



## Legislation Text

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AN ORDINANCE creating a public defender district and public defense advisory board for King County, amending Ordinance 11955, Section 6, as amended, and K.C.C. 2.16.130, Ordinance 8257, Section 2, as amended, and K.C.C. 2.60.020, Ordinance 11955, Section 13, as amended, and K.C.C. 2.16.110 and Ordinance 10167, Section 1, as amended, and K.C.C. 2.60.054, adding new sections to K.C.C. chapter 2.60, adding a new section to K.C.C. Title 4A and repealing Ordinance 14412, Section 3, as amended and K.C.C. 2.60.027, Ordinance 383, Section 6, as amended, and K.C.C. 2.60.060 and Ordinance 8257, Section 6, and K.C.C. 2.60.070.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

NEW SECTION. SECTION 1. There is hereby added to K.C.C. chapter 2.60 a new section to read as follows:

- A. There is hereby constituted a public defender district encompassing all of King County.
- B. There is established an office of public defender for the King County public defender district. The office of public defender shall be the department of public defense.
- C. The public defender shall be a qualified attorney licensed to practice law in Washington state. The public defender should be an attorney who is an active member of the Washington State Bar Association in good status and should have, at the time of appointment at least ten years of experience as an attorney primarily practicing criminal defense, including both felonies and misdemeanors, as well as supervisory and managerial experience.

D. The public defender shall be selected by a selection committee appointed by the council. The committee is hereby appointed by the council and shall consist of the chair of the county council, the presiding judge of the superior court, and the president of the King County Bar Association, provided, that the presiding judge of the superior court may substitute another member of the superior court for the judicial appointment and the president of the King County Bar Association may substitute another practicing attorney for the attorney appointment who is not a prosecuting attorney. In making its selection, the selection committee should consider the recommendations of the public defense advisory board.

E. The compensation of the public defender shall be set by the county council during the budget for the fiscal period. The compensation shall not exceed that of the county prosecutor.

F. The term of the public defender shall coincide with the elected term of the prosecuting attorney. The public defender may be removed from office by the selection committee.

G. The public defender shall make an annual report of costs and expenditures to the county council and executive.

H. The public defender shall represent, without charge to the accused, every indigent person who is or has been arrested or charged with a crime for which court appointed counsel for indigent defendants is required either under the United States Constitution or under the Constitution and laws of the state of Washington:

1. If the arrested person or accused, having been apprised of his or her constitutional and statutory rights to counsel, requests the appointment of counsel to represent him or her;
2. If a court, on its own motion or otherwise, does not appoint counsel to represent the accused; and
3. Unless the arrested person or accused, having been apprised of his or her right to counsel in open court, affirmatively rejects or intelligently repudiates his or her constitutional and statutory rights to be presented by counsel.

NEW SECTION. SECTION 2. There is hereby added to K.C.C. chapter 2.60 a new section to read as follows:

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

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

C. The board shall consist of ten members, 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.

D. The board shall consist of one representative of 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 nonpartisan organization active in King County that focuses on mental health issues, such as the King County mental health advisory board;
6. A nonpartisan organization active in King County that focuses on substance abuse issues, such as the King County alcoholism and substance abuse administrative board;
7. A nonpartisan organization active in King County that focuses on issues concerning military veterans, such as the King County veterans program advisory board;
8. A nonpartisan organization active in King County that focuses on issues related to poverty;
9. A nonpartisan organization active in King County that focuses on juvenile justice issues; and
10. A nonpartisan organization active in King County, which may include a minority bar association,

that focuses on issues concerning people of color.

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

F. Members of the board shall serve staggered three-year terms and until their successors are nominated and confirmed, except that the members designated in subsection D.1., 2. and 3. of this section shall serve an initial term of one year and the members designated in subsection D.4, 5. and 6. of this section shall serve an initial term of two years. If a member leaves the board midterm, the person appointed as a replacement shall serve the remainder of the term, rather than beginning a new term of three years. The county council may reappoint board members for additional three-year terms and may remove any board member who is unable or unwilling to participate effectively in the work of the board or who engages in misconduct that undermines the member's effectiveness as a board member. Removal of a board member requires the affirmative votes of at least six councilmembers. Members of the board shall not be compensated for the performance of their duties as members of the board, but may be paid subsistence rates and mileage in amounts consistent with county policy.

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

1. The chair of the council shall notify councilmembers of vacancies on the committee and shall direct council staff to develop a job description and list of qualifications for board members, as well as an application form;
2. The open positions shall be advertised at a minimum in the county's newspaper of record;
3. The chair of the council shall direct council staff to develop administrative procedures for accepting applications. All applications shall be forwarded to all county councilmembers. Applications shall also be forwarded for review to each public defense advisory board member, and the board and any board member may offer written comments to the law, justice, health and human services committee of the council, or its successor;

4. The law, justice, health and human services committee of the council, or its successor, shall review applications and may interview applicants. The committee may recommend to the full council the appointment of members to the public defense advisory board; and

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

H. 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 experience related to indigent defense. To the extent practicable, the board membership shall reflect the diversity of the clients of the department of public defense. A member may not, while serving on the committee, hold elective public office, be a candidate for elective public office or serve as a prosecuting attorney, a judge or an employee of a prosecuting attorney or court, with the exception of precinct committee officers.

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

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

K. Within ninety days after a vacancy occurs, or the board learns of an anticipated vacancy, in the office of county public defender, the public defense advisory board shall provide to the selection committee, and contemporaneously to the clerk of the county council, the names of exactly three qualified candidates to fill the vacancy, together with copies of the candidates' biographical and descriptive information and all other written information upon which the board relied in choosing the three candidates. The board shall not rank the

candidates, but may summarize the particular strengths of each candidate. The clerk shall forward electronic copies to all councilmembers and to the executive.

SECTION 3. Ordinance 8257, Section 2, as amended, and K.C.C. 2.60.020 are each hereby amended to read as follows:

~~((There is hereby established within the department of community and human services the office of public defense. A public director of the office of public defense shall be appointed by the county executive and approved by the county council. The county executive shall consult with representatives of the criminal justice system and the broader community during the recruitment and selection of the appointee.))~~ The department of public defense is responsible to manage and be fiscally accountable for the provision of public defense services. The department should initially have four divisions and reduce in the number of divisions over time as appropriate to manage case conflicts as the transition to an in-house department stabilizes and the needs of the department become better known.

SECTION 4. Ordinance 11955, Section 13, as amended, and K.C.C. 2.16.110 are each hereby amended to read as follows:

A. The county executive shall appoint the county administrative officer and the director of each executive department, except the departments of assessments, public safety, elections, public defense and judicial administration. The county executive shall also appoint the division director of the youth detention facility through a competitive search process that includes participation by the superior court judges.

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

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

D.1. All appointments by the county executive shall be subject to confirmation by a majority of the

county council except exempt personnel assigned to his or her personal staff.

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

E.1.a All individuals appointed by the county executive, under Section 340.40 of the King County Charter, shall serve in an acting capacity, unless confirmed by the council. The executive is authorized to appoint a person to serve in an acting capacity to fill a position requiring council confirmation for a period of no greater than one hundred fifty days. The executive shall notify the council within ninety days concerning the status of his or her search for qualified candidates for appointment to the vacant position. Thereafter, the individual may continue serving in an acting capacity for successive sixty-day periods only with approval by motion of the county council. The council shall grant at least one successive sixty-day extension if the executive certifies to the council's satisfaction that the executive is actively pursuing a search for qualified candidates for appointment to the vacant position. If no appointment is transmitted to the council for confirmation during the authorized period, the position shall be considered vacant for purposes of exercise of any authority given to the position under ordinance and no salary shall be paid for the position while it is so vacant.

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

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

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

- (1) a demonstrated reputation for integrity and professionalism;
- (2) a commitment to and knowledge of the responsibilities of the office;
- (3) a history of demonstrated leadership, experience and administrative ability;
- (4) the ability to work effectively with the executive, the council, other management, public agencies, private organizations and citizens; and
- (5) a demonstrated sensitivity to and knowledge of the particular needs and problems of minorities and women.

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

- (1) a full and complete resume of his or her employment history, to include references attesting to the stated employment experiences; and
- (2) a signed statement acknowledging that the council's confirmation process may require the submittal of additional information relating to the background and expertise of the appointee.

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

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

NEW SECTION. SECTION 5. There is hereby added to K.C.C. chapter 2.60 a new section to read as follows:

A. The department shall manage cases and assign counsel in a manner that avoids conflicts of interest, including but not limited to those that could arise from division-wide concurrent representation of more than one client involved in a single matter, such as codefendants or defendant and a witness or suspect in the case or



co-respondents or represented members of a family in a dependency case or a respondent and an adverse witness in a civil dependency case. The department shall adopt a policy to determine when a conflict exists and to avoid conflicting representation. If the department is unable to provide in-house representation when a conflict exists, the department may contract for services of outside counsel or assign counsel from the assigned counsel panel.

B. The director may also contract for services of outside counsel if the director finds it appropriate to seek outside defense services and funding is available taking into account the projected annual fiscal needs of the department.

C. If the department contracts for services of outside counsel, any entity who is able to provide the service may apply, including but not limited to private law firms, non-profit entities, or a public corporation formed by the county whose chartered duties include the provision of public defense and related services.