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On agenda:		Final action:	5/20/2013
Enactment date:		Enactment #:	17588
Title:	AN ORDINANCE creating a department of public defense within the executive branch; 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 383, Section 5, as amended, and K.C.C. 2.60.050 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, repealing Ordinance 14412, Section 3, as amended, and K.C.C. 2.60.027, Ordinance 8257, Section 3, and K.C.C. 2.60.030, Ordinance 383, Section 4, as amended, and K.C.C. 2.60.040, 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, and declaring an emergency.		
Sponsors:	Julia Patterson		
Indexes:			
Code sections:	2.16.110 -, 2.16.130 -, 2.60 -, 2.60.010 - ., 2.60.020 -, 2.60.027 - ., 2.60.054 - ., 2.60.060 - ., 2.60.070 - ., 4A - .		
Attachments:	1. Ordinance 17588.pdf, 2. 2013-0215 Budget Detail Spending Plan - Atta A.xls, 3. 2013-0215 Copy of revised OPD KCIT network FN.xlsx, 4. 2013-0215 revised OPD KCIT CM FN.xlsx, 5. 2013-0215 revised OPD onboarding FN.xls, 6. 2013-0215 fiscal note - revised OPD FMD FN.xlsx, 7. 2013-0215 transmittal letter..doc, 8. A. Transition Items, 9. Staff Report 05-01-13 OPD 2013-0108; 0109; 0210; 0211; 0212; 0215; 0216.pdf, 10. Staff Report 05-15-13 2013-0212, 0215, 0216, 0237, 0242 OPD Reorg SR 5-15-13 FINAL.docx, 11. Attachment 1 Striking Amendment (S1) to PO 2013-0212.docx, 12. Attachment 2 Title Amendment (T1) to PO 2013-0212.docx, 13. Attachment 4 2013-0242 Striker S1 to impl ord for exec appt charter amend FINAL.docx, 14. Attachment 7 Striking Amendment (S1) to PO 2013-0215.docx, 15. Attachment 8 Title Amendment (T1) to PO 2013-0215.docx, 16. Attachment 10 2013-0216 Interim Supplemental Striker S1 FINAL.docx, 17. Attachment 10 A GG CIP to 2013-0216 Revised 5-15-13.xlsx, 18. Attachment 11 Title Amendment (T1) to PO 2013-0216.docx, 19. 2013-0215 Striking Amendment 2 COW 05-15-13 mtg.pdf, 20. 05-15-13 COW mtg -Public Comment Handout.pdf, 21. 17588 amendment package 5-20-13.pdf, 22. A. Transition Items		

Date	Ver.	Action By	Action	Result
5/20/2013	2	Metropolitan King County Council	Hearing Held	
5/20/2013	2	Metropolitan King County Council	Passed as Amended	Pass
5/15/2013	1	Committee of the Whole	Recommended Do Pass Substitute	Pass
5/1/2013	1	Committee of the Whole	Deferred	
4/29/2013	1	Metropolitan King County Council	Introduced and Referred	

AN ORDINANCE creating a department of public defense within the executive branch; 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 383,

Section 5, as amended, and K.C.C. 2.60.050 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, repealing Ordinance 14412, Section 3, as amended, and K.C.C. 2.60.027, Ordinance 8257, Section 3, and K.C.C. 2.60.030, Ordinance 383, Section 4, as amended, and K.C.C. 2.60.040, 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, and declaring an emergency.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. Findings:

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

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

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

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

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

on appeal.

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

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

H. On March 18, 2013, the King County council adopted Ordinance 17537 approving a proposed settlement agreement that would recognize the current employees of the private, nonprofit corporations as county employees on July 1, 2013. That settlement is still subject to and awaiting final and nonappealable judicial approval.

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

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

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

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

agreement is implemented.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Investigating and determining eligibility for legal defense services through the department. In addition, the department shall secure reimbursement from eligible persons, including the parents of juveniles receiving legal defense service through the department, when the person can afford to pay some or all of the cost to King County of providing them such legal defense services;

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

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

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

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

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

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

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

- A. Managing the department of public defense;
- B. Ensuring the department employs the needed technical and public defense expertise to ensure effective delivery of public defense services;
- C. Representing the executive in all city, county, state and federal forums where the defense perspective is required;
- D. Ensuring that the American Bar Association Ten Principles for a Public Defense System guide the management of the department and development of department standards for legal defense representation;
- E. Following the Washington State Standards for Indigent Defense Services; and
- F. Developing and maintaining appropriate standards and guidelines for the qualifications and

experience level of public defense attorneys and paraprofessionals.

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

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

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

NEW SECTION. SECTION 7. 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. The department shall adopt a policy to determine when a conflict exists and to avoid conflicting representation. If the department is unable to provide 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 that is able to provide the service may apply, including, but not limited to, private law firms, nonprofit entities, or a public corporation formed by the county

whose chartered duties include the provision of public defense and related services.

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

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

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

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

3. In making its report and recommendation, the task force should consider the pros and cons of each approach that it examines and the ability of each approach to efficiently and effectively promote system improvements and efficiencies compared to what could be achieved by the department.

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

5. The report shall be based upon the assumptions that the public defense attorneys providing a majority of the county's indigent defense services will be county employees, and that the settlement that received preliminary judicial approval in the Dolan lawsuit will be the final settlement. The task force shall

include in its report and recommendation an assessment of the steps necessary to ensure that the independent entity will not be treated as an "arm and agency" of King County under the Dolan decision and create a risk of liability to the county for actions of the independent entity including, but not limited to, benefits such as enrollment in or contributions to the Public Employees Retirement System.

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

D. The task force shall consist of seven members, including one member appointed by the Washington state office of public defense, one member appointed by the King County Bar Association, two at-large members appointed by the executive, one member from the faculty of a Washington state law school appointed by the chair of the council and two at-large members appointed by the chair of the council. The task force members shall be appointed by June 3, 2013.

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

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

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

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

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

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

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

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

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

A. A defendant requesting counsel at public expense shall pay a processing fee ~~((of twenty-five dollars~~)), as specified in section 9 of this ordinance, as reimbursement to ~~((King))~~ the ~~((€))~~county for the administrative costs and expenses incurred in the processing of the application. The processing fee is payable at

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

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

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

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

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

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

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

SECTION 13. The county council finds as a fact and declares that an emergency exists and that this ordinance is necessary for the immediate preservation of public peace, health or safety or for the support of county government and its existing public institutions.