

6-27-13

nw

Sponsor: Patterson, Lambert

Proposed No.: 2013-0242

1 **STRIKING AMENDMENT TO PROPOSED ORDINANCE 2013-0242, VERSION**

2 **1**

3 On page 2, beginning on line 28, strike everything through page 17, line 357, 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. Beginning in the 1970s, King County 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. On May 20, 2013, the council adopted Ordinance 17588, which established a  
34 department of public defense on an interim basis, in order to ensure that current and  
35 future clients would have access to public defense services without disruption as the  
36 settlement agreement was implemented.

37 J. The county intends to maintain the high quality of public defense services that  
38 public defense attorneys and staff have delivered and to which King County has long

39 been committed, by promoting independence from political influence, a quality work  
40 force and operational efficiency in the provisions of public defense services.

41 K. Toward that end, the council has placed on the ballot, by Ordinance \_\_\_\_\_  
42 (Proposed Ordinance 2013-0212), a charter amendment that would make the department  
43 of public defense a charter-created department with a county public defender appointed  
44 from among candidates nominated by an advisory board that is broadly representative of  
45 entities and nonpartisan organizations that focus on issues related to criminal justice and  
46 public defense. The board would also serve in an advisory capacity during the term of the  
47 county public defender.

48 L. Only if the voters approve the charter amendment, will Sections 2 through 5 of  
49 this ordinance take effect and implement the charter amendment. If the voters reject the  
50 charter amendment, Sections 6 through 10 of this ordinance will take effect and  
51 implement a public defense structure similar to that initially proposed by the executive.

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

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

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

58 1. Providing legal defense services in accordance with ~~((K.C.C. 2.60.050))~~  
59 Section 350.20.60 of the King County Charter and other provisions of this chapter;

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

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

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

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

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

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

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

84            SECTION 3. Ordinance 17588, Section 4, and K.C.C. 2.60.\_\_\_\_ are each hereby  
85 amended to read as follows:

86            A. The department of public defense shall be directed by ~~((a director who shall be~~  
87 ~~appointed by the executive and confirmed by the council. The duties of the director))~~the  
88 county public defender, whose duties shall include:

89            ~~((A.))~~ 1. Managing the department of public defense;

90            ~~((B.))~~ 2. Ensuring the department employs the needed technical and public  
91 defense expertise to ensure effective delivery of public defense services;

92            ~~((C.))~~ 3. Representing the executive in all city, county, state and federal forums  
93 where the defense perspective is required;

94            ~~((D.))~~ 4. Ensuring that the American Bar Association Ten Principles for a Public  
95 Defense Delivery System, as approved by the American Bar Association House of  
96 Delegates in February of 2002, guide the management of the department and  
97 development of department standards for legal defense representation, and reporting on  
98 April 1 of each year on the results of the county public defender’s efforts in that regard,  
99 in the form of paper and electronic copies of the report filed with the clerk of the council,  
100 who shall forward electronic copies to all councilmembers, to the chair of the public  
101 defense advisory board, to the lead staff of the budget and fiscal management committee  
102 or its successor and to the lead staff of the law, justice, health and human services  
103 committee or its successor;

104            ~~((E.))~~ 5. Following the Washington State Standards for Indigent Defense  
105 Services;

106            ~~((F-))~~ 6. Developing and maintaining appropriate standards and guidelines for  
107 the qualifications and experience level of public defense attorneys and paraprofessionals;

108 ~~((and))~~

109            7. Working collaboratively with the public defense advisory board and  
110 providing relevant, non-privileged information to the board upon its reasonable request;  
111 and

112            8. Advocating for system improvements and promoting efficiencies and equity  
113 for indigent individuals in the criminal justice system.

114            B. The county public defender shall be appointed by the executive ~~((and~~  
115 confirmed)), subject to confirmation by the council. The executive shall choose from  
116 among three candidates nominated by the public defense advisory board, provided, that  
117 the executive may request three additional candidates from the public defense advisory  
118 board, and the executive may then appoint the county public defender from among the six  
119 candidates, subject to confirmation by the council. Confirmation requires the affirmative  
120 vote of at least five members of the council.

121            C. The county public defender shall, within two years of appointment, be an  
122 attorney admitted to practice law in the courts of the state of Washington and an "active"  
123 member of the Washington State Bar Association in good status and shall, at the time of  
124 appointment, have at least seven years of experience as an attorney primarily practicing  
125 criminal defense, including both felonies and misdemeanors, as well as supervisory and  
126 managerial experience.

127            D. The term of office of the county public defender shall end at the same time as  
128 the term of the county prosecuting attorney. The county executive may reappoint the

129 county public defender to additional four-year terms, subject to confirmation by the  
130 county council. Confirmation requires the affirmative votes of at least five members of  
131 the council.

132 E. The executive may remove the county public defender from office for cause,  
133 which includes but is not limited to:

134 1. The grounds for vacancy of elective office under Section 680 of the King  
135 County Charter;

136 2. Failure to meet the applicable legal requirements for serving as county public  
137 defender, as set forth in the county charter or other applicable law;

138 3. Conviction of a crime;

139 4. A finding or stipulation of misconduct under the Washington Rules of  
140 Professional Conduct; and

141 5. Failure to manage the department effectively.

142 F. Removal may be appealed by the defender to the council within ten days of the  
143 removal. The council shall review de novo the grounds for removal and either confirm or  
144 reject the removal within thirty days of the appeal by an affirmative vote of five  
145 members, or else the executive's decision shall stand. A determination by the council  
146 made within thirty days of the appeal is final.

147 G. The county public defender shall receive compensation at the same rate as the  
148 prosecuting attorney.

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

151           A. The public defense advisory board shall: regularly review the activities and  
152 plans of the department of public defense, make recommendations to the county public  
153 defender on matters concerning the department, advise the executive and council on  
154 matters of social justice related to public defense, prepare reports as required in this  
155 section and as deemed appropriate by the board; and when there is a vacancy in the office  
156 of county public defender, as provided in subsection K. of this section, recommend to the  
157 county executive possible candidates to fill the vacancy.

158           B. In performing its duties, the board shall work collaboratively with the county  
159 public defender and may reasonably request relevant, non-privileged information from  
160 the county public defender. The board through its chair shall consult with the county  
161 prosecutor, courts, and department of public defense in the performance of all of its  
162 duties except for the recommendation of candidates.

163           C. The board shall consist of eleven members, shall establish its own rules of  
164 procedure, subject to the county charter, the county code and other applicable law, and  
165 shall choose its own chair.

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

- 167           1. The Washington Association of Criminal Defense Lawyers;
- 168           2. The Washington state Office of Public Defense;
- 169           3. The Washington Defender Association;
- 170           4. The King County Bar Association;
- 171           5. A minority bar association;
- 172           6. A nonpartisan organization active in King County that focuses on mental  
173 health issues;

174           7. A nonpartisan organization active in King County that focuses on substance  
175 abuse issues;

176           8. A nonpartisan organization active in King County that focuses on issues  
177 concerning military veterans;

178           9. A nonpartisan organization active in King County that focuses on issues  
179 related to poverty;

180           10. A nonpartisan organization active in King County that focuses on juvenile  
181 justice issues; and

182           11. A nonpartisan organization active in King County that focuses on  
183 immigration issues.

184           E. Members of the board shall serve staggered three-year terms and until their  
185 successors are nominated and confirmed, except that the members designated in  
186 subsections D.1., 2., 3. and 4. of this section shall serve an initial term of one year and the  
187 members designated in subsections D.5., 6., 7. and 8. of this section shall serve an initial  
188 term of two years. If a member leaves the board midterm, the person appointed as a  
189 replacement shall serve the remainder of the term, rather than beginning a new term of  
190 three years. The county council may reappoint board members for additional three-year  
191 terms and may remove any board member with the affirmative votes of at least five  
192 councilmembers. Members of the board shall not be compensated for the performance of  
193 their duties as members of the board, but may be paid subsistence rates and mileage in  
194 amounts consistent with county policy.

195           F. The process for filling vacancies on the board is:

196           1. Upon learning of a pending or existing vacancy or thirty days before a  
197 scheduled vacancy, the clerk of the council shall provide written notice of the vacancy to  
198 the executive, all councilmembers and  
199           a. to the represented organization for vacancies in the board seats designated in  
200 subsections D.1. through D.4.;

201           b. to each of the bar association organizations identified as a minority bar  
202 association by the Washington State Bar Association for a vacancy in the board seat  
203 designated in subsection D.5.; and  
204           c. by publication of notice of the vacancy in the official county newspaper and  
205 in the largest newspaper of general circulation within the county for the board seats  
206 designated in subsections D.6. through D.11.

207           The notice shall specify the deadlines established below.

208           2. Within sixty days after receiving notice from the clerk of the council, the  
209 represented organization, each minority bar association organization that wishes to do so,  
210 and each nonpartisan organization with the required subject matter focus that wishes to  
211 do so shall submit in writing, in both hard copy and electronic format, to the county  
212 executive and contemporaneously to the clerk of the council, the names of three  
213 candidates for appointment to fill a vacancy in the board seat for which notice was  
214 required to be given to the organization, together with the resumé of each candidate and  
215 all other written materials that the organization considered in deciding to recommend the  
216 candidate. The organization shall not rate the candidates, but may provide a brief  
217 description of the strengths of each candidate. The clerk of the council shall provide an  
218 electronic copy of the resumes and other written materials to each councilmember.

219           3. The county executive shall make an appointment, which the county council  
220 shall confirm or reject, in accordance with section G. below.

221           G. Within thirty days after the applicable deadline established in section F.2.  
222 above, the county executive shall appoint one of the recommended candidates by  
223 providing written notice of the appointment to the clerk of the council, who shall provide  
224 an electronic copy of the notice to each councilmember. The county council shall confirm  
225 or reject the executive's appointee in the manner provided in K.C.C. chapter 2.28 for  
226 confirmation of appointments to boards. A motion to confirm the executive's appointee  
227 shall be referred for committee consideration to the council's law, justice, health and  
228 human services committee, or its successor.

229           H. Each member of the advisory board shall have substantial experience and  
230 expertise that are relevant to the work of the department of public defense and shall have  
231 an ability and willingness to commit the time necessary to attend meetings and participate  
232 effectively as a member of the board. A majority of the members should have substantial  
233 experience in providing indigent defense representation. To the extent practicable, the  
234 board membership shall reflect the diversity of the county. A member may not, while  
235 serving on the committee, hold elective public office (except precinct committee officer),  
236 be a candidate for elective public office (except precinct committee officer) or serve as a  
237 judge, a prosecuting attorney, a public defender, or be an employee of a court, the county  
238 prosecuting attorney, or the county department of public defense.

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

242 The report on the state of county public defense shall include an assessment of the  
243 progress of the county in promoting equity in the criminal justice system and may include  
244 recommendations for advancing equity.

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

250 K. Within ninety days after a vacancy occurs, or the board learns of an  
251 anticipated vacancy, in the office of county public defender, the public defense advisory  
252 board shall provide to the county executive, and contemporaneously to the clerk of the  
253 county council, the names of exactly three qualified candidates to fill the vacancy,  
254 together with copies of the candidates' biographical and descriptive information and all  
255 other written information upon which the board relied in choosing the three candidates.  
256 The board shall not rank the candidates, but may summarize the particular strengths of  
257 each candidate. Upon request by the executive, the board shall provide the names and  
258 information of three additional candidates.

259 L. The executive and council shall jointly provide for staffing of the advisory  
260 board.

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

263 Legal defense services through the department shall be made available to all  
264 eligible persons for whom counsel is constitutionally required. In addition, legal defense

265 services through the department shall be made available when funds are available: to any  
266 eligible person in legal proceedings arising in King County that may result in the person's  
267 loss of liberty by an act of King County or any of its agencies, including, but not limited  
268 to, criminal proceedings alleging a violation of any law of the state of Washington or  
269 ordinance of King County, juvenile matters, mental illness and similar commitment  
270 proceedings, revocations and habeas corpus proceedings when they arise in King County;  
271 and to eligible parents and children in dependency proceedings arising in King County.

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

278         SECTION 6. Ordinance 383, Section 5, as amended, and K.C.C. 2.60.050 are  
279 each hereby amended to read as follows:

280         Legal defense services through the department shall be made available to all  
281 eligible persons for whom counsel is constitutionally required. In addition, legal defense  
282 services through the department shall be made available when funds are available: to any  
283 eligible person in legal proceedings arising in King county that may result in the person's  
284 loss of liberty by an act of King county or any of its agencies, including, but not limited  
285 to, criminal proceedings alleging a violation of any law of the state of Washington or  
286 ordinance of King county, juvenile matters, mental illness and similar commitment

287 proceedings, revocations and habeas corpus proceedings when they arise in King county;  
288 and to eligible parents and children in dependency proceedings arising in King county.

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

294 SECTION 7. Ordinance 8257, Section 2, as amended, and K.C.C. 2.60.020 are  
295 each hereby amended to read as follows:

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

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

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

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

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

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

312 5. Assigning cases to one of the two divisions of the department staffed by  
313 attorneys who shall represent the highest percentage possible of all caseloads, with  
314 unavoidable conflicts of interest such as in complex cases that may involve multiple  
315 defendants or multiple charges or other special circumstances being the cases receiving  
316 representation by assigned counsel~~((Assigning cases to assigned counsel where conflicts~~  
317 ~~of interest or other special circumstances exist which require use of assigned counsel));~~  
318 and

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

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

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

331            SECTION 8. Ordinance 17588, Section 4, and K.C.C. 2.60.\_\_\_\_ are each hereby  
332 amended to read as follows:

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

336            A. Managing the department of public defense;

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

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

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

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

345            ~~((and))~~

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

348            G. Consult with the public defense advisory board and receive its  
349 recommendations on department policies, operations, and matters of budget.

350            NEW SECTION. SECTION 9. There is hereby added to K.C.C. chapter 2.60 a  
351 new section to read as follows:

352           A. There is created a King County department of public defense advisory board  
353 to support the director of the department of public defense and the independence of the  
354 legal practice of public defense within the executive branch.

355           B. The board shall review the activities and plans of the department of public  
356 defense and make recommendations to the county public defender, and advise the county  
357 public defender on matters of concern to the practice of public defense in King County.

358           C. The board shall consist of seven members. Board members shall be  
359 nominated by the executive and confirmed by the council. The board shall establish its  
360 own rules of procedure and choose its own chairperson.

361           D. The board's members shall be representative of the King County criminal  
362 defense community and shall include:

- 363           1. One member representing the Washington state Bar Association;
- 364           2. One member representing the King County Bar Association;
- 365           3. One member representing a minority bar association with representation  
366 revolving among these groups each membership term;
- 367           4. One member shall be a judge retired from the King County superior or  
368 district court;
- 369           5. One member from the faculty of a law school in Washington state; and
- 370           6. Two members shall be associated with community organizations that serve  
371 the indigent population of King County.

372           E. Members of the board shall serve two-year terms and until their successors are  
373 nominated and confirmed. Beginning in 2013, initial member representatives in  
374 designated in subsection D.1, 3. and 5. of this section shall be appointed for one-year

375 terms, and member representatives designated in subsection D.2, 4. and 6. of this section  
376 shall be appointed for two-year terms. The terms of designated representative members  
377 shall coincide with the terms of the persons who are vacating those seats. Members of  
378 the board shall not be compensated for the performance of their duties as members of the  
379 board, but may be paid subsistence rates and mileage in the amounts consistent with  
380 county policy.

381 F. The board shall meet at least once every two months and shall issue a report to  
382 the executive and council at least twice each calendar year on the state of King County  
383 public defense. One of the reports shall consist of the board's review of the executive  
384 proposed annual budget for public defense.

385 G. Any reporting to the council under this subsection shall be made in the form  
386 of a paper and electronic copy of the report filed with the clerk of the council, who shall  
387 forward electronic copies to all councilmembers and the lead staff of the budget and  
388 fiscal management committee or its successor.

389 H. The board shall exercise those powers and authorities, and incur those duties,  
390 responsibilities and liabilities as are provided for by K.C.C. chapter 2.28.

391 SECTION 10. Ordinance 17588, Section 7, and K.C.C. 2.60.\_\_\_\_ are each hereby  
392 repealed.

393 SECTION 11. Sections 2 through 5 of this ordinance take effect upon  
394 certification that the charter amendment proposed by Ordinance \_\_\_\_ (Proposed Ordinance  
395 2013-0212) has been approved by the voters. Sections 6 through 10 of this ordinance  
396 take effect upon certification that the charter amendment proposed by Ordinance \_\_\_\_  
397 (Proposed Ordinance 2013-0212) has been rejected by the voters.

398 "

399 **EFFECTS:**

- 400 • Executive can make a one-time request for advisory board to submit three  
401 additional recommendations for Public Defender.
- 402 • Qualifications are all contained in implementing ordinance instead of charter  
403 amendment.
- 404 • Executive removes the Defender for-cause, subject to appeal to the Council by the  
405 Defender within 10 days. Council has 30 days to decide by majority vote or else  
406 Executive decision stands.
- 407 • Advisory board advises Executive and Council on social justice matters related to  
408 public defense.
- 409 • The advisory board must consult with the prosecutor, courts and department of  
410 public defense in its review and advisory functions (not in the recommendation of  
411 candidates).
- 412 • Advisory board members are 11, including a representative for immigration  
413 issues.
- 414 • Executive appoints advisory board members subject to confirmation.
- 415 • Exec proposed structure is generally implemented if Charter Amendment fails at  
416 November election.