



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

May 21, 2013

Ordinance 17588

Proposed No. 2013-0215.3

Sponsors Patterson

1 AN ORDINANCE creating a department of public defense
2 within the executive branch; amending Ordinance 11955,
3 Section 6, as amended, and K.C.C. 2.16.130, Ordinance 8257,
4 Section 2, as amended, and K.C.C. 2.60.020, Ordinance 383,
5 Section 5, as amended, and K.C.C. 2.60.050 and Ordinance
6 10167, Section 1, as amended, and K.C.C. 2.60.054, adding
7 new sections to K.C.C. chapter 2.60, adding a new section to
8 K.C.C. Title 4A, repealing Ordinance 14412, Section 3, as
9 amended, and K.C.C. 2.60.027, Ordinance 8257, Section 3, and
10 K.C.C. 2.60.030, Ordinance 383, Section 4, as amended, and
11 K.C.C. 2.60.040, Ordinance 383, Section 6, as amended, and
12 K.C.C. 2.60.060 and Ordinance 8257, Section 6, and K.C.C.
13 2.60.070, and declaring an emergency.

14 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

15 **SECTION 1. Findings:**

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

18 B. The Sixth Amendment of the United States Constitution and Article I, Section
19 22, of the Washington state Constitution guarantee assistance of counsel to every citizen
20 accused of a matter where loss of liberty is possible.

21 C. Since the 1970s, King County has contracted with private, nonprofit
22 corporations for the provision of most indigent defense services. These private, nonprofit
23 corporations were viewed by the county and the corporations as independent contractors
24 and as a result the employees of the private, nonprofit corporations were not considered
25 county employees and did not receive county benefits nor were they enrolled in the
26 Public Employees' Retirement System (PERS).

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

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

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

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

39 H. On March 18, 2013, the King County council adopted Ordinance 17537
40 approving a proposed settlement agreement that would recognize the current employees

41 of the private, nonprofit corporations as county employees on July 1, 2013. That
42 settlement is still subject to and awaiting final and nonappealable judicial approval.

43 I. The county intends to maintain the high quality of public defense services that
44 public defense attorneys and staff have delivered and to which King County has long
45 been committed, by promoting independence from political influence, a quality work
46 force and operational efficiency in the provisions of public defense services.

47 J. The county values the expertise and interest of public defenders and recognizes
48 the contributions they have made to establish a foundation of a public defense service
49 system on which to build a new structure. The county desires to work with the agency
50 directors in a close and collaborative process that achieves the county's goals for public
51 defense during the transition to a new management structure.

52 K. The Raising Our Youth As Leaders (ROYAL) project is a program shown to
53 be effective at reducing recidivism in King County youth. The office of public defense
54 expects the department of public defense to be able to continue the contract with the
55 department of community and human services on at least an interim basis. This will
56 ensure the continuation of this project during the public defense transition.

57 L. In order to maintain the continuity of services that meet its principles, the
58 county needs to ensure that current and future clients have access to public defense
59 services without disruption, as the settlement agreement is implemented.

60 M. The proposed class action settlement calls for the county to recognize the
61 employees who are working for the public defense contractors as of June 30, 2013 as
62 King County employees with full benefits for their positions on July 1, 2013 ("the
63 recognition date"). To meet the recognition date obligation and to provide a structure to

64 administer the public defense program, which shall be an executive department with
65 divisions until such time that the council directs implementation of an alternative
66 structure, enactment of this ordinance as an emergency ordinance is necessary.

67 SECTION 2. Ordinance 11955, Section 6, as amended, and K.C.C. 2.16.130 are
68 each hereby amended to read as follows:

69 A. The department of community and human services is responsible to manage
70 and be fiscally accountable for the community services division, mental health, chemical
71 abuse and dependency services division(~~(, the office of public defense))~~) and the
72 developmental disabilities division.

73 B. The duties of the community services division shall include the following:

74 1. Working in partnership with communities and other funders to develop,
75 support and provide human services which emphasize prevention, early intervention and
76 community education, and which strengthen individuals, families and communities in
77 King County;

78 2. Managing programs which increase family self-sufficiency, enhance youth
79 resiliency, reduce community violence and strengthen communities. The division shall
80 also manage programs which address housing and community development needs, and
81 help implement improvements identified in subarea and neighborhood plans for low and
82 moderate income communities and population. Such programs are to include, but not be
83 limited to, providing employment and training for youth and adults and providing
84 assistance to indigent veterans and their families as authorized by chapters 41.02 and
85 73.08 RCW. This division shall administer the county's federal housing and community
86 development funds and other housing and community development programs;

87 3. Developing housing and community development policies and programs to
88 implement the growth management policies throughout King County to provide
89 affordable housing to low and moderate income residents; and

90 4. Duties regarding the women's advisory board specified in K.C.C. 2.30.040.

91 C. The duties of the mental health, chemical abuse and dependency services
92 division shall include the following:

93 1. Managing and operating a system of mental health services for acutely
94 disturbed, seriously disturbed and chronically mentally ill children and adults;

95 2. Managing and operating a twenty-four-hour crisis response system, including
96 civil commitment as a last resort;

97 3. Providing treatment and rehabilitation service for alcoholism and for other
98 drug addictions under federal and state laws and King County ordinances;

99 4. Selecting appropriate agencies for the provision of mental health services
100 developing, implementing and monitoring the provision and outcomes of contracted
101 services;

102 5. Being responsible for resource management of a comprehensive mental
103 health system including provision of staff support to appropriate advisory boards, and
104 serving as liaison to federal, state, and other governments and relevant organizations in
105 carrying out planning and allocation processes;

106 6. Ensuring the continuing availability of appropriate treatment services for
107 eligible individuals with a single diagnosis of a mental illness or a substance use or
108 dependency disorder; and

109 7. Developing and maintaining a continuum of appropriate treatment services
110 for eligible individuals with dual diagnoses of both a mental illness and a substance use
111 or dependency disorder.

112 D. ~~((The duties of the office of public defense shall include those duties specified
113 in K.C.C. chapter 2.60.~~

114 E.)) The duties of the developmental disabilities division shall include the
115 following:

116 1. Managing and operating a system of services for persons with developmental
117 disabilities in accordance with relevant state statutes and county policies and to provide
118 staff support to the King County board for developmental disabilities; and

119 2. Negotiating, implementing and monitoring contracts with community
120 agencies for the provision of developmental disabilities services.

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

123 ~~((There is hereby established within the department of community and human
124 services the office of public defense. A public director of the office of public defense
125 shall be appointed by the county executive and approved by the county council. The
126 county executive shall consult with representatives of the criminal justice system and the
127 broader community during the recruitment and selection of the appointee.))~~ A. The
128 department of public defense is responsible to manage and be fiscally accountable for the
129 provision of public defense services. The department should have four divisions.

130 B. The duties of the department of public defense shall include:

- 131 1. Providing legal defense services in accordance with K.C.C. 2.60.050 and
132 other provisions of this chapter;
- 133 2. Providing legal defense services in an efficient manner that ensures effective
134 representation at reasonable cost to the county;
- 135 3. Investigating and determining eligibility for legal defense services through
136 the department. In addition, the department shall secure reimbursement from eligible
137 persons, including the parents of juveniles receiving legal defense service through the
138 department, when the person can afford to pay some or all of the cost to King County of
139 providing them such legal defense services;
- 140 4. Establishing and maintaining an assigned counsel panel that includes
141 attorneys acceptable to the department who wish to participate in the defense of persons
142 eligible for services through the department;
- 143 5. Assigning cases to assigned counsel where conflicts of interest or other
144 special circumstances exist which require use of assigned counsel; and
- 145 6. Preparing an annual budget for the department that evaluates and forecasts
146 service delivery levels and department expenses for service delivery, contractors,
147 assigned counsel and administration. Such evaluations and forecasts shall include an
148 analysis of the impact, if any, of changes in the procedures or practices of the courts,
149 prosecutor, police, or other elements of the criminal justice system.
- 150 C. The department may provide its services to the state of Washington, tribal
151 governments and municipalities in King County on a full cost recovery basis and is
152 authorized to negotiate appropriate contractual agreements, subject to council approval
153 by ordinance when required by law.

154 D. The department may provide services related to the Raising Our Youth As
155 Leaders (ROYAL) project and is authorized to enter into appropriate contractual
156 agreements.

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

159 The department of public defense shall be directed by a director who shall be
160 appointed by the executive and confirmed by the council. The duties of the director shall
161 include:

162 A. Managing the department of public defense;

163 B. Ensuring the department employs the needed technical and public defense
164 expertise to ensure effective delivery of public defense services;

165 C. Representing the executive in all city, county, state and federal forums where
166 the defense perspective is required;

167 D. Ensuring that the American Bar Association Ten Principles for a Public
168 Defense System guide the management of the department and development of
169 department standards for legal defense representation;

170 E. Following the Washington State Standards for Indigent Defense Services; and

171 F. Developing and maintaining appropriate standards and guidelines for the
172 qualifications and experience level of public defense attorneys and paraprofessionals.

173 SECTION 5. A. The council requests the executive to negotiate any agreements
174 related to implementation of the settlement agreement approved in Ordinance 17537 with
175 minimal disruption to client services, including but not limited to agreements related to
176 items in Attachment A.

177 B. The executive may pay the employees of the department the same rates of pay
178 the employees were earning at the public defender agencies until the executive
179 establishes final pay rates and schedules or, for represented employees, until such time as
180 the council ratifies collective bargaining agreements between the county and the union or
181 unions representing employees in the department.

182 C. If attorneys or staff of the private nonprofit public defender corporations who
183 become county employees on July 1, 2013, are employed by the county in a job
184 classification that has an assigned pay range that has a top step lower than the employees'
185 rate of pay on June 30, 2013, the executive may pay the employees at the higher rate of
186 pay. If the executive decides to allow the higher rate of pay, the employees' wage would
187 be frozen until the top step of the pay range is greater than the employees' frozen rate of
188 pay.

189 NEW SECTION. SECTION 7. There is hereby added to K.C.C. chapter 2.60 a
190 new section to read as follows:

191 A. The department shall manage cases and assign counsel in a manner that avoids
192 conflicts of interest. The department shall adopt a policy to determine when a conflict
193 exists and to avoid conflicting representation. If the department is unable to provide
194 representation when a conflict exists, the department may contract for services of outside
195 counsel or assign counsel from the assigned counsel panel.

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

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

203 SECTION 8. A. The public defense criminal justice reform advisory task force is
204 hereby established.

205 B. The purpose of the task force is to utilize the expertise of the local and
206 regional public defense communities to obtain their recommendation on county options
207 for preserving the type of innovative thinking and criminal justice reform efforts that
208 have been a part of the nationally recognized work of nonprofit public defender agencies
209 serving King county over the past forty years.

210 C. 1. The task force shall issue a report and recommendation on the feasibility of
211 the county using outside entities, such as one or more public corporations, nonprofit
212 organizations or private corporations, to perform county public defense-related services
213 that promote system improvements and efficiencies in the King county public defense
214 system through innovative approaches to criminal justice reform. The report shall be
215 advisory.

216 2. The task force should examine county public defense-related services that
217 would supplement, not replace, the work performed by the department of public defense.

218 3. In making its report and recommendation, the task force should consider the
219 pros and cons of each approach that it examines and the ability of each approach to

220 efficiently and effectively promote system improvements and efficiencies compared to
221 what could be achieved by the department.

222 4. The task force should give strong consideration in its analysis to the fact that
223 indigent defense services are supported by the county's general fund; the task force
224 should consider the financial cost of any recommended alternatives.

225 5. The report shall be based upon the assumptions that the public defense
226 attorneys providing a majority of the county's indigent defense services will be county
227 employees, and that the settlement that received preliminary judicial approval in the
228 Dolan lawsuit will be the final settlement. The task force shall include in its report and
229 recommendation an assessment of the steps necessary to ensure that the independent
230 entity will not be treated as an "arm and agency" of King County under the Dolan
231 decision and create a risk of liability to the county for actions of the independent entity
232 including, but not limited to, benefits such as enrollment in or contributions to the Public
233 Employees Retirement System.

234 6. The task force is encouraged to seek input from other organizations, including
235 but not limited to inviting other organizations to attend task force meetings as
236 appropriate.

237 D. The task force shall consist of seven members, including one member
238 appointed by the Washington state office of public defense, one member appointed by the
239 King County Bar Association, two at-large members appointed by the executive, one
240 member from the faculty of a Washington state law school appointed by the chair of the

241 council and two at-large members appointed by the chair of the council. The task force
242 members shall be appointed by June 3, 2013.

243 E. Task force members must have demonstrated interest and expertise in the
244 subject of public defense. Members should also have knowledge of government
245 operations and budget, a demonstrated history of working collaboratively to find
246 solutions to complex problems and a willingness to commit the time necessary to attend
247 meetings of the task force and to actively support development of the task force report.

248 F. The task force shall have technical and administrative staff support provided
249 by the executive and council. The task force shall file its report with the clerk of the
250 council by August 30, 2013, who shall forward a copy to the executive, all
251 councilmembers and the lead staff of the committee of the whole.

252 G. The county council shall reimburse task force members for mileage at the
253 standard county reimbursement rate for travel within the county to and from scheduled
254 task force meetings. The county council shall provide parking space free of charge in the
255 county garage to task force members while attending meetings at which task force
256 business is conducted.

257 NEW SECTION. SECTION 9. There is hereby added to K.C.C. Title 4A a new
258 section to read as follows:

259 The processing fee for a defendant requesting counsel at public expense under
260 K.C.C. chapter 2.60 is twenty-five dollars. All processing fee payments received shall be
261 credited to the county general fund.

262 SECTION 10. Ordinance 383, Section 5, as amended, and K.C.C. 2.60.050 are
263 each hereby amended to read as follows:

264 Legal defense services through the ~~((public defense program))~~department shall be
265 made available to all eligible persons for whom counsel is constitutionally required. In
266 addition, legal defense services through the ~~((public defense program will))~~department
267 shall be made available when funds are available ~~((therefor))~~; to ~~((all))~~ any eligible
268 person~~((s when there may be some factual likelihood of))~~ in legal proceedings arising in
269 King county that may result in ~~((such))~~ the person's loss of liberty by an act of King
270 ~~((C))~~county or any of its agencies, including, but not limited to, a violation of any law of
271 the ~~((S))~~state of Washington or ordinance of King ~~((C))~~county, juvenile matters, mental
272 illness and similar commitment proceedings, revocations and habeas corpus proceedings
273 when ~~((such))~~ they arise in King ~~((C))~~county.

274 Legal defense services through the ~~((public defense program))~~department may be
275 made available~~((, at his or her expense,))~~ to a person charged in King ~~((C))~~county with a
276 felony of public notoriety, at his or her expense, when the court finds that the defendant is
277 unable to employ adequate private counsel as a result of ~~((such))~~ the public notoriety. The
278 ~~((administrator))~~director of the ~~((public defense program))~~department shall establish a
279 reasonable fee for ~~((such))~~the legal defense services, subject to the approval of the court.

280 SECTION 11. Ordinance 10167, Section 1, as amended, and K.C.C. 2.60.054 are
281 each hereby amended to read as follows:

282 A. A defendant requesting counsel at public expense shall pay a processing fee
283 ~~((of twenty five dollars))~~, as specified in section 9 of this ordinance, as reimbursement to
284 ~~((King))~~ the ~~((C))~~county for the administrative costs and expenses incurred in the

285 processing of the application. The processing fee is payable at the time the request for
286 ~~((public))~~ counsel is made to the ~~((office))~~department of public defense. Processing fees
287 are not refundable, even if the defendant is determined to be not eligible for counsel at
288 public expense. A defendant ~~((will))~~shall not be denied counsel because the defendant
289 cannot pay the processing fee. ~~((All processing fee payments received shall be credited to
290 the county current expense fund.))~~

291 B. To be eligible to receive legal defense services at no cost through the public
292 defense program, the person must be financially unable to obtain adequate representation
293 without substantial hardship to the person and the person's family and there must be some
294 factual likelihood that the person will be deprived of his or her liberty. If a person has
295 some resources available that can be used to secure representation but not sufficient
296 resources to pay the entire costs of private legal services without substantial hardship to
297 the person and the person's family, the department of public defense shall determine how
298 much the person shall pay for the legal defense services provided through the department
299 of public defense.

300 SECTION 12. A. Ordinance 14412, Section 3, as amended and K.C.C. 2.60.027
301 are each hereby repealed.

302 B. Ordinance 8257, Section 3, and K.C.C. 2.60.030 are each hereby repealed.

303 C. Ordinance 383, Section 4, as amended, and K.C.C. 2.60.040 are each hereby
304 repealed.

305 D. Ordinance 383, Section 6, as amended, and K.C.C. 2.60.060 are each hereby
306 repealed.

307 E. Ordinance 8257, Section 6, and K.C.C. 2.60.070 are each hereby repealed.

308 SECTION 13. The county council finds as a fact and declares that an emergency
309 exists and that this ordinance is necessary for the immediate preservation of public peace,
310 health or
311

312 safety or for the support of county government and its existing public institutions.

313

314

Ordinance 17588 was introduced on 4/29/2013 and passed as amended by the Metropolitan King County Council on 5/20/2013, by the following vote:

Yes: 8 - Mr. Phillips, Mr. von Reichbauer, Mr. Gossett, Ms. Hague,
Ms. Lambert, Mr. Dunn, Mr. McDermott and Mr. Dembowski
No: 0
Excused: 1 - Ms. Patterson

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON



Larry Gossett, Chair

ATTEST:



Anne Noris, Clerk of the Council

Attachments: A. Transition Items

Transition Items

The following Office of Public Defense (OPD) transition items need to be addressed with the four private, nonprofit corporations in order to establish management terms within the framework of County policy and to ensure the continuity of County public defense service:

1. Resolution of contractual prepayment of open cases.
2. Completion of interim space planning for public defense staff, including any necessary lease agreements.
3. Determination of furniture, equipment and office supplies for public defense staff, including information technology equipment.
4. Completion of contract reconciliation for case services.
5. Completion of case management system implementation and logistics to ensure the system is operational.
6. Establishment of attorney and staff communication protocols and resources.
7. Transition of King County employee administrative services.
8. Determination of the continuing status of current non-County contracts currently held by the private, nonprofit corporations with the State of Washington, the City of Seattle, and the tribal governments.
9. The determination of the continuing status of grants or contract services related to the social justice programs of the private, nonprofit corporations.