

5-15-13

S2

at Sponsor: Patterson
Proposed No.: 2013-0215

1 **STRIKING AMENDMENT TO PROPOSED ORDINANCE 2013-0215, VERSION**

2 **1**

3 On page 1, beginning on line 13, strike everything through page 15, line 306, 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 of a matter where loss of liberty is possible.

11 C. Since the 1970s, King County has 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 approving a proposed settlement agreement that would recognize the current employees
31 of the private, nonprofit corporations as county employees on July 1, 2013. That
32 settlement is still subject to and awaiting final and nonappealable judicial approval.

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

37 J. The county values the expertise and interest of public defenders and recognizes
38 the contributions they have made to establish a foundation of a public defense service
39 system on which to build a new structure. The county desires to work with the agency

40 directors in a close and collaborative process that achieves the county's goals for public
41 defense during the transition to a new management structure.

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

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

50 M. The proposed class action settlement calls for the county to recognize the
51 employees who are working for the public defense contractors as of June 30, 2013 as
52 King County employees with full benefits for their positions on July 1, 2013 ("the
53 recognition date"). To meet the recognition date obligation and to provide a structure to
54 administer the public defense program, which shall be an executive department with
55 divisions until such time that the council directs implementation of an alternative
56 structure, enactment of this ordinance as an emergency ordinance is necessary.

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

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

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

64 1. Working in partnership with communities and other funders to develop,
65 support and provide human services which emphasize prevention, early intervention and
66 community education, and which strengthen individuals, families and communities in
67 King County;

68 2. Managing programs which increase family self-sufficiency, enhance youth
69 resiliency, reduce community violence and strengthen communities. The division shall
70 also manage programs which address housing and community development needs, and
71 help implement improvements identified in subarea and neighborhood plans for low and
72 moderate income communities and population. Such programs are to include, but not be
73 limited to, providing employment and training for youth and adults and providing
74 assistance to indigent veterans and their families as authorized by chapters 41.02 and
75 73.08 RCW. This division shall administer the county's federal housing and community
76 development funds and other housing and community development programs;

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

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

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

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

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

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

89 4. Selecting appropriate agencies for the provision of mental health services
90 developing, implementing and monitoring the provision and outcomes of contracted
91 services;

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

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

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

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

104 E.)) The duties of the developmental disabilities division shall include the
105 following:

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

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

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

113 ~~((There is hereby established within the department of community and human
114 services the office of public defense. A public director of the office of public defense
115 shall be appointed by the county executive and approved by the county council. The
116 county executive shall consult with representatives of the criminal justice system and the
117 broader community during the recruitment and selection of the appointee.))~~ A. The
118 department of public defense is responsible to manage and be fiscally accountable for the
119 provision of public defense services. The department should have four divisions.

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

121 1. Providing legal defense services in accordance with K.C.C. 2.60.050 and
122 other provisions of this chapter;

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

125 3. Investigating and determining eligibility for legal defense services through
126 the department. In addition, the department shall secure reimbursement from eligible
127 persons, including the parents of juveniles receiving legal defense service through the

128 department, when the person can afford to pay some or all of the cost to King County of
129 providing them such legal defense services;

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

133 5. Assigning cases to assigned counsel where conflicts of interest or other
134 special circumstances exist which require use of assigned counsel; and

135 6. Preparing an annual budget for the department that evaluates and forecasts
136 service delivery levels and department expenses for service delivery, contractors,
137 assigned counsel and administration. Such evaluations and forecasts shall include an
138 analysis of the impact, if any, of changes in the procedures or practices of the courts,
139 prosecutor, police, or other elements of the criminal justice system.

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

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

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

149 The department of public defense shall be directed by a director who shall be
150 appointed by the executive and confirmed by the council. The duties of the director shall
151 include:

152 A. Managing the department of public defense;

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

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

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

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

161 F. Developing and maintaining appropriate standards and guidelines for the
162 qualifications and experience level of public defense attorneys and paraprofessionals; and

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

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

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

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

181 The department shall manage cases and assign counsel in a manner that avoids
182 conflicts of interest. If the department is unable to provide representation when a conflict
183 exists, it shall assign counsel from the assigned counsel panel. The department shall
184 adopt a policy to determine when a conflict exists to avoid conflicting representation.

185 NEW SECTION. SECTION 8. There is hereby added to K.C.C. Title 4A a new
186 section to read as follows:

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

190 SECTION 9. Ordinance 383, Section 5, as amended, and K.C.C. 2.60.050 are
191 each hereby amended to read as follows:

192 Legal defense services through the ~~((public defense program))~~department shall be
193 made available to all eligible persons for whom counsel is constitutionally required. In
194 addition, legal defense services through the ~~((public defense program will))~~department

195 shall be made available when funds are available ~~((therefor))~~; to ~~((all))~~ any eligible
196 person~~((s when there may be some factual likelihood of))~~ in legal proceedings arising in
197 King county that may result in ~~((such))~~ the person's loss of liberty by an act of King
198 ~~((C))~~county or any of its agencies, including, but not limited to, a violation of any law of
199 the ~~((S))~~state of Washington or ordinance of King ~~((C))~~ounty, juvenile matters, mental
200 illness and similar commitment proceedings, revocations and habeas corpus proceedings
201 when ~~((such))~~they arise in King ~~((C))~~ounty.

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

208 SECTION 10. Ordinance 10167, Section 1, as amended, and K.C.C. 2.60.054 are
209 each hereby amended to read as follows:

210 A. A defendant requesting counsel at public expense shall pay a processing fee
211 ~~((of twenty-five dollars))~~, as specified in section 8 of this ordinance, as reimbursement to
212 ~~((King))~~ the ~~((C))~~county for the administrative costs and expenses incurred in the
213 processing of the application. The processing fee is payable at the time the request for
214 ~~((public))~~ counsel is made to the ~~((office))~~department of public defense. Processing fees
215 are not refundable, even if the defendant is determined to be not eligible for counsel at
216 public expense. A defendant ~~((will))~~shall not be denied counsel because the defendant

217 cannot pay the processing fee. (~~All processing fee payments received shall be credited to~~
218 ~~the county current expense fund.~~)

219 B. To be eligible to receive legal defense services at no cost through the public
220 defense program, the person must be financially unable to obtain adequate representation
221 without substantial hardship to the person and the person's family and there must be some
222 factual likelihood that the person will be deprived of his or her liberty. If a person has
223 some resources available that can be used to secure representation but not sufficient
224 resources to pay the entire costs of private legal services without substantial hardship to
225 the person and the person's family, the department of public defense shall determine how
226 much the person shall pay for the legal defense services provided through the department
227 of public defense.

228 SECTION 11. A. Ordinance 14412, Section 3, as amended and K.C.C. 2.60.027
229 are each hereby repealed.

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

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

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

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

236 SECTION 12. The county council finds as a fact and declares that an emergency
237 exists and that this ordinance is necessary for the immediate preservation of public peace,
238 health or safety or for the support of county government and its existing public
239 institutions.

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EFFECT:

- Technical language clean-up
- Clarifies pay for represented employees
- Modifies proposal to make some passages consistent with existing 2.60 code, including removing the addition of dependencies to the list of case types and repealing .030 after incorporating .030 language elsewhere in the striker.
- Repealing .040 which authorizes contracts with non-profit agencies for public defense.
- Reverts selection of interim director to normal appointment process instead of making current OPD director the interim director, based on legal review.
- Compared to S1, deletes examples of conflicts at line 182 and performs technical clean-up.