



King County

Metropolitan King County Council Committee of the Whole

STAFF REPORT

Agenda Item:	5	Name:	Patrick Hamacher, Amy Tsai, Nick Wagner
Proposed No.:	2013-0242	Date:	21 October 2013
Invited:	<ul style="list-style-type: none">• Dave Chapman, Director, Office of Public Defense• Dwight Dively, Director, Office of Performance, Strategy and Budget (PSB)		

SUBJECT

An ordinance implementing the proposed charter amendment creating a department of public defense, contingent on voter approval of the charter amendment.

SUMMARY

Proposed Ordinance 2013-0242 (Attachment 1) would implement the proposed charter amendment that was placed on the November 2013 ballot by Ordinance 17614 (Attachment 4). The proposed ordinance is contingent on the charter amendment being approved by the voters.

The charter amendment would create a charter-based department of public defense, headed by a county public defender, within the executive branch. The amendment also provides for the creation of a public defense advisory board, which would be representative of a variety of groups that focus on issues related to public defense. The county public defender would be appointed by the executive, subject to council confirmation, from among candidates recommended by the advisory board. The advisory board members would be appointed by the executive, subject to council confirmation, from among candidates recommended by the groups that they represent.

Proposed Ordinance 2103-0242 would implement the charter amendment if it is approved by the voters. Primarily, the ordinance would: supplement the charter description of the duties of the department of public defense and the county public defender; further define the required qualifications for serving as county public defender; detail the membership, qualifications, and duties of the public defense advisory board; and detail the process for appointment, confirmation, and removal of the county public defender and the members of the public defense advisory board.

BACKGROUND

Dolan Litigation

For many years King County contracted with four private, nonprofit corporations for the provision of most public defense services. In January of 2006, a class action lawsuit was filed against the County, alleging that the employees of these agencies were county employees and that King County had a duty to enroll them in the Public Employees' Retirement System (PERS). In a ruling upheld by the Washington Supreme Court, the trial court held that the nonprofits were "arms and agencies" of King County, making the employees of those nonprofits employees of King County for purposes of PERS enrollment.

In April of 2012, the County began making employer contributions to PERS for those employees. In March of 2013, the Council approved a settlement agreement between King County and the Dolan plaintiffs. The settlement agreement recognizes the plaintiffs as county employees on July 1, 2013, with full benefits, but leaves up to King County how public defense will be structured. The settlement has received judicial approval, but will not be final until an appeal by the State Department of Retirement Services has been resolved.

"Interim" Ordinance 17588

On 20 May 2013 the Council adopted as an interim measure Ordinance 17588, which created a new department of public defense that initially has four divisions. This department will be in place until the Council decides on a new public defense structure and that structure is implemented. The Executive has transitioned almost all of the former staff of the four nonprofit public defense agencies to the status of county employees within the new department of public defense.

Charter Amendment Ordinance 17614

In large part to provide a degree of independence that is expected to help maintain the high quality of public defense services that King County is known for, the Council on 1 July 2013 adopted Ordinance 17614, which placed on the November 2013 ballot a charter amendment that would, in part, if approved by the voters:

- Create a charter-based department of public defense, headed by a county public defender and staffed by career-service county employees, within the executive branch;
- Create a public defense advisory board, which would be representative of a variety of groups that focus on issues related to public defense;
- Provide for appointment of the county public defender by the executive, subject to council confirmation, from among candidates recommended by the advisory board, and provide for possible removal of the public defender by the executive for cause, subject to appeal to the council;

- Provide for appointment of the advisory board members by the executive, subject to council confirmation, from among candidates recommended by the groups that they represent;
- Establish duties of the department of public defense, including not only the provision of legal counsel and representation to indigent individuals but also the fostering and promotion of “system improvements, efficiencies, access to justice and equity in the criminal justice system” and other duties that may be prescribed by ordinance;
- Establish duties of the public defense advisory board, including: recommending candidates to fill any vacancy in the office of county public defender; reviewing, advising, and reporting on the department of public defense; advising the executive and the council on matters of equity and social justice related to public defense; and such other duties as the council may prescribe by ordinance;
- Provide that nothing in Article 5 of the county charter (concerning the county personnel system) is intended to “limit the ability of the county to contract with any person, organization, or government for services that could be provided by the department of public defense”; and
- Provide that the county executive must consult with the county public defender on the plans and goals for collective bargaining with represented employees of the department, both before and periodically during the negotiation of their terms and conditions of employment.

Proposed “Implementing” Ordinance 2013-0242

The proposed charter amendment, if approved by the voters, would establish the structure and the key elements of a charter-based department of public defense, office of county public defender, and public defense advisory board; however, the details for implementing the charter amendment must be prescribed by ordinance, which is the purpose of Proposed Ordinance 2013-0242, the provisions of which are described below.

ANALYSIS OF PROPOSED ORDINANCE 2013-0242

This analysis of Proposed Ordinance 2013-0242 is based on Striking Amendment S4 (Attachment 2), not on the original proposed ordinance, because of the number of changes that are included in the striking amendment.

The key provisions of Striking Amendment S4 are:

A. Department of Public Defense (DPD)

1. Duties:

- a. Managing and being fiscally accountable for providing public defense services (53-60);¹
- b. Screening applicants for financial eligibility and securing reimbursement to the extent of their ability (or their families' ability) to pay (61-65);
- c. Establishing and maintaining an assigned counsel panel and assigning cases to panel members (66-70);
- d. Preparing an annual budget that evaluates and forecasts service delivery levels and DPD expenses (71-75); and
- e. "Fostering and promoting system improvements, efficiencies, access to justice and equity in the criminal justice system" (76-77).

2. Permitted DPD activities:

- a. Providing services by contract to tribal governments and municipalities in King County (78-81);
- b. Services related to Raising Our Youth As Leaders (ROYAL), including entering into agreements (82-84).

B. County Public Defender (CPD)

1. Qualifications:

- a. Attorney admitted to practice in any U.S. jurisdiction, in active status and good standing (188-89);
- b. Within two years after appointment, become a member of the Washington State bar in active status and good standing (189-92);
- c. At least seven years of experience as an attorney primarily practicing criminal defense, including both felonies and misdemeanors (192-94); and
- d. Supervisory and managerial experience (194-95).

¹ Numbers in parentheses are the line numbers of Striking Amendment S4 where the subject is addressed.

2. Duties:

- a. Managing and being fiscally accountable for DPD (90-91);
- b. Ensuring that DPD employs the needed technical and public defense expertise (92-93);
- c. Representing the executive in all city, county, state, and federal forums where the defense perspective is required (94-95);
- d. Ensuring that the American Bar Association Ten Principles for a Public Defense Delivery System guide the management of the department and the development of department standards for legal defense representation, and filing with the clerk of the council by April 1 of each year a report on the results of the county public defender's efforts in that regard (96-101);
- e. Following the Washington State Standards for Indigent Defense Services (102-03);
- f. Developing and maintaining appropriate standards for staff qualifications and experience (104-05);
- g. Working collaboratively with the public defense advisory board (PDAB) and providing relevant, non-privileged information to the board upon its reasonable request (106-08);
- h. Fostering and promoting system improvements, efficiencies, access to justice, and equity in the criminal justice system (109-10); and
- i. Within seven days after appointment, the CPD must designate a DPD employee to serve as deputy and, in the event of a vacancy in the office of CPD, as interim CPD until a new CPD is appointed (184-87).

3. Appointment process

- a. Appointed by the Executive, subject to Council confirmation, from among candidates recommended by PDAB (111-17);
- b. Within seven days after the CPD position becomes vacant, the Executive must begin a national recruitment for candidates (118-24);
- c. The Executive must complete the recruitment and provide PDAB with the names and related information of all candidates who meet the charter and code qualifications (124-28);

- d. Within 60 days after receiving the candidate information from the Executive, PDAB must review the candidates and recommend three for the Executive's consideration; PDAB must not rank the candidates, but may summarize the particular strengths of each (128-35);
- e. Within 15 days after receiving the list of recommended candidates from PDAB, the Executive may request three additional "names" (i.e., candidate recommendations and relevant written materials about each candidate); PDAB must comply within 30 days (136-40);
- f. Within 30 days after receiving the list of names from PDAB, the Executive must make the appointment (141-45); if PDAB has not provided the requisite number of names, the Executive may either choose one of the recommended candidates or wait until PDAB has provided the requisite number and make the appointment within 30 days thereafter (145-49);
- g. Council confirmation requires the affirmative votes of five councilmembers; motions to confirm are referred to the Committee of the Whole (150-53);
- h. If the Council rejects the appointment, PDAB must within 30 days recommend one additional candidate to the Executive (154-57); if the Executive has not previously requested three additional names (e.g., after receiving the initial three names), the Executive may request four more names instead of just one (158-64); PDAB must provide the additional one or four names within 30 days (164-67);
- i. Within 30 days after receiving the additional name or names, the Executive must make the appointment (and may not appoint a candidate whom the Council has rejected) (168-71); if PDAB has not provided the requisite number of names, the Executive may either choose one of the recommended candidates or wait until PDAB has provided the requisite number and make the appointment within 30 days thereafter (171-174);
- j. Upon written request from the Executive, the Council by motion may authorize the commencement of a new selection process, beginning with a new national recruitment (175-183); this provides a remedy if the original pool of candidates is considered unsatisfactory.

4. Term of office:

- a. Four years, ending at same time as the term of the county prosecuting attorney (196-97);

- b. The Executive may reappoint the CPD to additional terms, subject to Council confirmation (197-200).

5. Removal for cause:

- a. The Executive may remove the CPD only for cause, which includes but is not limited to:
 - i. The grounds for vacancy of elective office under Section 680 of the King County Charter (203-04);
 - ii. Failure to meet the applicable legal requirements for serving as county public defender (205-06);
 - iii. Conviction of a crime (207);
 - iv. Misconduct under the Washington Rules of Professional Conduct (208-09); and
 - v. Failure to manage the department effectively (210).
- b. CPD may, within 10 days, appeal removal to the council, which may either affirm or reverse the removal within 30 days; inaction by the council results in affirmance of the removal (218-24).

6. Compensation: At the same rate as the prosecuting attorney (233-34).

C. Public Defense Advisory Board (PDAB)

1. Duties

- a. Review the activities and plans of DPD (237-38);
- b. Make recommendations to CPD (238-39);
- c. Advise the Executive and the Council on matters of equity and social justice related to public defense (239-40);
- d. Prepare reports as required and as PDAB deems appropriate (240-41);
- e. Recommend candidates to fill any vacancy in the office of CPD (241-43);
- f. Work collaboratively with the CPD (and may reasonably request relevant, non-privileged information) (244-46); and

- g. Consult with the county prosecutor, courts, and DPD in performing all of PDAB's duties except recommending candidates for CPD (246-48).

2. Makeup of board: eleven members (249-270), representing:

- a. Washington Association of Criminal Defense Lawyers;
- b. Washington State Office of Public Defense;
- c. Washington Defender Association;
- d. King County Bar Association;
- e. A bar association identified as a minority bar association by the Washington State Bar Association; and
- f. Nonpartisan organizations active in King County that focus on:
 - i. Mental health issues;
 - ii. Substance abuse issues;
 - iii. Military veterans;
 - iv. Issues related to poverty;
 - v. Juvenile justice issues; and
 - vi. Immigration issues.

3. Terms of board members: staggered three-year terms (271-77);

4. Appointment process

- a. Council clerk notifies groups of vacancies (289-302);
- b. Represented groups have 60 days to recommend candidates to the Executive (266-335);
- c. Within 30 days after the close of the notice period, the Executive must make the appointment, which is subject to Council confirmation; if a represented group has not provided the requisite number of names, the Executive may either choose one of the recommended candidates or wait until PDAB has provided the requisite number and make the appointment within 30 days thereafter (314-324);

- d. Council motions to confirm are referred to the Law, Justice, Health, and Human Services Committee (326-28);
- e. If the Council rejects an appointment, the represented group has 30 days to recommend an additional candidate for the Executive to consider (329-35).

5. Qualifications

- a. Substantial experience and expertise that are relevant to the work of DPD (341-42);
- b. Ability and willingness to commit the time necessary to attend meetings and participate effectively (343-44);
- c. A majority “should have substantial experience in providing indigent defense representation” (344-45);
- d. “To the extent practicable, the board membership shall reflect the diversity of the county” (345-46); and
- e. “[M]ay not, while serving on the board, hold elective public office except precinct committee officer, be a candidate for elective public office except precinct committee officer, serve as a King County judge, a King County prosecuting attorney or a King County public defender or be an employee of a King County court, the King County prosecuting attorney or the King County department of public defense” (346-51).

6. Meetings: at least once every two months (352).

7. Reports: at least two each calendar year: one on PDAB’s review of CPD’s proposed budget for public defense; and one on the state of county public defense (352-55). The latter “shall include an assessment of the progress of the county in promoting equity and social justice related to the criminal justice system and may include recommendations for advancing equity and social justice.”

8. Staffing: to be provide by the Council (359).

AMENDMENTS

Striking Amendment S4 (Attachment 2) would extensively revise the original ordinance; hence, the analysis contained in this staff report reflects the striking amendment, not the original ordinance.

Title Amendment T1 (Attachment 3) would amend the code references in the title to conform to Striking Amendment S4 and would remove unnecessary substantive detail.

ATTACHMENTS

1. Proposed Ordinance 2013-0242
2. Striking Amendment S1
3. Title Amendment T1
4. Ordinance 17614 (the proposed charter amendment)



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

October 18, 2013

Ordinance

Proposed No. 2013-0242.1

Sponsors Patterson and Lambert

1 AN ORDINANCE implementing the charter amendment
2 creating the department of public defense; establishing the
3 duties and functions of the department of public defense
4 and of the county public defender; establishing the
5 qualifications for the county public defender; establishing
6 cause for removal of the county public defender from
7 office; establishing duties, membership, process and
8 qualifications for appointment, rules and procedures of the
9 public defender advisory board; defining eligibility for
10 receiving legal defense services at no cost; and designating
11 the county public defender as the bargaining agent of the
12 county on all matters concerning employees of the
13 department of public defense except for compensation and
14 benefits, which shall be negotiated by the county executive;
15 amending Ordinance 8257, Section 2, as amended, and
16 K.C.C. 2.60.020, Ordinance 14412, Section 3, as amended,
17 and K.C.C. 2.60.027, Ordinance 8257, Section 3, as
18 amended, and K.C.C. 2.60.030, Ordinance 383, Section 5,
19 as amended, and K.C.C. 2.60.050, Ordinance 10167,

20 Section 1, as amended, and K.C.C. 2.60.054, Ordinance
21 383, Section 6, as amended, and K.C.C. 2.60.060 and
22 Ordinance 197, Section 1, as amended, and K.C.C.
23 3.16.010, adding new sections to K.C.C. chapter 2.60 and
24 repealing Ordinance 8257, Section 3, as amended, and
25 K.C.C. 2.60.030, Ordinance 383, Section 4, as amended,
26 and K.C.C. 2.60.040 and Ordinance 8257, Section 6, as
27 amended, and K.C.C. 2.60.070.

28 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

29 **SECTION 1. Findings:**

30 A. Public defense services are mandated by the United States Constitution, the
31 Washington State Constitution and state law.

32 B. The Sixth Amendment of the United States constitution and Article I, Section
33 22, of the Washington State Constitution guarantee assistance of counsel to every citizen
34 accused of a matter where loss of liberty is possible.

35 C. Since the 1970s, King County has contracted with private, nonprofit
36 corporations for the provision of most indigent defense services. These corporations
37 were viewed by the county and the corporations as independent contractors, and as a
38 result the employees of the corporations were not considered county employees and did
39 not receive county benefits, nor were they enrolled in the Public Employees' Retirement
40 System.

41 D. In January 2006, a class action lawsuit was filed against King County,
42 alleging that the employees of the corporations were county employees and that King
43 County had a duty to enroll them in the Public Employees' Retirement System.

44 E. In February 2009, a Pierce county superior court judge ruled that the county
45 had exercised such control over the corporations that they were effectively county
46 agencies and the employees were employees of the county for the purpose of enrollment
47 in the Public Employees' Retirement System.

48 F. In August 2011, the Washington Supreme Court affirmed the trial court's
49 decision in a five-to-four decision, and the county's motion for reconsideration was
50 denied.

51 G. In March 2012, the trial court entered an order requiring King County to
52 enroll the current employees of the public defense firms in the Public Employees'
53 Retirement System, which the county did.

54 H. On March 18, 2013, the King County council adopted Ordinance 17537,
55 approving a proposed settlement agreement that would recognize the current employees
56 of the public defense corporations as county employees on July 1, 2013.

57 I. The county intends to maintain the high quality of public defense services that
58 public defense attorneys and staff have delivered and to which King County has long
59 been committed, by ensuring to the greatest degree possible independence from political
60 influence and support for a quality work force and excellent performance. The county
61 also wishes to maximize resources, value and operational efficiency in the provision of
62 public defense services.

63 J. The county values the expertise and commitment of public defenders and
64 recognizes the contributions they have made to establish a foundation of public defense
65 services on which to build a new structure. The county wishes to work with the public
66 defense agency directors in a close and collaborative process during the transition to a
67 new management structure that achieves the county's goals for public defense.

68 SECTION 2. Ordinance 8257, Section 2, as amended, and K.C.C. 2.60.020 are
69 each hereby amended to read as follows:

70 ~~((There is hereby established within the department of community and human
71 services the office of public defense. A public director of the office of public defense
72 shall be appointed by the county executive and approved by the county council. The
73 county executive shall consult with representatives of the criminal justice system and the
74 broader community during the recruitment and selection of the appointee.))~~ The duties of
75 the department of public defense include:

76 A. Providing publicly-financed legal counsel and representation to indigent
77 individuals in the legal proceedings described in K.C.C. 2.60.050.

78 B. Providing legal defense services in an efficient manner that ensures effective
79 representation at reasonable cost to the county;

80 C. Screening and determining eligibility for publicly-financed legal defense
81 services. Determination of indigency is controlled by chapter 10.101 RCW. In
82 determining eligibility and seeking contribution, when appropriate, the department shall
83 comply with the applicable provisions of chapter 10.101 RCW;

84 D. Assigning cases to public defense attorneys consistent with the federal and
85 state constitutions and standards; and

86 E. Establishing and maintaining an assigned counsel panel that includes attorneys
87 acceptable to the department who wish to participate in the defense of eligible persons,
88 and assignment of cases to assigned counsel where conflicts of interest or other special
89 circumstances exist which require use of assigned counsel.

90 SECTION 3. Ordinance 14412, Section 3, as amended, and K.C.C. 2.60.027 are
91 each hereby amended to read as follows:

92 ~~((The duties of the director of the office of public defense shall include the~~
93 ~~following:~~

94 ~~A. Manage the office of public defense;~~

95 ~~B. Ensure the office of public defense employs the needed technical and public~~
96 ~~defense expertise to ensure effective delivery of public defense services;~~

97 ~~C. Represent the department in all city, county, state and federal forums where~~
98 ~~the defense perspective is required; and~~

99 ~~D. Develop appropriate standards and guidelines for the qualification and~~
100 ~~experience level of attorneys and paraprofessionals.))~~

101 A. The duties of the county public defender include:

102 1. Managing the department of public defense;

103 2. Ensuring that the department employs the needed technical and public
104 defense expertise to ensure effective delivery of public defense services;

105 3. Preparing an annual budget for the department that evaluates and forecasts
106 service delivery levels and program expenses for contractors, assigned counsel and
107 administration. Such evaluations and forecasts shall include an analysis of the impact, if

108 any, of changes in the procedures or practices of the courts, prosecutor, police, public
109 defense contractors, or other elements of the criminal justice system;

110 4. Representing the department in city, county, state, federal and private forums
111 when the county public defender considers it appropriate to do so;

112 5. Advocating and working for social justice and criminal justice reform related
113 to public defense;

114 6. Ensuring that the department of public defense meets the Washington State
115 Standards for Indigent Defense Services;

116 7. Developing and maintaining appropriate standards and guidelines for the
117 qualification and experience of public defense attorneys and paraprofessionals;

118 8. Implementing, to the extent feasible, the Ten Principles of a Public Defense
119 Delivery System that were approved by the American Bar Association House of
120 Delegates in February of 2002, and reporting on April 1 of each year, in the manner
121 prescribed in section 4.J, on the status of that implementation; and

122 9. Working collaboratively with the public defense advisory board and
123 providing relevant, non-privileged information to the board upon its reasonable request.

124 B. The county public defender shall be appointed by the county executive,
125 subject to confirmation by the county council, from among three candidates nominated
126 by the public defense advisory board.

127 C. The county public defender shall be an attorney admitted to practice law in the
128 courts of the state of Washington and a member of the Washington State Bar Association
129 in “active” status and shall have, at the time of appointment, at least ten years of

130 experience as an attorney primarily practicing criminal defense, including both felonies
131 and misdemeanors, as well as supervisory and managerial experience.

132 D. The term of office of the county public defender is four years, coterminous
133 with the term of the county prosecuting attorney.

134 E. The county executive may reappoint the county public defender to additional
135 four-year terms, subject to confirmation by the county council.

136 F. The county council may remove the county public defender from office for
137 cause, which includes but is not limited to:

138 1. The grounds for vacancy of elective office under Section 680 of the King

139 County Charter;

140 2. Failure to meet the applicable legal requirements for serving as county public
141 defender, as set forth in the county charter or other applicable law;

142 3. Conviction of a crime; and

143 4. A finding or stipulation of misconduct under the Washington Rules of
144 Professional Conduct.

145 G. Confirmation of the appointment and reappointment of the county public
146 defender requires the affirmative votes of at least five members of the county council.

147 Removal requires at least six affirmative votes.

148 H. If the office of county public defender becomes vacant before the end of the
149 term of office, the person appointed as a replacement shall serve the remainder of the
150 term, rather than beginning a new four-year term.

151 I. The county public defender shall receive compensation at the same rate as the
152 prosecuting attorney.

153 NEW SECTION. SECTION 4. There is hereby added to K.C.C. chapter 2.60 a
154 new section to read as follows:

155 A. The public defense advisory board shall: regularly review the activities and
156 plans of the department of public defense, make recommendations to the county public
157 defender on matters concerning the department, prepare reports as required in this section
158 and as deemed appropriate by the board; and when there is a vacancy in the office of
159 county public defender, as provided in subsection K of this section, recommend to the
160 county council three possible candidates to fill the vacancy.

161 B. In performing its duties, the board shall work collaboratively with the county
162 public defender and may reasonably request relevant, non-privileged information from
163 the county public defender.

164 C. The board shall consist of ten members, shall establish its own rules of
165 procedure, subject to the county charter, the county code and other applicable law, and
166 shall choose its own chair.

167 D. The board shall consist of one representative of each of the following:

168 1. The Washington Association of Criminal Defense Lawyers

169 <<http://www.wacdl.org/>>;

170 2. The Washington state Office of Public Defense

171 <<http://www.opd.wa.gov/Default.htm>>;

172 3. The Washington Defender Association <<http://wsba.org/>>;

173 4. The King County Bar Association <<http://www.kcba.org/>>;

174 5. A nonpartisan organization active in King County that focuses on mental
175 health issues, such as the King County mental health advisory board
176 <<http://www.kingcounty.gov/healthservices/MentalHealth/Board.aspx>>;

177 6. A nonpartisan organization active in King County that focuses on substance
178 abuse issues, such as the King County alcoholism and substance abuse administrative
179 board
180 <[http://www.kingcounty.gov/healthservices/SubstanceAbuse/Boards/AdministrativeBoar](http://www.kingcounty.gov/healthservices/SubstanceAbuse/Boards/AdministrativeBoard.aspx)
181 [d.aspx](http://www.kingcounty.gov/healthservices/SubstanceAbuse/Boards/AdministrativeBoard.aspx)>;

182 7. A nonpartisan organization active in King County that focuses on issues
183 concerning military veterans, such as the King County veterans program advisory board
184 <[http://www.kingcounty.gov/socialservices/veterans/AdvisoryBoards/VeteransProgramA](http://www.kingcounty.gov/socialservices/veterans/AdvisoryBoards/VeteransProgramAdvisoryBoard.aspx)
185 [dvisoryBoard.aspx](http://www.kingcounty.gov/socialservices/veterans/AdvisoryBoards/VeteransProgramAdvisoryBoard.aspx)>;

186 8. A nonpartisan organization active in King County that focuses on issues
187 related to poverty;

188 9. A nonpartisan organization active in King County that focuses on juvenile
189 justice issues; and

190 10. A minority bar association.

191 E. The county council shall appoint each board member from among one or more
192 individuals nominated by the entity that the member will represent.

193 F. Members of the board shall serve staggered three-year terms and until their
194 successors are nominated and confirmed, except that the members designated in
195 subsection D.1., 2. and 3. of this section shall serve an initial term of one year and the
196 members designated in subsection D.4, 5. and 6. of this section shall serve an initial term

197 of two years. If a member leaves the board midterm, the person appointed as a
198 replacement shall serve the remainder of the term, rather than beginning a new term of
199 three years. The county council may reappoint board members for additional three-year
200 terms and may remove any board member who is unable or unwilling to participate
201 effectively in the work of the board or who engages in misconduct that undermines the
202 member's effectiveness as a board member. Removal of a board member requires the
203 affirmative votes of at least six councilmembers. Members of the board shall not be
204 compensated for the performance of their duties as members of the board, but may be
205 paid subsistence rates and mileage in amounts consistent with county policy.

206 G. The process for filling vacancies on the board is:

207 1. The chair of the council shall notify councilmembers of vacancies on the
208 committee and shall direct council staff to develop a job description and list of
209 qualifications for board members, as well as an application form;

210 2. The open positions shall be advertised at a minimum in the county's
211 newspaper of record;

212 3. The chair of the council shall direct council staff to develop administrative
213 procedures for accepting applications. All applications shall be forwarded to all county
214 councilmembers. Applications shall also be forwarded for review to each public defense
215 advisory board member, and the board and any board member may offer written
216 comments to the law, justice, health and human services committee of the council, or its
217 successor;

218 4. The law, justice, health and human services committee of the council, or its
219 successor, shall review applications and may interview applicants. The committee may

220 recommend to the full council the appointment of members to the public defense
221 advisory board; and

222 5. Appointments shall be made by the full council by motion.

223 H. Each member of the advisory board shall have substantial experience and
224 expertise that are relevant to the work of the department of public defense and shall have
225 an ability and willingness to commit the time necessary to attend meetings and participate
226 effectively as a member of the board. A majority of the members should have substantial
227 experience in providing indigent defense representation. To the extent practicable, the
228 board membership shall reflect the diversity of the clients of the department of public
229 defense. A member may not, while serving on the committee, hold elective public office,
230 be a candidate for elective public office or serve as a prosecuting attorney, a judge or an
231 employee of a prosecuting attorney or court.

232 I. The board shall meet at least once every two months and shall issue a report to
233 the executive and the council at least twice each calendar year: once on the state of
234 county public defense and once on the board's review of the proposed budget for public
235 defense.

236 J. Any reporting to the council under this chapter shall be made in the form of
237 paper and electronic copies of the report filed with the clerk of the council, who shall
238 forward electronic copies to all councilmembers, to the lead staff of the budget and fiscal
239 management committee or its successor and to the lead staff of the law, justice, health
240 and human services committee or its successor.

241 K. Within ninety days after a vacancy occurs, or the board learns of an
242 anticipated vacancy, in the office of county public defender, the public defense advisory

243 board shall provide to the county executive, and contemporaneously to the clerk of the
244 county council, the names of exactly three qualified candidates to fill the vacancy,
245 together with copies of the candidates' biographical and descriptive information and all
246 other written information upon which the board relied in choosing the three candidates.
247 The board shall not rank the candidates, but may summarize the particular strengths of
248 each candidate.

249 SECTION 5. Ordinance 383, Section 5, as amended, and K.C.C. 2.60.050 are
250 each hereby amended to read as follows:

251 Legal defense services through the department of public defense (~~(program)~~) shall
252 be made available to all eligible persons for whom counsel is constitutionally required. In
253 addition, legal defense services through the department of public defense (~~(program)~~)
254 (~~(will)~~) shall be made available, when funds are available therefor, to all eligible persons
255 (~~((when there may be some factual likelihood of such person's))~~) in legal proceedings
256 arising in King County that may result in the persons' loss of liberty by an act of the
257 county or any of its agencies, including criminal proceedings alleging a violation of any
258 law of the ((S))state of Washington or ordinance of King County, juvenile matters,
259 mental illness and similar commitment proceedings, revocations and habeas corpus
260 proceedings ((when such arise)); and to eligible parents and children in dependency
261 proceedings arising in King County.

262 Legal defense services through the department of public defense (~~(program)~~) may
263 be made available, at his or her expense, to a person charged in King County with a
264 felony of public notoriety when the court finds that the defendant is unable to employ
265 adequate private counsel as a result of such public notoriety. The (~~(administrator of the)~~)

266 department of public defense (~~(program)~~) shall establish a reasonable fee for such legal
267 defense services, subject to the approval of the court.

268 SECTION 6. Ordinance 10167, Section 1, as amended, and K.C.C. 2.60.054 are
269 each hereby amended to read as follows:

270 A. A defendant requesting counsel at public expense shall pay a processing fee of
271 twenty-five dollars as reimbursement to (~~(King County)~~) the county for the
272 administrative costs and expenses incurred in the processing of the application. The
273 processing fee(~~(s)~~) is payable at the time the request for public counsel is made to the
274 (~~(office)~~) department of public defense. Processing fees are not refundable, even if the
275 defendant is determined to be not eligible for counsel at public expense. A defendant
276 (~~(will)~~) shall not be denied counsel because the defendant cannot pay the processing fee.
277 All processing fee payments received shall be credited to the county current expense
278 fund.

279 B. The department of public defense may enter into agreements to provide
280 indigent defense services to the state of Washington, tribal governments and
281 municipalities in King County on a full cost recovery basis, subject to council approval
282 by ordinance when required by law.

283 SECTION 7. Ordinance 383, Section 6, as amended, and K.C.C. 2.60.060 are
284 each hereby amended to read as follows:

285 To be eligible to receive legal defense services through the department of public
286 defense (~~(program)~~) at no cost, the person must be financially unable to obtain adequate
287 representation without substantial hardship to himself and his family and there must be
288 some factual likelihood that he will be deprived of his liberty. If a person has some

289 resources available which can be used to secure representation but not sufficient
290 resources to pay the entire costs of private legal services without substantial hardship to
291 himself and his family, the department of public defense (~~((program))~~) shall determine how
292 much the person shall pay for the legal defense services provided through the (~~((public
293 defense program))~~) department.

294 NEW SECTION. SECTION 8. There is hereby added to K.C.C. chapter 2.60 a
295 new section to read as follows:

296 The department shall manage cases and assign counsel in a manner that avoids
297 conflicts of interest, including those that could arise from division-wide concurrent
298 representation of more than one client involved in a single matter, such as codefendants
299 or defendant and a witness or suspect in the case or correspondents or represented
300 members of a family in a dependency case or a respondent and an adverse witness in a
301 civil dependency case. If the department is unable to provide in-house representation
302 when a conflict exists, it shall assign counsel from the assigned counsel panel. The
303 department shall develop adopt a policy to determine when a conflict exists and to avoid
304 conflicting representation.

305 SECTION 9. Ordinance 197, Section 1, as amended, and K.C.C. 3.16.010 are
306 each hereby amended as follows:

307 A. In accordance with Sections 890, (~~((and))~~) 898 and 899 of the King County
308 Charter, the King County executive is designated bargaining agent for King County,
309 except as provided in subsections B and C. of this section.

310 B.1. The sheriff is the designated bargaining agent of the county on all
311 department of public safety matters except for compensation and benefits for employees

312 of the department of public safety. The county executive is the designated bargaining
313 agent on compensation and benefits for employees of the department of public safety.

314 2. The sheriff and the executive shall consult and collaborate with each other in
315 advance of collective bargaining negotiations with representatives of the employees of
316 the department of public safety. The sheriff and the executive shall identify respective
317 areas of bargaining authority, the positions to be taken on issues expected to arise during
318 collective bargaining and other matters that have the potential to affect collective
319 bargaining. The sheriff and the executive shall make a good faith effort, including
320 meeting if necessary, to resolve any disagreements between them concerning such
321 matters.

322 3. ~~((H))~~ To the extent that the sheriff and the executive are unable to resolve
323 ~~((any))~~ such disagreements, the sheriff and the executive shall promptly submit to each
324 councilmember a confidential, detailed, joint written report describing the disagreement.

325 4. Neither the executive nor the sheriff may propose or agree to the inclusion of
326 language in any collective bargaining agreement, memorandum of agreement or
327 memorandum of understanding concerning employees of the department of public safety
328 without conferring with each other, except regarding compensation and benefits.

329 C.1. The county public defender is the designated bargaining agent of the county
330 on all department of public defense matters except for compensation and benefits for
331 employees of the department of public defense. The county executive is the designated
332 bargaining agent on compensation and benefits for employees of the department of public
333 defense.

334 2. The county public defender and the executive shall consult and collaborate
335 with each other in advance of collective bargaining negotiations with representatives of
336 the employees of the department of public defense. The county public defender and the
337 executive shall identify respective areas of bargaining authority, the positions to be taken
338 on issues expected to arise during collective bargaining and other matters that have the
339 potential to affect collective bargaining. The county public defender and the executive
340 shall make a good faith effort, including meeting if necessary, to resolve any
341 disagreements between them concerning such matters.

342 3. To the extent that the county public defender and the executive are unable to
343 resolve such disagreements, the county public defender and the executive shall promptly
344 submit to each councilmember a confidential, detailed, jointly written report describing
345 the disagreement.

346 4. Neither the executive nor the county public defender may propose or agree to
347 the inclusion of language in any collective bargaining agreement, memorandum of
348 agreement or memorandum of understanding concerning employees of the department of
349 public defense without conferring with each other.

350 SECTION 10. A. Ordinance 8257, Section 3, as amended, and K.C.C. 2.60.30
351 are each hereby repealed.

352 B. Ordinance 383, Section 4, as amended, and K.C.C. 2.60.040 are each hereby
353 repealed.

354 C. Ordinance 8275, Section 6, and K.C.C. 2.60.070 are each hereby repealed.

355 SECTION 11. This ordinance takes effect only upon certification that the charter
356 amendment that this ordinance implements (Proposed Ordinance 2013-0212) has been
357 approved by the voters.
358

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

Larry Gossett, Chair

ATTEST:

Anne Noris, Clerk of the Council

APPROVED this ____ day of _____, _____.

Dow Constantine, County Executive

Attachments: None

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10-21-13

nw

Sponsor: Patterson, Lambert

Proposed No.: 2013-0242

1 **STRIKING AMENDMENT TO PROPOSED ORDINANCE 2013-0242, VERSION**

2 **1**

3 On page 2, beginning on line 28, strike everything through page 17, line 357, and insert:

4 "BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

5 **SECTION 1. Findings:**

6 A. Public defense services are mandated by the United States Constitution, the
7 Washington state Constitution and state law.

8 B. The Sixth Amendment of the United States Constitution and Article I, Section
9 22, of the Washington state Constitution guarantee assistance of counsel to every citizen
10 accused in a matter where loss of liberty is possible.

11 C. Beginning in the 1970s, King County contracted with private, nonprofit
12 corporations for the provision of most indigent defense services. These private, nonprofit
13 corporations were viewed by the county and the corporations as independent contractors,
14 and as a result the employees of the private, nonprofit corporations were not considered
15 county employees and did not receive county benefits, nor were they enrolled in the
16 Public Employees' Retirement System ("PERS").

17 D. In January 2006, a class action lawsuit was filed against King County,
18 alleging that the employees of the private, nonprofit corporations were county employees
19 and that King County had a duty to enroll them in PERS.

20 E. In February 2009, a Pierce county superior court judge entered an injunction
21 requiring employees of the King County public defense contractors to be enrolled in
22 PERS. Enforcement of that injunction was stayed on appeal.

23 F. In August 2011, the Washington Supreme Court affirmed the trial court's
24 decision in a five to four decision. The county's motion for reconsideration, which was
25 supported by the state of Washington as amicus curiae, was denied.

26 G. In March 2012, the trial court entered an order requiring King County to
27 enroll the then-current employees of the private, nonprofit corporations in PERS. The
28 county complied with this order.

29 H. On March 18, 2013, the King County council adopted Ordinance 17537,
30 which approved a proposed settlement agreement that recognized the current employees
31 of the private, nonprofit corporations as county employees on July 1, 2013. The
32 settlement received judicial approval but will not be final until an appeal that was
33 received from the Department of Retirement Services is resolved.

34 I. On May 20, 2013, the council adopted Ordinance 17588, which established a
35 department of public defense performing public defense services primarily in-house, in
36 order to ensure that current and future clients would have access to public defense
37 services without disruption as the settlement agreement was implemented.

38 J. The county intends to maintain the high quality of public defense services that
39 public defense attorneys and staff have delivered and to which King County has long

40 been committed, by promoting independence from political influence, a quality work
41 force and operational efficiency in the provision of public defense services.

42 K. Toward that end, the council has placed on the ballot, by Ordinance 17614, a
43 charter amendment that would make the department of public defense a charter-created
44 department with a county public defender appointed by the executive from among
45 candidates nominated by an advisory board that is broadly representative of entities and
46 nonpartisan organizations that focus on issues related to criminal justice and public
47 defense, with the appointment subject to council confirmation. The board would also
48 serve as an advisor to the county public defender.

49 L. Only if the voters approve the charter amendment will this ordinance take
50 effect in order to implement the charter amendment.

51 SECTION 2. Ordinance 8257, Section 2, as amended, and K.C.C. 2.60.020 are
52 each hereby amended to read as follows:

53 A. The department of public defense is responsible ~~((to manage))~~ for managing
54 and ~~((be))~~ being fiscally accountable for the provision of public defense services. ~~((The~~
55 ~~department should have four divisions.))~~

56 B. The duties of the department of public defense include:

57 1. Providing legal defense services in accordance with ~~((K.C.C. 2.60.050))~~

58 Section 350.20.60 of the King County Charter and ~~((other provisions of))~~ this chapter;

59 2. Providing legal defense services in an efficient manner that ensures effective
60 representation at reasonable cost to the county;

61 3. ~~((Investigating))~~ Screening and determining eligibility for legal defense

62 services through the department. In addition, the department shall secure reimbursement

63 from eligible persons, including the parents of juveniles receiving legal defense services
64 through the department, when the person can afford to pay some or all of the cost to King
65 County of providing such legal defense services;

66 4. Establishing and maintaining an assigned counsel panel that includes
67 attorneys acceptable to the department who wish to participate in the defense of persons
68 eligible for services through the department;

69 5. Assigning cases to assigned counsel where conflicts of interest or other
70 special circumstances exist which require use of assigned counsel; ~~((and))~~

71 6. Preparing an annual budget for the department that evaluates and forecasts
72 service delivery levels and department expenses for service delivery, contractors,
73 assigned counsel and administration. ~~((Such))~~ The evaluations and forecasts shall include
74 an analysis of the impact, if any, of changes in the procedures or practices of the courts,
75 prosecutor, police~~((;))~~ or other elements of the criminal justice system; and

76 7. Fostering and promoting system improvements, efficiencies, access to justice
77 and equity in the criminal justice system.

78 C. The department may provide its services to the state of Washington, tribal
79 governments and municipalities in King County on a full cost recovery basis and is
80 authorized to negotiate appropriate agreements, subject to council approval by ordinance
81 when required by law.

82 D. The department may provide services related to the Raising Our Youth As
83 Leaders (ROYAL) project and is authorized to enter into appropriate agreements for that
84 purpose.

85 SECTION 3. Ordinance 17588, Section 4, and K.C.C. 2.60.026 are each hereby
86 amended to read as follows:

87 A. The department of public defense shall be directed by ~~((a director who shall be~~
88 ~~appointed by the executive and confirmed by the council. The duties of the director))~~ the
89 county public defender, whose duties include:

90 ~~((A.))~~ 1. Managing and being fiscally accountable for the department of public
91 defense;

92 ~~((B.))~~ 2. Ensuring that the department employs the needed technical and public
93 defense expertise for effective delivery of public defense services;

94 ~~((C.))~~ 3. Representing the executive in all city, county, state and federal forums
95 where the defense perspective is required;

96 ~~((D.))~~ 4. Ensuring that the American Bar Association Ten Principles for a Public
97 Defense Delivery System, as approved by the American Bar Association House of
98 Delegates in February of 2002, guide the management of the department and the
99 development of department standards for legal defense representation, and filing with the
100 clerk of the council by April 1 of each year a report on the results of the county public
101 defender's efforts in that regard.

102 ~~((E.))~~ 5. Following the Washington State Standards for Indigent Defense
103 Services; ~~((and))~~

104 ~~((F.))~~ 6. Developing and maintaining appropriate standards and guidelines for
105 the qualifications and experience level of public defense attorneys and paraprofessionals;

106 7. Working collaboratively with the public defense advisory board and
107 providing relevant, nonprivileged information to the board upon its reasonable request;
108 and

109 8. Fostering and promoting system improvements, efficiencies, access to justice
110 and equity in the criminal justice system.

111 B.1. The county public defender shall be appointed by the executive, subject to
112 confirmation by the council. The executive shall appoint one of the three candidates
113 recommended by the public defense advisory board, except that the executive may
114 request three additional candidates from the public defense advisory board, and the
115 executive may then appoint the county public defender from among the six candidates,
116 subject to confirmation by motion by the council. Confirmation requires the affirmative
117 votes of at least five members of the council.

118 2. Within seven days after either a vacancy occurs in the office of the county
119 public defender or the county executive learns that a vacancy is expected to occur within
120 one hundred eighty days, including but not limited to a vacancy that will result from the
121 expiration of the term of a county public defender who the executive determines to not
122 reappoint, the executive shall provide written notice of the vacancy or expected vacancy
123 to each member of the public defense advisory board and to the clerk of the council and
124 shall commence a national recruitment for candidates to fill the vacancy. Within thirty
125 days after commencing the recruitment, the executive shall provide to each member of
126 the public defense advisory board the names, resumes and all other relevant information
127 about all candidates who meet the qualifications for office set forth in the county charter
128 and subsection C. of this section. Within sixty days after receiving the names, resumes,

129 and other relevant information about the qualified candidates from the executive, the
130 public defense advisory board shall provide in writing at the same time to the executive
131 and the clerk of the county council the names of three candidates to fill the vacancy,
132 together with copies of the candidates' resumes and other relevant information, including
133 all written information upon which the board relied in choosing the three candidates. The
134 board shall not rank the candidates, but may summarize the particular strengths of each
135 candidate.

136 3. The executive may request in writing to the board chair, within fifteen days
137 after receiving the list of three candidates, that the board provide to the executive the
138 names, resumes and other relevant written information of three additional candidates, and
139 the board shall comply with such a request within thirty days and shall at the same time
140 provide a copy of the additional materials to the clerk of the council.

141 4. Within thirty days after receiving either the original list of three candidates or
142 the list of three additional candidates, the executive shall appoint the county public
143 defender by providing written notice of the appointment to the clerk of the council, who
144 shall provide an electronic copy of the notice to each councilmember and to the chair of
145 the public defense advisory board. If the board fails to timely recommend in writing to
146 the executive three or six candidates, as applicable, the executive may either appoint the
147 county public defender from among the candidates who have been recommended or wait
148 until the board has recommended the requisite number of candidates and make the
149 appointment within thirty days thereafter.

150 5. The county council may confirm or reject the executive's appointment by
151 adoption of a motion with the affirmative votes of at least five members. A motion to

152 confirm or reject the appointment shall be referred for committee consideration to the
153 council's committee of the whole.

154 6. If the council rejects the executive's appointment of the county public
155 defender, the public defense advisory board shall, within thirty days, recommend and
156 provide in writing at the same time to both the executive and the clerk of the council the
157 name, resume and all other relevant written information for one additional candidate.

158 7. If the council rejects the executive's appointment of the county public
159 defender and the executive has not previously elected to request additional candidates
160 from the advisory board under this subsection B.7. or subsection B.3. of this section, the
161 executive may request the public defense advisory board for recommendation of four
162 additional candidates. Such a request must be made in writing within seven days after the
163 council rejects the executive's appointment, to the chair of the advisory board, with a
164 copy to the clerk of the council. The advisory board shall, within thirty days after
165 receiving the executive's request, recommend and provide in writing at the same time to
166 both the executive and the clerk of the council the name, resume and all other relevant
167 written information for four additional candidates.

168 8. Within thirty days after receiving the additional name or names, the executive
169 shall appoint the county public defender from among the recommended candidates,
170 except that the executive may not reappoint any candidate whose appointment has been
171 rejected by the council. If the advisory board fails to recommend the additional
172 candidate or candidates required by subsection B.6. and 7. of this section and provide the
173 required written information, the executive shall proceed in the same manner as set forth
174 in subsection B.4. of this section.

175 9. At any time after the commencement of the national recruitment process
176 required by subsection B.2. of this section, except when the executive has appointed a
177 county public defender and the council has not confirmed or rejected the appointment, the
178 executive may request that the council authorize the commencement of a new national
179 recruitment and public defense advisory board review and executive appointment
180 process. Such a request must be submitted in writing to the clerk of the council with a
181 copy to the chair of the advisory board. When so requested, the council may authorize
182 commencement of a new recruitment, advisory board review, and appointment process
183 by motion adopted with the affirmative votes of at least five councilmembers.

184 10. Within seven days after appointment, the county public defender shall
185 designate an employee in the department of public defense to serve as a deputy and, in
186 the event of a vacancy in that office, as interim county public defender until a new county
187 public defender has been appointed.

188 C. The county public defender must be an attorney admitted to practice law in
189 any jurisdiction within the United States and in active status and good standing. The
190 county public defender shall, within two years after appointment, be an attorney admitted
191 to practice law in the courts of the state of Washington and an active member of the
192 Washington State Bar Association in good standing and shall, at the time of appointment,
193 have at least seven years of experience as an attorney primarily practicing criminal
194 defense, including both felonies and misdemeanors, as well as supervisory and
195 managerial experience.

196 D. The term of office of the county public defender shall end at the same time as
197 the term of the county prosecuting attorney. The county executive may reappoint the

198 county public defender to additional four-year terms, subject to confirmation by the
199 county council. The county council may confirm or reject the executive's reappointment
200 by adoption of a motion with the affirmative votes of at least five members.

201 E. The executive may remove the county public defender from office for cause,
202 which includes, but is not limited to:

203 1. The grounds for vacancy of elective office under Section 680 of the King
204 County Charter;

205 2. Failure to meet the applicable legal requirements for serving as county public
206 defender, as set forth in the county charter or the county code;

207 3. Conviction of a crime;

208 4. A finding or stipulation of misconduct under the Washington Rules of
209 Professional Conduct; and

210 5. Failure to manage the department effectively.

211 F. To remove the county public defender for cause, the executive shall serve a
212 written notice of removal, specifying the cause for removal, by delivering a copy of the
213 notice to the county public defender personally or by leaving a copy of the notice at the
214 office of the county public defender with a secretary or other assistant to the county
215 public defender. The executive shall contemporaneously deliver a copy of the written
216 notice of removal to the clerk of the council and to the chair of the public defense
217 advisory board.

218 G. The county public defender may appeal removal to the council by delivering a
219 written notice of appeal to the clerk of the council within ten days after service of the
220 written notice of removal. The notice of appeal shall be delivered at the same time to the

221 executive and to the chair of the public defense advisory board. The council shall review
222 de novo the grounds for removal and either affirm or reverse the removal within thirty
223 days after delivery of the notice of appeal by an affirmative vote of five members, or else
224 the removal shall stand. Removal of the county public defender is effective upon the
225 earliest of:

226 1. Ten days after service of notice of removal, if the county public defender
227 serves no notice of appeal;

228 2. Affirmation of removal by the council following an appeal;

229 3. Thirty days after delivery of the notice of appeal, if the council neither
230 affirms nor reverses the removal; or

231 4. The county public defender's delivery of a written notice of resignation to the
232 executive or the clerk of the council.

233 H. The county public defender shall receive compensation at the same rate as the
234 prosecuting attorney.

235 NEW SECTION. SECTION 4. There is hereby added to K.C.C. chapter 2.60 a
236 new section to read as follows:

237 A. The public defense advisory board shall: regularly review the activities and
238 plans of the department of public defense, make recommendations to the county public
239 defender on matters concerning the department, advise the executive and council on
240 matters of equity and social justice related to public defense, prepare the reports required
241 in this section and such other reports as the board may deem appropriate; and when there
242 is a vacancy in the office of county public defender, as provided in K.C.C. 2.60.026,
243 recommend to the county executive candidates to fill the vacancy.

244 B. In performing its duties, the board shall work collaboratively with the county
245 public defender and may reasonably request relevant, non-privileged information from
246 the county public defender. The board through its chair shall consult with the county
247 prosecutor, courts, and department of public defense in the performance of all of its
248 duties except for the recommendation of candidates.

249 C. The board shall consist of eleven members, shall establish its own rules of
250 procedure, subject to the county charter, the county code and other applicable law, and
251 shall choose its own chair.

252 D. The board shall consist of one representative from each of the following:

- 253 1. The Washington Association of Criminal Defense Lawyers;
- 254 2. The Washington state Office of Public Defense;
- 255 3. The Washington Defender Association;
- 256 4. The King County Bar Association;
- 257 5. A bar association identified as a minority bar association by the Washington
258 State Bar Association;
- 259 6. A nonpartisan organization active in King County that focuses on mental
260 health issues;
- 261 7. A nonpartisan organization active in King County that focuses on substance
262 abuse issues;
- 263 8. A nonpartisan organization active in King County that focuses on issues
264 concerning military veterans;
- 265 9. A nonpartisan organization active in King County that focuses on issues
266 related to poverty;

267 10. A nonpartisan organization active in King County that focuses on juvenile
268 justice issues; and

269 11. A nonpartisan organization active in King County that focuses on
270 immigration issues.

271 E. Members of the board shall serve staggered three-year terms and until their
272 successors are appointed and confirmed, except that the members designated in
273 subsection D.1., 2., 3. and 4. of this section shall serve an initial term of one year and the
274 members designated in subsection D.5., 6., 7. and 8. of this section shall serve an initial
275 term of two years. If a member leaves the board midterm, the person appointed as a
276 replacement shall serve the remainder of the unexpired term, rather than beginning a new
277 term of three years. The county council may reappoint board members for additional
278 three-year terms and may remove any board member by motion adopted with the
279 affirmative votes of at least five councilmembers. Members of the board shall not be
280 compensated for the performance of their duties as members of the board, but may be
281 reimbursed for parking expenses in the King County parking garage when attending
282 meetings of the committee, which shall be deemed to be for the business convenience of
283 the county and shall be paid for by the department of public defense.

284 F. The process for filling vacancies on the board is:

285 1.a. Upon learning of a pending or existing vacancy or one hundred twenty days
286 before a scheduled vacancy on the board, the board chair and the county public defender
287 shall provide written notice of the vacancy to the clerk of the council and to the
288 executive.

289 b. Upon learning of a pending or existing vacancy or one hundred twenty days
290 before a scheduled vacancy, the clerk of the council shall provide written notice of the
291 vacancy to the executive, all councilmembers, the board chair, the county public defender
292 and:

293 (1) to the represented organization for vacancies in the board seats designated
294 in subsection D.1., 2., 3. and 4. of this section;

295 (2) to each of the bar associations identified as a minority bar association by
296 the Washington State Bar Association for a vacancy in the board seat designated in
297 subsection D.5. of this section; and

298 (3) by publication of notice of the vacancy in the official county newspaper
299 and in the largest newspaper of general circulation within the county for the board seats
300 designated in subsection D.6., 7., 8., 9., 10. and 11. of this section.

301 c. The notice shall specify the deadlines established in subsection F.2. of this
302 section;

303 2. Within sixty days after the clerk of the council provides the notice required in
304 subsection F.1.b. of this section, the represented organization, any minority bar
305 association organization and each nonpartisan organization with the required subject
306 matter focus that wishes to do so shall submit in writing at the same time to the county
307 executive and the clerk of the council, the names of three candidates recommended for
308 appointment to fill a vacancy in the board seat for which notice was required to be given
309 to the organization, together with the resume of each candidate and all other written
310 materials that the organization considered in deciding to recommend the candidate. The
311 organization shall not rate the candidates, but may provide a brief description of the

312 strengths of each candidate. The clerk of the council shall provide an electronic copy of
313 the resumes and other written materials to each councilmember;

314 3. Within thirty days after receiving the written materials concerning the
315 recommended candidates for a board seat designated in subsection D.1., 2., 3. or 4. of this
316 section, or within sixty to ninety days after the clerk of the council provides the notice
317 required in subsection F.2 for a board seat designated in subsection D.5, 6., 7., 8., 9., 10.
318 or 11. of this section, the county executive shall appoint one of the recommended
319 candidates by providing written notice of the appointment to the clerk of the council, who
320 shall provide an electronic copy of the notice to each councilmember. If the applicable
321 organization fails to timely recommend three candidates, the executive may either make
322 an appointment from among the recommended candidates or candidate or wait until the
323 organization has recommended three candidates and make an appointment within thirty
324 days after receiving the board's recommendation of the third candidate;

325 4. The county council may confirm or reject the executive's appointment by
326 motion adopted by the affirmative votes of at least five members. A motion to confirm
327 the appointment shall be referred for committee consideration to the council's law,
328 justice, health and human services committee, or its successor; and

329 5. If the council rejects the executive's appointment of a board member, the
330 clerk of the council shall provide written notice of the rejection to the executive and the
331 represented organization or organizations. Within thirty days after receiving the written
332 notice, the represented organization shall provide to the executive in writing, and
333 contemporaneously to the clerk of the council, the name, resume, and all other relevant
334 written information for one additional candidate. Within thirty days after receiving the

335 additional candidate recommendation and the relevant written materials, the executive
336 shall appoint the board member from among the recommended candidates, excluding any
337 candidate whom the council has rejected. If a represented organization fails to timely
338 provide the additional candidate recommendation and relevant written materials, the
339 executive shall proceed in the same manner as if the entity had recommended fewer than
340 the required number of candidates, as provided in subsection F.3. of this section.

341 G. Each member of the advisory board shall have substantial experience and
342 expertise that are relevant to the work of the department of public defense and shall have
343 an ability and willingness to commit the time necessary to attend meetings and participate
344 effectively as a member of the board. A majority of the members should have substantial
345 experience in providing indigent defense representation. To the extent practicable, the
346 board membership shall reflect the diversity of the county. A member may not, while
347 serving on the board, hold elective public office except precinct committee officer, be a
348 candidate for elective public office except precinct committee officer, serve as a King
349 County judge, a King County prosecuting attorney or a King County public defender or
350 be an employee of a King County court, the King County prosecuting attorney or the
351 King County department of public defense.

352 H. The board shall meet at least once every two months and shall issue at least
353 two written reports to the executive and the council each calendar year: one on the
354 board's review of the executive's proposed budget for public defense; and one on the
355 state of county public defense. The report on the state of county public defense shall
356 include an assessment of the progress of the county in promoting equity and social justice

357 related to the criminal justice system and may include recommendations for advancing
358 equity and social justice.

359 I. The council shall provide for staffing of the advisory board.

360 SECTION 5. Ordinance 383, Section 5, as amended, and K.C.C. 2.60.050 are
361 each hereby amended to read as follows:

362 A. Legal defense services through the department shall be made available to all
363 eligible persons for whom counsel is constitutionally required. In addition, legal defense
364 services through the department shall be made available when funds are available: to any
365 eligible person in legal proceedings arising in King County that may result in the person's
366 loss of liberty by an act of King County or any of its agencies, including, but not limited
367 to, criminal proceedings alleging a violation of any law of the state of Washington or
368 ordinance of King County, juvenile matters, mental illness and similar commitment
369 proceedings, revocations and habeas corpus proceedings arising in King County; and to
370 eligible parents and children in dependency proceedings arising in King County.

371 B. Legal defense services through the department may be made available to a
372 person charged in King County with a felony of public notoriety, at his or her expense,
373 when the court finds that the defendant is unable to employ adequate private counsel as a
374 result of the public notoriety. The ~~((director of the department))~~ county public defender
375 shall establish a reasonable fee for the legal defense services, subject to the approval of
376 the court.

377 NEW SECTION. SECTION 6. There is hereby added to K.C.C. chapter 2.60 a
378 new section to read as follows:

379 Except as otherwise provided under this chapter, reports or notices that are
380 required under this chapter to be provided to the county council or the clerk of the council
381 shall be filed in paper and electronic form with the clerk of the council, who shall
382 forward electronic copies to all councilmembers, to the chair of the public defense
383 advisory board, to the lead staff of the budget and fiscal management committee or its
384 successor and to the lead staff of the law, justice, health and human services committee or
385 its successor.

386 SECTION 7. Ordinance 11955, Section 12, as amended, and K.C.C. 2.16.100 are
387 each hereby amended to read as follows:

388 A. Exemptions from the requirements of the career service personnel system
389 shall be consistent with the provisions of Sections 550, 350.10 and 350.20 of the King
390 County Charter. Key subordinate units, as determined by the county council, and
391 departmental divisions shall be considered to be executive departments. Divisions of
392 administrative offices shall be considered to be administrative offices for the purpose of
393 determining the applicability of the charter provisions.

394 B. The county administrative officer, directors, chief officers and supervisors of
395 departments, administrative offices, divisions, key subordinate units and other units of
396 county government as required by law shall be exempt from the requirements and
397 provisions of the career service personnel system.

398 C.1. The following are determined by the council to be key subordinate units due
399 to the nature of the programs involved and their public policy implications and
400 appointments to these positions shall be subject to confirmation by the council:

401 a. ~~((the director of the office of public defense;~~

402 ~~b.~~) the chief information officer of the administrative office of information
403 resource management;

404 ~~(e.)~~ b. the manager of the elections division;

405 ~~(f.)~~ c. the superintendent of elections in the elections division; and

406 ~~(g.)~~ d. the manager of the records and licensing services division.

407 2. When an ordinance is enacted designating a position as a key subordinate
408 unit, no person then serving in the position shall continue to serve for more than ninety
409 days after such enactment, unless reappointed by the executive and confirmed by the
410 council.

411 D. If an administrative assistant or a confidential secretary, or both, for each
412 director, chief officer of an administrative office and supervisor of a key subordinate unit
413 are authorized, those positions are exempt from the requirements and provisions of the
414 career service personnel system.

415 SECTION 8. Ordinance 11955, Section 13, as amended, and K.C.C. 2.16.110 are
416 each hereby amended to read as follows:

417 A. The county executive shall appoint the county administrative officer and the
418 director of each executive department, except the departments of assessments, public
419 safety, elections and judicial administration. The county executive shall also appoint the
420 division director of the youth detention facility through a competitive search process that
421 includes participation by the superior court judges. The ~~((county executive shall also
422 appoint the director of the office of public defense))~~ appointment of the county public
423 defender shall be consistent with Section 350.20.61 of the King County Charter and
424 K.C.C. chapter 2.60.

425 B. The county administrative officer shall appoint the division directors and chief
426 officers of each administrative office in the department of executive services.

427 C. The director of each executive department, at the discretion of the county
428 executive, shall appoint exempt employees of his or her department as provided in
429 Section 550 of the King County Charter.

430 D.1. All appointments by the county executive shall be subject to confirmation
431 by a majority of the county council except exempt personnel assigned to his or her
432 personal staff.

433 2. All appointments to positions of division director or chief officer of an
434 administrative office not made by the county executive shall be subject to approval by the
435 county executive.

436 E.1.a. All individuals appointed by the county executive, under Section 340.40 of
437 the King County Charter, shall serve in an acting capacity, unless confirmed by the
438 council. The executive is authorized to appoint a person to serve in an acting capacity to
439 fill a position requiring council confirmation for a period of no greater than one hundred
440 fifty days. The executive shall notify the council within ninety days concerning the status
441 of his or her search for qualified candidates for appointment to the vacant position.

442 Thereafter, the individual may continue serving in an acting capacity for successive sixty-
443 day periods only with approval by motion of the county council. The council shall grant
444 at least one successive sixty-day extension if the executive certifies to the council's
445 satisfaction that the executive is actively pursuing a search for qualified candidates for
446 appointment to the vacant position. If no appointment is transmitted to the council for
447 confirmation during the authorized period, the position shall be considered vacant for

448 purposes of exercise of any authority given to the position under ordinance and no salary
449 shall be paid for the position while it is so vacant.

450 b. Within seven calendar days of any executive appointment that is subject to
451 council confirmation, the executive shall deliver written notice of the appointment to the
452 council accompanied by a proposed motion confirming the appointment.

453 c. Upon the receipt of the notification by the executive of an appointment,
454 accompanied by the proposed motion, the council shall act to consider confirmation of
455 the appointment within ninety days. Approval of the introduced motion by a majority of
456 the council shall constitute confirmation of the appointee. Once confirmed, the appointee
457 is no longer serving in an acting capacity.

458 d. In considering the confirmation of executive appointments to offices of
459 management level responsibility, the council shall base its review on the ability of the
460 appointee to meet the following criteria:

461 (1) a demonstrated reputation for integrity and professionalism;

462 (2) a commitment to and knowledge of the responsibilities of the office;

463 (3) a history of demonstrated leadership, experience and administrative
464 ability;

465 (4) the ability to work effectively with the executive, the council, other
466 management, public agencies, private organizations and citizens; and

467 (5) a demonstrated sensitivity to and knowledge of the particular needs and
468 problems of minorities and women.

469 e. The appointee, before review of the appointment by the council, shall submit
470 to the chair of the council:

471 (1) a full and complete resume of his or her employment history, to include
472 references attesting to the stated employment experiences; and

473 (2) a signed statement acknowledging that the council's confirmation process
474 may require the submittal of additional information relating to the background and
475 expertise of the appointee.

476 f. Upon receipt of an executive appointment, the chair or his or her delegate,
477 subject to the council's rules of procedure, shall notify council members of the
478 appointment and attempt to allow a minimum of one work week for individual members
479 to submit written questions to the reviewing committee.

480 2. It is understood that written inquiries submitted to the reviewing committee,
481 by individual council members, may require a written response from the appointee or the
482 executive, in matters pertaining to the process of appointment and other pertinent
483 employment policies of King County.

484 SECTION 9. Ordinance 1872, Section 3, as amended, and KCC 2.32.120 are
485 each hereby amended to read as follows:

486 A. There is established a board of corrections, hereinafter, referred to as the
487 board, consisting of fourteen members. The members shall consist of the following: the
488 chairman of the King County magistrate's association, the presiding judge of the Seattle
489 Municipal Court the presiding judge of the King County Superior Court, the chairman of
490 the juvenile court management committee, the director of King County Department of
491 Public Safety, the ~~((administrator of the King County office of public defense))~~ King
492 County public defender, the King County prosecuting attorney, the mayor of the city of
493 Seattle, the president of the King County Suburban Mayors' Association, the chief of the

494 Seattle Police Department, the dean of the University of Washington School of Law, the
495 dean of the University of Washington School of Social Work, and the director of the
496 King County health department. In addition, the King County executive shall appoint
497 one member who has been incarcerated in a King County detention facility within three
498 years prior to the appointment. The director of the department of adult detention shall
499 serve as a nonvoting ex officio member.

500 B. The board shall serve as an advisory body to the manager of the department of
501 adult detention to review and make recommendations at least annually for the department
502 of adult detention on its policies, operations and matters of budget.

503 C. The advisory board shall meet at least once during each calendar quarter of
504 each year.

505 SECTION 10. This ordinance takes effect upon certification that the charter
506 amendment proposed by Ordinance 17614 has been approved by the voters."

507 **EFFECTS: The ordinance has been extensively re-written and should be reviewed**
508 **in its entirety.**

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Oct. 21, 2013

T1

nw

Sponsor: Patterson

Proposed No.: 2013-0242

1 **AMENDMENT TO PROPOSED ORDINANCE 2013-0242, VERSION 1**

2 On page 1, beginning on line 1, strike everything through page 2, line 27, and insert:

3 "AN ORDINANCE implementing the charter amendment
4 that was placed on the ballot by Ordinance 17614,
5 contingent on certification that the charter amendment has
6 been approved by the voters; amending Ordinance 8257,
7 Section 2, as amended, and K.C.C. 2.60.020, Ordinance
8 17588, Section 4, and K.C.C. 2.60.026, Ordinance 383,
9 Section 5, as amended, and K.C.C. 2.60.050, Ordinance
10 11955, Section 12, as amended, and K.C.C. 2.16.100,
11 Ordinance 11955, Section , 13, as amended, and K.C.C.
12 2.16.110 and Ordinance 1872, Section 3, as amended, and
13 K.C.C. 2.32.100 and adding new sections to K.C.C. chapter
14 2.60."

15 **EFFECT: Amends the code references to conform to Striking Amendment S4 and**
16 **removes unnecessary substantive details.**

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KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

October 18, 2013

Ordinance 17614

Proposed No. 2013-0212.3

Sponsors Patterson and Lambert

1 AN ORDINANCE relating to the creation of a department
2 of public defense, amending Section 350.20 of the King
3 County Charter adding a new Section 350.20.60 entitled
4 "Duties of the Department of Public Defense" to the King
5 County Charter creating a department of public defense and
6 an appointed office with the title of "county public
7 defender," adding a new Section 350.20.61 to the King
8 County Charter, adding a new Section 350.20.65 to the
9 King County Charter creating a public defense advisory
10 board, adding a new Section 555 to the King County
11 Charter, permitting the county to contract for public
12 defense services, adding a new Section 899 to the King
13 County Charter, requiring the executive to consult with the
14 county public defender on the executive's bargaining with
15 employees of the department of public defense, submitting
16 the same to the voters of the county for their ratification or
17 rejection at the November 2013 general election.

18 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

19 SECTION 1. There shall be submitted to the qualified voters of King County for
20 their approval and ratification or rejection, at the next general election to be held in this
21 county occurring more than forty-five days after the enactment of this ordinance, an
22 amendment to the King County Charter, amending Section 350.20 of the King County
23 Charter and adding a new Section 350.20.60, new Section 350.20.61, new Section
24 350.20.65, new Section 555 and new Section 899 to the King County Charter, as set forth
25 below:

26 **Section 350.20. Executive Departments.**

27 The executive departments shall consist of the department of assessments, the
28 department of judicial administration, the department of elections, the department of
29 public defense and those agencies of the executive branch which are primarily engaged in
30 the execution and enforcement of ordinances and statutes concerning the public peace,
31 health and safety and which furnish or provide governmental services directly to or for
32 the residents of the county.

33 **Section 350.20.60. Duties of the Department of Public Defense.**

34 The duties of the department of public defense shall include providing legal
35 counsel and representation to indigent individuals in legal proceedings, including those in
36 the superior and district courts for King County and in appeals from those courts, to the
37 extent required under the sixth amendment to the United States Constitution or Article I,
38 Section 22, of the Constitution of the State of Washington. The department of public
39 defense shall also foster and promote system improvements, efficiencies, access to justice
40 and equity in the criminal justice system. Additional duties may be prescribed by
41 ordinance. Elected officials shall not interfere with the exercise of these duties by the

42 department; however, the enactment of appropriation ordinances does not constitute
43 interference. The department shall not have its duties, as established in this section,
44 decreased by the county council or the county executive.

45 **Section 350.20.61. Administration of the Department of Public Defense.**

46 The department of public defense shall be managed by the county public
47 defender. The department shall utilize the services of the executive departments and
48 administrative offices as administered by the county executive.

49 The county public defender shall be appointed by the county executive, subject to
50 confirmation by the county council, to a term that ends at the same time as the term of the
51 county prosecuting attorney, unless removed earlier by the executive for cause, including
52 the grounds for vacancy for elective office under Section 680 of this charter and such
53 other grounds as the council may prescribe by ordinance. The removal may be appealed
54 by the defender to the council by a process to be prescribed by ordinance. The council's
55 determination shall be final.

56 The county executive shall appoint the county public defender from candidates
57 recommended by the public defense advisory board under a process prescribed by
58 ordinance. Qualifications of the county public defender may be established by ordinance.
59 The county executive may reappoint the county public defender to additional terms,
60 subject to confirmation by the county council. Confirmation of the appointment or
61 reappointment, or removal when appealed, shall require the affirmative votes of at least
62 five members of the county council.

63 **Section 350.20.65. Public Defense Advisory Board.**

64 The public defense advisory board is established to review, advise and report on
65 the department of public defense in a manner that may be prescribed by ordinance. The
66 board shall also advise the executive and council on matters of equity and social justice
67 related to public defense. In the event of a vacancy in the office of county public
68 defender, the board shall recommend candidates from whom the county executive shall
69 make an appointment to fill the vacancy subject to confirmation by the county council.
70 The county council shall prescribe by ordinance the board's membership, process and
71 qualifications for appointment to the board, rules and procedures, and may prescribe by
72 ordinance additional duties of the board.

73 **Section 555. Department of Public Defense.**

74 Nothing in this Article 5 shall limit the ability of the county to contract with any
75 person, organization, or government for services that could be provided by the
76 department of public defense.

77 **Section 899. Department of Public Defense Employee Collective Bargaining.**

78 The county executive shall consult with the county public defender on the plans
79 and goals for bargaining before and periodically during the negotiation of terms and
80 conditions of employment with employees of the department of public defense. The
81 council may prescribe the method of consultation by ordinance.

82 SECTION 2. The clerk of the council shall certify the proposition to the director
83 of the elections department, in substantially the following form, with such additions,
84 deletions or modifications as may be required by the prosecuting attorney:

85 Shall the King County Charter be amended to create an appointed office of
86 county public defender, a department of public defense, and a public

87 defense advisory board, permit the county to contract for public defense
88 services, and require the executive to consult with the county public
89 defender on the executive's bargaining with employees of the department
90 of public defense?
91

Ordinance 17614 was introduced on 4/22/2013 and passed as amended by the Metropolitan King County Council on 7/1/2013, by the following vote:

Yes: 9 - Mr. Phillips, Mr. von Reichbauer, Mr. Gossett, Ms. Hague,
Ms. Patterson, Ms. Lambert, Mr. Dunn, Mr. McDermott and Mr.
Dembowski
No: 0
Excused: 0

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

Larry Gossett, Chair

ATTEST:

Anne Noris, Clerk of the Council

APPROVED this ____ day of _____, _____.

Dow Constantine, County Executive

Attachments: None