

Restructuring Public Defense in King County

Preserving Independence, Encouraging Reform, and Protecting Taxpayers

**By Rod Dembowski
King County Councilmember, District 1**

King County's public defense system is undergoing a major transition. Later this summer, public defenders, currently employed by four non-profit organizations and contracted by the County to perform public defense services, will become employees of the County. Although change is inevitable, I am committed to a smooth transition with uninterrupted quality representation and preservation of the elements that have led the system to be regarded as one of the best in the nation.

As required by federal and state law as a guarantee of due process, public defender services are provided to indigent persons accused of a serious crime who cannot otherwise afford counsel. Cities and counties across the country use a variety of systems to provide these services. King County is somewhat unique in that it provides funding for indigent defense through a division of the county, the Office of Public Defense (OPD), which then contracts and assigns cases to four nonprofit agencies.

The uprooting of this forty year old system is a result of a class-action lawsuit. Last fall, the Washington State Supreme Court ruled in *Dolan v. King County* that the nonprofit organizations had become "arms and agencies" of the County and therefore, not independent contractors. Agreement on a proposed settlement grants public defenders employed through the agencies on June 30, 2013 full pension and health-care benefits and recognizes them as employees starting July 1, 2013.

For the past few months, King County Councilmembers have been deliberating on various options for a long-term structure to deliver public defense services *post-Dolan*, while also considering an interim structure that responds to the upcoming July 1 deadline.

On May 20th, the County Council adopted an interim ordinance creating a Department of Public Defense initially comprised of four separate divisions. This temporary measure will allow public defenders to continue their work in an organization that is akin to today's four-entity structure, while a long-term structure is developed.

I believe the ability of public defenders to think and act creatively to effect positive change for their clients requires independence, day-to-day interaction with communities most affected, and relationships with organizations served and trusted by those communities. To ensure these elements are not lost with public defenders coming in-house, I introduced an amendment to the interim ordinance.

My amendment utilizes community expertise to obtain recommendations on preserving the type of innovative thinking and criminal justice reform efforts that have been part of the work of the non-profit public defender agencies. A Criminal Justice Reform Advisory Task Force will be appointed by June 3. The Task Force is charged with issuing a report on the feasibility of this work to continue through one or

more outside entities, such as nonprofits, public service corporations or private entities. We expect the report to be completed and delivered to the County Council by August 30, 2013.

The continuation of innovative work in our criminal justice system by an outside entity would be complementary to any of the long-term options currently being considered by the Council. As it stands today, the five proposals pending are:

- Ordinance [2013-0237](#), which I have sponsored, creates a Public Defender District as allowed by state law (Chapter 36.26 RCW). The director is appointed by a three member selection committee following recommendations from a Public Defense Advisory Board.
- Ordinance [2013-0108](#), proposed by King County Executive Constantine, creates a Department of Public Defense and a Public Defense Advisory Board. The director is appointed by and reports to the Executive following recommendations from the Advisory Board.
- Ordinance [2013-0210](#), sponsored by Councilmember Patterson, creates a Department of Public Defense with a director appointed by a public defense oversight commission.
- Ordinance [2013-0211](#), sponsored by Councilmember Patterson, creates a Department of Public Defense with a director elected by the voters.
- Ordinance [2013-0212](#), sponsored by Councilmembers Patterson and Lambert, creates a Department of Public Defense and a Public Defense Advisory Board. The director is appointed by and reports to the Executive following recommendations from the Advisory Board. The director is subject to confirmation by the Council.

In each option providing for an advisory board, the board is comprised of public defense experts.

Some of these options will require amendments to the County charter and therefore, voter approval. If the Council is to pass an ordinance requiring a change to the Charter, it will need to do so by early August to meet deadlines for the November general election ballot.

This tight timeline means that the public should let us know its views now on the pending proposals. I am actively working with my colleagues on the County Council and leaders in the community to forge the very best proposal we can. I expect that we will develop a compromise proposal, taking the best ideas from all of the legislation now pending, and submit the question to the voters for their decision in November. Whatever is eventually adopted, I want to ensure that we (1) protect independence in the delivery of public defense services, (2) protect our tradition of innovative reforms, and (3) ensure appropriate fiscal accountability and oversight for our taxpayers.