## REVISED STAFF REPORT

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| **Agenda Item:** | 5 | **Name:** | Jenny Giambattista  |
| **Proposed No**.: | 2021-0193 | **Date:** | August 31, 2021 |

**COMMITTEE ACTION**

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| ***Proposed Substitute Ordinance 2021-0193.2 relating to the Public Defense Advisory Board, passed out of committee on August 31, 2021 with a “Do Pass” recommendation. The Ordinance was amended in committee with Striking Amendment S1 which makes clarifying edits to Proposed Ordinance 2021-0193. It also replaces the clerk of the council with the executive as the entity responsible for notification when a vacancy occurs. Further, the striking amendment specifies it is the executive rather than the clerk of the council that would receive application materials from prospective materials.*** |

**SUBJECT**

Proposed Ordinance 2021-0193 would amend Ordinance 17678, Section 4, and K.C.C 2.60.031 relating to the Public Defense Advisory Board.

**SUMMARY**

The Public Defense Advisory Board (PDAB) was created in 2013. Proposed Ordinance 2021-0193 reflects the changes recommended by PDAB to King County Code section 2.60.031 relating to the Public Defense Advisory Board. These changes are focused on the board member selection process and reporting requirements and do not substantively change the overall function and duties of the board. Staff have also prepared a striking amendment to reflect additional changes supported by Executive staff and PDAB.

**BACKGROUND**

**Creation of the Board**

The King County Public Defense Advisory Board (“the Board”) was created, along with the King County Department of Public Defense and the office of County Public Defender, by a charter amendment that the Council placed on the November 2013 ballot by adopting Ordinance 17614.[[1]](#footnote-1) The PDAB began meeting in August 2014.

Section 350.20.65 of the King County Charter provides that the County Council shall prescribe by ordinance the Board's membership, the process and qualifications for appointment to the Board, and the Board’s rules and procedures.[[2]](#footnote-2)

**Duties of the Board**

Section 350.20.65 assigns the following duties to the Board:

* “[R]eview, advise and report on the department of public defense in a manner that may be prescribed by ordinance”;
* “[A]dvise the executive and council on matters of equity and social justice related to public defense”;
* “In the event of a vacancy in the office of county public defender, . . . recommend candidates from whom the county executive shall make an appointment to fill the vacancy subject to confirmation by the county council”; and
* Such additional duties as the County Council may prescribe by ordinance.

Section 2.60.031 of the King County Code assigns the following additional duties to the Board:

* Work collaboratively with the County Public Defender (KCC 2.60.031(B));
* Through the Board chair, consult with the County Prosecutor, the Courts, and the Department of Public Defense in the performance of all the Board’s duties except the recommendation of candidates to serve as County Public Defender (2.60.031(B));
* Meet at least once every two months (KCC 2.60.031(H)); and
* Issue at least two written reports to the Executive and the Council each calendar year: one on the Board’s review of the Executive’s proposed budget for public defense and one on the state of county public defense; the latter report must include an assessment of the county’s progress in promoting equity and social justice related to the criminal justice system and may include recommendations for advancing equity and social justice.

**Board Membership**

The 11-member Board is required by the county code (KCC 2.60.031(D)) to consist of one representative from each of the following:

1. The Washington Association of Criminal Defense Lawyers;
2. The Washington state Office of Public Defense;
3. The Washington Defender Association;
4. The King County Bar Association;
5. A bar association identified as a minority bar association by the Washington State Bar Association;
6. A nonpartisan organization active in King County that focuses on mental health issues;
7. A nonpartisan organization active in King County that focuses on substance abuse issues;
8. A nonpartisan organization active in King County that focuses on issues concerning military veterans;
9. A nonpartisan organization active in King County that focuses on issues related to poverty;
10. A nonpartisan organization active in King County that focuses on juvenile justice issues; and
11. A nonpartisan organization active in King County that focuses on immigration issues.

KCC 2.60.031(G) sets the following additional requirements:

* “Each member of the advisory board shall have substantial experience and expertise that are relevant to the work of the department of public defense and shall have an ability and willingness to commit the time necessary to attend meetings and participate effectively as a member of the board.”
* “A majority of the members should have substantial familiarity with advocating on behalf of the indigent.”
* “To the extent practicable, the board membership shall reflect the diversity of the county.”
* “A member may 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 judicial officer, 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.”

**Terms of Board Members**

Board members serve three-year terms. To avoid excessive turnover, the terms are staggered, with the terms of three or four members expiring each year. To achieve this result, four of the initial board members are appointed to one-year terms, four are appointed to two-year terms, and three are appointed to three-year terms. (KCC 2.60.031(E))

The Council may reappoint Board members for additional three-year terms and may remove any Board member by motion adopted with the affirmative votes of at least five councilmembers. (KCC 2.60.031(E))

**Board Selection Process**

The process for selecting Board members is prescribed in KCC 2.60.031(F). Briefly, the represented organizations are notified of board vacancies and are invited to recommend candidates to the County Executive, who makes appointments from among those recommended.[[3]](#footnote-3)

**Board Confirmation Process**

Council confirmation or rejection of a Board appointment requires “the affirmative votes of at least five members” (KCC 2.60.031(F)(4)). If the Council rejects an appointment, the represented organization[[4]](#footnote-4) is required to recommend to the Executive, within 30 days after receiving notice of the rejection, another candidate. The Executive then has an additional 30 days to make a new appointment from among all the recommended candidates (excluding those who have been rejected by the Council).[[5]](#footnote-5) (KCC 2.60.031(F)(5).

**ANALYSIS**

The Proposed Ordinance was developed by the Public Defense Advisory Board. Upon introduction, additional issues needing clarification were identified. Council staff worked with the PDAB board chair and Executive staff to develop the attached striking amendment.

This section of the staff report will describe the substantive changes in both the underlying ordinance and the Striking Amendment.

**Board Selection Process**

The current recruitment process involves finding organizations representing specific issues areas that are willing to nominate candidates to represent those organizations on the PDAB board. Executive staff note the process can be cumbersome and time consuming and has been a barrier to qualified potential PDAB members who are not affiliated with a particular organization. The Proposed Ordinance is intended to eliminate the requirement that a nonpartisan organization for each specific issue area be represented on the board. Instead, the proposed ordinance requires board members represent issues that may affect public defense clients and includes a list of those issues that reflect the issues areas in the current code. However, a drafting error in the proposed ordinance resulted in a shortening of the list of issues.

*Striker update:* The drafting error has been corrected in the striking amendment (lines 22-42) and the final list of representatives would read as follows.

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

1. The Washington Association of Criminal Defense Lawyers;
2. The Washington State Office of Public Defense;
3. The Washington Defender Association
4. The King County Bar Association and
5. Bar Associations identified as minority bar associations by the Washington State Bar Association and
6. The remaining six members of the board shall represent areas or issues that may affect public defense clients, including mental health, substance abuse, military veterans, poverty, juvenile justice and immigration issues.

Additionally, the Proposed Ordinance allows candidates to apply individually if the applicant has significant experience or knowledge in one of the issue areas (lines 43-45). The applicants applying individually are also required to submit resumes.

*Striker Update:* The striker eliminates the term “nonpartisan” organization to refer to those organizations who could nominate candidates to the PDAB board. This is because the County does not generally refer to those organizations working on issues such as mental health, substance abuse, military veterans, poverty, juvenile justice and immigration as nonpartisan.

The proposed ordinance also eliminates the requirement for the clerk to publish a notice in the official county newspaper of the vacancy for the board seats representing issues that may affect public defense clients (lines 73-75). Executive staff report that newspapers are not an effective means of reaching community organizations. However, the proposed ordinance adds a requirement for the clerk to notify those nonpartisan organizations active in the issue areas referenced in Subsection D6, which identifies the list of public defense related issues to be represented by PDAB board members.

*Striker update*: Upon consultation with the Clerk and Executive staff, the responsibility for notification has been changed from the Clerk to the Executive (line 65). There is not a single list of every organization in King County working on issues affecting public defense clients. However, Executive staff note they can send a notification to all organizations which contract with the Department of Community and Health Services. Additionally, the nominations, either self-nominations or nominations from organizations would now go to the Executive rather than to all councilmembers. The Executive would continue to transmit a nominee for approval to the Council.

**Reporting Changed to Every Other Year**

Under the existing code, the board is required to provide two reports each year: a report on the board’s review of the Executive’s proposed budget for public defense and report on the state of County Public Defense. The proposed ordinance changes the reporting requirement so that each report is required at least every other year (lines 138-139).

**Eliminates requirement to consult with County Prosecutor, Courts, Department of Public Defense in the performance of its duties. (Lines 16-18)**

As shown below, the proposed ordinance eliminates the requirement for the Board to consult with the County prosecutor, Courts, and Department of Public Defense.

*B. In performing its duties, the board shall work collaboratively with the County public defender and may reasonably request relevant, ((non privileged)) nonprivileged information from the county public defender. ((~~The board through its chair shall consult with the county prosecutor, courts, and department of public defense in the performance of all of its duties except for the recommendation of candidates.~~))*

The PDAB chair reports that the existing language is overly broad and could require consultation when it is not in the best interest of the Department of Public Defense or PDAB. However, PDAB intends to continue to consult with the Prosecutor and Courts when appropriate. Additionally, PDAB will continue to get regular updates at its Board meetings from managers at DPD and the labor unions representing Public Defense staff.

**Staffing**

The existing King County Code 2.60.031 states:

*The council shall provide for staffing of the advisory board.*

The proposed ordinance would specify that Council is to provide funding for executive staffing of the advisory board (lines 143-144).

*The council shall provide for funding for executive staffing of the advisory board.*

*Striker Update:* In order to avoid the ordinance binding future budgetary actions of the Council, the striker clarifies that funding is subject to appropriation (lines 144-145).

 *The council shall provide funding, subject to appropriation, for executive staffing of the advisory board.*

**Code Clean-Up**

The proposed ordinance also cleans up sections of the code. For example, it deletes references to the initial board terms and corrects the names of the Council’s Law and Justice Committee.

**AMENDMENT**

As described above, a striking amendment has been prepared in collaboration with the Public Defense Advisory Board. It makes clarifying edits to Proposed Ordinance 2021-0193. It also replaces the Clerk of the Council with the Executive as the entity responsible for notification when a vacancy occurs. Further, the striking amendment specifies it is the Executive rather than the Clerk of the Council that would receive application materials from prospective materials.

1. Both the Department and the Board were created in response to a Washington Supreme Court ruling and the proposed settlement of a class action lawsuit against King County regarding county benefits for public defense agency employees (*Dolan v. King County*). [↑](#footnote-ref-1)
2. Section 2.60.031(C) of the King County Code (Att. 17) provides in part that the Board “shall establish its own rules of procedure, subject to the county charter, the county code and other applicable law, and shall choose its own chair.” [↑](#footnote-ref-2)
3. Section 2.60.031(F) contains a number of procedural details and contingency provisions. [↑](#footnote-ref-3)
4. That is, the organization that would have been represented by the rejected appointee. [↑](#footnote-ref-4)
5. If the represented organization fails to recommend another candidate within 30 days, the Executive may either continue to wait indefinitely or choose from among the remaining candidates who have not been rejected by the Council. [↑](#footnote-ref-5)