

Ordinance No. 122493

Council Bill No. 116012

Council Bill 116012

AN ORDINANCE relating to the selection of providers of and standards for indigent public defense services, and amending Ordinance 121501.

CF No. \_\_\_\_\_

Date Introduced:	<u>9-4-07</u>	
Date 1st Referred:	<u>9-4-07</u>	To: (committee) <u>PUBLIC SAFETY, GOVERNMENT RELATIONS &amp; ARTS</u>
Date Re - Referred:		To: (committee)
Date Re - Referred:		To: (committee)
Date of Final Passage:	<u>9-10-07</u>	Full Council Vote: <u>8-0</u>
Date Presented to Mayor:	<u>9-11-07</u>	Date Approved: _____
Date Returned to City Clerk:	<u>9-21-07</u>	Date Published: <u>6</u> T.O. <input checked="" type="checkbox"/> F.T. <input type="checkbox"/>
Date Vetoes by Mayor:		Date Veto Published:
Date Passed Over Veto:		Veto Sustained:

## The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: Licata  
Councilmember

### Committee Action:

pass as amended 3-0 NL, JG, PS 9/7/07 (UP)

9-10-07 Passed AS Amended 8-0  
(Excused: Diago)

This file is complete and ready for presentation to Full Council. Committee: \_\_\_\_\_  
(initial/date)

Law Dept. Review

OMP  
Review

City Clerk  
Review


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**Legislative Department  
Office of City Clerk  
Memorandum**

**Date:** September 24, 2007  
**To:** Councilmembers  
**From:** Laurel Humphrey for Judith E. Pippin, City Clerk   
**Subject:** Mayor's Return of Council Bill No. 116012, Unsigned  
(relates to the selection of providers of and standards for indigent public defense services)

On August 21, 2007, Mayor Nickels returned Council Bill No. 116012 (Ordinance 122493) to this office without his signature of approval. This is the Bill relating to the selection of providers of and standards for indigent public defense services, and amending Ordinance 121501.

Attached is the Mayor's letter of explanation, in which he describes forthcoming legislation on this matter that will be submitted for review and approval. No further action from the Council is required at this time.



Gregory J. Nickels  
Mayor of Seattle

September 21, 2007

The Honorable Sally Clark  
The Honorable Richard Conlin  
The Honorable David Della  
The Honorable Jan Drago  
The Honorable Jean Godden  
The Honorable Richard McIver  
The Honorable Tom Rasmussen  
The Honorable Peter Steinbrueck  
Seattle City Council  
CH-02-10

FILED  
CITY OF SEATTLE  
2007 SEP 21 PM 2:38  
CITY CLERK

Dear Council members Clark, Conlin, Della, Drago, Godden, McIver, Rasmussen, and Steinbrueck:

Due to the schedule conflict between the enactment of CB 116012 and the current request for proposal (RFP) process for selecting new services for the defense of indigents, and in order to enact needed changes for the upcoming contract, we have agreed to the following revised provisions regarding the selection of and standards for public defenders. New legislation that includes these provisions will be submitted to the Council for review and approval.

Below is an outline for handling the new RFP process for public defense. To facilitate this approach and to allow the new RFP process to begin, we have agreed that the City issue the requests for proposal for public defense services and award a contract in the first quarter of 2008. However, the current contract will be extended for six months to June 30, 2008 should additional time be needed.

RFP Review Panel: The RFP review panel will have a total of six members plus two alternates. Two members will be City employees: one with expertise in financial management and one with expertise in contract administration. Four members will be selected based upon the recommendations of the King County Bar Association (KCBA). The KCBA will recommend to the Mayor a minimum of six people to serve on the panel, to allow for alternates in case one or more of the recommended members is unable to serve due to scheduling conflicts or other reasons. The Mayor will also identify alternates, with the same expertise as described above, in case one of the city staff members is unable to serve. The review panel will also review the RFP prior to its issuance. The new RFP review panel will have all new panelists from the current panel.

Caseload Evaluation: The RFP panel will be selected and serve only for the duration of the RFP process. The new legislation will not include language that requires the RFP panel to review the Washington State Bar Association caseload recommendations. However, consistent with the 1989 Budget Intent Statement, City agreements with indigent public defense service providers shall require caseloads no higher than 380 total assigned cases, not closed cases, per-attorney per-year.

Primary Agency: The primary agency will have a minimum of fifteen attorneys.

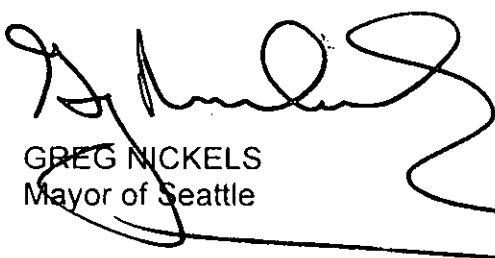
Secondary Agency: The secondary agency will have a minimum of seven attorneys to handle conflict cases as well as other cases. Currently, there are five trial courts in session at any given time and additional pre-trial and domestic violence courts at the same or other times. With seven attorneys, the secondary agency should be able to dedicate one attorney for each courtroom plus have a back-up attorney.

Third Agency: The City will contract with a third agency for one attorney FTE to handle an estimated 75 to 150 conflict cases (these are cases in which both the primary and secondary agencies have a conflict; currently they are handled by private attorneys).

Administration of conflict cases: The City will contract with one of the three contract agencies for the administration of assigned counsel cases.

Contract Term: The Director of Executive Administration (DEA) may execute agreements for public defense for a term not to exceed three years.

Sincerely, ✓



GREG NICKELS  
Mayor of Seattle



NICK LICATA  
President, Seattle City Council

cc: The Honorable Ronald Mamiya, Presiding Judge, Seattle Municipal Court  
Regina LaBelle, Counsel to the Mayor  
Fred Podesta, Director, Executive Administration  
Catherine Cornwall, Senior Policy Analyst, Office of Policy & Management  
Julien Loh, Public Defense Program Manager, Office of Policy & Management



ORDINANCE 122493

AN ORDINANCE relating to the selection of providers of and standards for indigent public defense services and amending Ordinance 121501.

WHEREAS, it is a constitutional requirement, a requirement of Chapter 10.101 RCW and a public purpose that each person charged with a crime punishable by incarceration or involved in certain other proceedings that may result in loss of liberty or loss of fundamental rights, be provided with effective legal representation in order to ensure equal justice under law without regard to his or her ability to pay; and

WHEREAS, effective legal representation should be provided consistent with the constitutional requirements of fairness, equal protection, and due process in all cases where the right to counsel attaches; and

WHEREAS, it is the intention of The City of Seattle (the "City"), consistent with Chapter 10.101 RCW and other applicable law, to make such services available in an efficient manner which provides effective representation at reasonable cost to the city; and

WHEREAS, the provision of indigent public defense services by nonprofit service providers helps ensure a client focus by those entrusted with representing indigent persons; and

WHEREAS, a non-profit board of directors is generally representative of the community it serves, and the City Council desires Seattle's public defense program to be representative of the community it serves; and

WHEREAS, the American Bar Association recommends an average of 6 hours per case bringing the optimum number of cases handled by attorney to 275 per year; and

WHEREAS, the King County Bar Indigent Defense Services Task Force developed a 300 case per attorney, per year guideline in 1982; and

WHEREAS, the Seattle City Council adopted Resolution 27696 on September 28, 1987, adopting a framework and schedule for implementing recommendations contained in the 1987 Public Defender Salary and Caseload Review conducted by City Council staff, which report led to a 1989 City Council Budget Intent Statement (attached as Attachment 1 and incorporated herein by reference) establishing a 380 case per-attorney, per-year limit, and conditions leading to those recommendation have not materially changed; and

WHEREAS, the City is guided by the standards referenced in Chapter 10.101 RCW and the American Bar Association's (ABA's) Ten Principles of a Public Defense Delivery System attached as Attachment 2 and incorporated herein by reference; and



1 WHEREAS, in 2004, the City Council passed Ordinance 121501, stating that public defense  
2 agreements shall require caseloads no higher than 380 cases per attorney per year; and

3 WHEREAS, a 2007 City of Seattle Audit found that the Office of Management and Planning's  
4 (OMP's) method of determining attorney caseload is not an accurate measure of workload  
5 and can conflict with the City caseload standard of 380 annual cases per attorney  
6 specified in Ordinance 121501; and the Auditor further found that in 2005 and 2006, the  
7 current primary public defense agency's caseload exceeded the standard established in  
8 Ordinance 121501; and

9 WHEREAS, the Audit also commented on OMP's Request for Proposals process, observing that  
10 the Mayor appointed all the members of the 2004 proposal review committee, and  
11 recommended that the Executive and City Council should decide whether this Mayoral  
12 role provides sufficient independence as outlined in the ABA principles; and

13 WHEREAS, overall, this 2007 City Audit contains 36 recommendations for improving the City's  
14 public defense program, including a recommendation to have a larger secondary public  
15 defense agency; NOW, THEREFORE,

16 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

17 Section A. Ordinance 121501 is hereby amended as follows:

18 Section 1. In order to provide for indigent public defense services in a manner that is free  
19 from political influence, ((F))the selection of service providers for indigent public defense  
20 services and the award of contracts with those providers shall be made by the Director of  
21 Executive Administration upon receiving the recommendation of an independent, non-partisan,  
22 indigent public defense services proposal review panel or the recommendation(s) of panel  
23 member(s). The panel shall be advisory only, and shall have seven members. A quorum shall  
24 consist of four members, except as provided elsewhere in this Section 1. The Chair of the City  
25 Council Public Safety, Governmental Relations, and Arts Committee shall appoint three  
26 members subject to confirmation by the City Council. The Mayor shall appoint three members.



1 The panel as constituted shall appoint a member to fill the seventh position. If, by 15 days after  
2 this ordinance takes effect, the appointing authorities have collectively appointed only three panel  
3 members, then the three existing panel members shall appoint a fourth member. At any time  
4 that the panel has at least four but fewer than seven members, the panel shall make additional  
5 appointment(s) as needed to reach seven members. Members thus appointed shall not be subject  
6 to City Council confirmation. When appointing members of ((F))this panel, the appointing  
7 authorities shall make efforts to include, but shall not be limited to, lawyers with criminal  
8 defense experience and/or experience in Seattle Municipal Court, community members with  
9 legal expertise as well as those who hold firm the interests of low-income communities. No City  
10 officer or employee may be a panel member. Except as provided in Section ((4))6 of this  
11 Ordinance, the City shall enter into agreements to provide indigent defense services only with  
12 nonprofit corporations formed for the express purpose of providing legal services to persons  
13 eligible for representation through a public defense program.

14 Section 2. The duties of the panel shall be to review, and recommend from among, the  
15 proposals submitted in response to the Request for Proposals to provide indigent defense services  
16 received from nonprofit corporations formed for the express purpose of providing legal services  
17 to persons eligible for representation through a public defense program. In addition to any other  
18 materials provided by proposers, the panel shall consider any City Audits of its indigent defense  
19 programs; and shall, before the end of the 2008-2010 defense contract term, review the  
20 Washington State Bar Association caseload recommendations and report to the City Council on  
21 any need to amend the caseload standards in this ordinance.





1           Section ((2))3. The City Council intends to review and consider any recommendation  
2 from the panel for new caseload standards, and may adopt new standards, partly in response to  
3 such a recommendation. Until such time as the City Council adopts by ordinance new caseload  
4 standards, ((F))the City hereby reaffirms the caseload standards established in the 1989 Budget  
5 Intent Statement. The 1989 Budget Intent Statement, the American Bar Association's Ten  
6 Principles of a Public Defense Delivery System and the provisions of Sections 1, 2 and 3 of this  
7 Ordinance shall collectively constitute "standards for public defense services" as that term is used  
8 in RCW 10.101.030 until such time as the City Council may by ordinance adjust those standards.  
9 Consistent with the 1989 Budget Intent Statement, City agreements with indigent public defense  
10 service providers shall require caseloads no higher than 380 total assigned cases per-attorney per-  
11 year. The City also affirms the Washington State Bar- endorsed supervision standard of one full-  
12 time supervisor for every ten staff lawyers.

13           Section ((3))4. The Council intends that ((A))any new standards for public defense  
14 services established by ordinance as contemplated by RCW 10.101.030 relating to  
15 "compensation of counsel, duties and responsibilities of counsel, case load limits and types of  
16 cases, responsibility for expert witness fees and other costs associated with representation,  
17 administrative expenses, support services, reports of attorney activity and vouchers, training,  
18 supervision, monitoring and evaluation of attorneys, substitution of attorneys or assignment of  
19 contracts, limitations on private practice of contract attorneys, qualifications of attorneys,  
20 disposition of client complaints, cause for termination of contract or removal of attorney, and  
21 nondiscrimination," shall be the outcome of a comprehensive review that involves the Executive,  
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1 the City Council, Public Defenders, Law School faculty, and King County Bar Association, and  
2 non-profit community service providers, in addition to the panel.

3 Section ((4))5. Upon receiving the recommendations of the panel or panel member(s),  
4 ((F))the Director of Executive Administration shall negotiate the terms of each proposed  
5 agreement with ((a)) each service provider for indigent public defense services consistent with  
6 the standards adopted in Section ((2))3 of this Ordinance and consistent with the provisions of  
7 Sections 1 and 2 of this Ordinance. The Director of Executive Administration may execute  
8 agreements for that purpose not exceeding three years, provided that no agreement to provide  
9 indigent public defense services shall be executed or become effective unless and until approved  
10 by the City Council, by ordinance.

13 Section ((5))6. The contracts with each of the primary and secondary providers selected  
14 to provide indigent public defense services shall each provide sufficient funding to support at  
15 least two attorneys more than the number of Seattle Municipal Court "departments" provided by  
16 law. A third agency shall be selected to represent defendants in those cases in which both the  
17 primary and secondary providers have a conflict of interest; the contract with the third agency  
18 shall require caseloads no higher than 275 total assigned cases per-attorney per-year. One of the  
19 three contracts shall also include the administration of an assigned counsel services program for  
20 ((H)) cases or other proceedings where conflicts of interest or other special circumstances exist  
21 ((;)) at the three contracting agencies. ((F))the City will pay directly (not via any of the three  
22 contracting agencies) for ((may provide for))assigned counsel services provided by persons or  
23 entities other than nonprofit corporations.







Returned Unsigned  
by Mayor

FORM C

Councilmember Rice  
Staff Analyst S. Crane  
Date November 3, 1988

1989 CITY COUNCIL BUDGET

INTENT STATEMENTS

Report Page P.C.  
Department Finance General

Report Page	Prog. Cat.	Intent Statement	P	R	Yes	No	Yes	No	Tot	GB	VG	PK	JN	NR	DS	SS	JS	JH
11		<p>In approving the increased appropriation for Indigent Defense Services, it is the intent of the City Council to recognize the issues of caseload and salary. This increment of \$36,000 is to be used to lower the contracting standard from 390 cases per attorney to 385 cases per attorney, annually.</p> <p>If a public defender program is already meeting the lower caseload standard of 385 cases per FTE attorney, it is the intent of the City Council that the additional increment received by the agency shall be used to raise the average salary of its attorneys practicing in Municipal Court.</p> <p>It is the further intent of the Council that OMB shall monitor: a) the agencies' performance to ensure that public defenders practicing in Municipal Court carry caseloads no higher than 390 per FTE attorney; and b) the experience level of public defenders assigned to Municipal Court.</p> <p>Furthermore, it is the intent of the City to continue to work with the County to reach agreement on uniform caseload and salary standards.</p>			Yes	No	Yes	No	8	✓	✓	A	✓	✓	✓	✓	✓	✓
EXPLANATION:																		

11-3R.2/BUDGET:ksr(SC)

Vide. toman: Pasha

Attachment 1 to C.B. 116012



Councilmember Williams

1988 CITY COUNCIL BUDGET

Date 11-6-87

INTENT STATEMENTS

Department Finance General

Report Page P.C.

	P F	Yes No	Tot	GB	VG	PK	JN	NR	DS	SS	JS	JW
In increasing the appropriation for Public Defense Services it is the intent of the Council to continue to seek an increase in public defender salaries so that they are more comparable to Assistant City Attorney salaries.		Yes No										
This increased appropriation shall be used both for increasing the rates of payment for Municipal Court Appeals and to lower attorney caseloads.		Yes No										
It is the further intent of the City to work with the County to reach agreement on uniform caseload and salary standards.		Yes No										



**ABA**

**TEN**

**PRINCIPLES**

**OF A PUBLIC DEFENSE DELIVERY SYSTEM**

*February 2002*

*Attachment 2 to C.B. 116012*



ABA STANDING COMMITTEE  
ON LEGAL AID AND INDIGENT DEFENDANTS

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2001 - 2002

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# TEN PRINCIPLES

## OF A PUBLIC DEFENSE DELIVERY SYSTEM

*February 2002*

Approved by American Bar Association House of Delegates, February 2002. The American Bar Association recommends that jurisdictions use these Principles to assess promptly the needs of public defense delivery systems and clearly communicate those needs to policy makers.





# INTRODUCTION

The *ABA Ten Principles of a Public Defense Delivery System* were sponsored by the ABA Standing Committee on Legal and Indigent Defendants and approved by the ABA House of Delegates in February 2002. The Principles were created as a practical guide for governmental officials, policymakers, and other parties who are charged with creating and funding new, or improving existing, public defense delivery systems. The Principles constitute the fundamental criteria necessary to design a system that provides effective, efficient, high quality, ethical, conflict-free legal representation for criminal defendants who are unable to afford an attorney. The more extensive ABA policy statement dealing with indigent defense services is contained within the ABA Standards for Criminal Justice, *Providing Defense Services* (3d ed. 1992), which can be viewed on-line (black letter only) and purchased (black letter with commentary) by accessing the ABA Criminal Justice Section homepage at <http://www.abanet.org/crimjust/home.html>.

## ACKNOWLEDGMENTS

The Standing Committee on Legal Aid and Indigent Defendants is grateful to everyone assisting in the development of the *ABA Ten Principles of a Public Defense Delivery System*. Foremost, the Standing Committee acknowledges former member James R. Neuhard, Director of the Michigan State Appellate Defender Office, who was the first to recognize the need for clear and concise guidance on how to design an effective system for providing public defense services. In 2000, Mr. Neuhard and Scott Wallace, Director of Defender Legal Services for the National Legal Aid and Defender Association, jointly produced a paper entitled "The Ten Commandments of Public Defense Delivery Systems," which was later included in the Introduction to Volume I of the U.S. Department of Justice's Compendium of Standards for Indigent Defense Systems. The *ABA Ten Principles of a Public Defense Delivery System* are based on this work of Mr. Neuhard and Mr. Wallace.

Special thanks go to the members of the Standing Committee and its Indigent Defense Advisory Group who reviewed drafts and provided comment. Further, the Standing Committee is grateful to the ABA entities that provided invaluable support for these Principles by co-sponsoring them in the House of Delegates, including: Criminal Justice Section, Government and Public Sector Lawyers Division, Steering Committee on the Unmet Legal Needs of Children, Commission on Racial and Ethnic Diversity in the Profession, Standing Committee on Pro Bono and Public Services. We would also like to thank the ABA Commission on Homelessness and Poverty and the ABA Juvenile Justice Center for their support.

L. Jonathan Ross  
Chair, Standing Committee on  
Legal Aid and Indigent Defendants



# ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM

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## *Black Letter*

The public defense function, including the selection, funding, and payment of defense counsel, is independent.

Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.

Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel.

Defense counsel is provided sufficient time and a confidential space within which to meet with the client.

Defense counsel's workload is controlled to permit the rendering of quality representation.

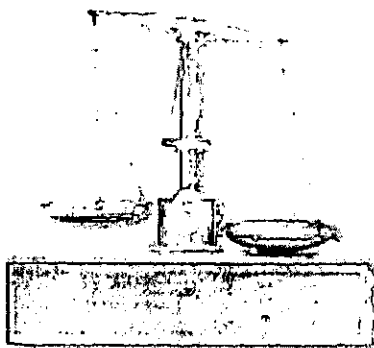
Defense counsel's ability, training, and experience match the complexity of the case.

The same attorney continuously represents the client until completion of the case.

There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.

Defense counsel is provided with and required to attend continuing legal education.

Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.



# ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM

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## *With Commentary*

The public defense function, including the selection, funding, and payment of defense counsel,<sup>1</sup> is independent. The public defense function should be independent from political influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel.<sup>2</sup> To safeguard independence and to promote efficiency and quality of services, a nonpartisan board should oversee defender, assigned counsel, or contract systems.<sup>3</sup> Removing oversight from the judiciary ensures judicial independence from undue political pressures and is an important means of furthering the independence of public defense.<sup>4</sup> The selection of the chief defender and staff should be made on the basis of merit, and recruitment of attorneys should involve special efforts aimed at achieving diversity in attorney staff.<sup>5</sup>

Where the caseload is sufficiently high,<sup>6</sup> the public defense delivery system consists of both a defender office<sup>7</sup> and the active participation of the private bar. The private bar participation may include part-time defenders, a controlled assigned counsel plan, or contracts for services.<sup>8</sup> The appointment process should never be *ad hoc*,<sup>9</sup> but should be according to a coordinated plan directed by a full-time administrator who is also an attorney familiar with the varied requirements of practice in the jurisdiction.<sup>10</sup> Since the responsibility to provide defense services rests with the state, there should be state funding and a statewide structure responsible for ensuring uniform quality statewide.<sup>11</sup>

3 Clients are screened for eligibility,<sup>12</sup> and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel. Counsel should be furnished upon arrest, detention, or request,<sup>13</sup> and usually within 24 hours thereafter.<sup>14</sup>

4 Defense counsel is provided sufficient time and a confidential space within which to meet with the client. Counsel should interview the client as soon as practicable before the preliminary examination or the trial date.<sup>15</sup> Counsel should have confidential access to the client for the full exchange of legal, procedural, and factual information between counsel and client.<sup>16</sup> To ensure confidential communications, private meeting space should be available in jails, prisons, courthouses, and other places where defendants must confer with counsel.<sup>17</sup>

5 Defense counsel's workload is controlled to permit the rendering of quality representation. Counsel's workload, including appointed and other work, should never be so large as to interfere with the rendering of quality representation or lead to the breach of ethical obligations, and counsel is obligated to decline appointments above such levels.<sup>18</sup> National caseload standards should in no event be exceeded,<sup>19</sup> but the concept of workload (i.e., caseload adjusted by factors such as case complexity, support services, and an attorney's nonrepresentational duties) is a more accurate measurement.<sup>20</sup>

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Defense counsel's ability, training, and experience match the complexity of the case. Counsel should never be assigned a case that counsel lacks the experience or training to handle competently, and counsel is obligated to refuse appointment if unable to provide ethical, high quality representation.<sup>21</sup>

The same attorney continuously represents the client until completion of the case. Often referred to as "vertical representation," the same attorney should continuously represent the client from initial assignment through the trial and sentencing.<sup>22</sup> The attorney assigned for the direct appeal should represent the client throughout the direct appeal.

There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system. There should be parity of workload, salaries and other resources (such as benefits, technology, facilities, legal research, support staff, paralegals, investigators, and access to forensic services and experts) between prosecution and public defense.<sup>23</sup> Assigned counsel should be paid a reasonable fee in addition to actual overhead and expenses.<sup>24</sup> Contracts with private attorneys for public defense services should never be let primarily on the basis of cost; they should specify performance requirements and the anticipated workload, provide an overflow or funding mechanism for excess,

unusual, or complex cases,<sup>25</sup> and separately fund expert, investigative, and other litigation support services.<sup>26</sup> No part of the justice system should be expanded or the workload increased without consideration of the impact that expansion will have on the balance and on the other components of the justice system. Public defense should participate as an equal partner in improving the justice system.<sup>27</sup> This principle assumes that the prosecutor is adequately funded and supported in all respects, so that securing parity will mean that defense counsel is able to provide quality legal representation.

Defense counsel is provided with and required to attend continuing legal education. Counsel and staff providing defense services should have systematic and comprehensive training appropriate to their areas of practice and at least equal to that received by prosecutors.<sup>28</sup>

Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards. The defender office (both professional and support staff), assigned counsel, or contract defenders should be supervised and periodically evaluated for competence and efficiency.<sup>29</sup>

# NOTES

<sup>1</sup> "Counsel" as used herein includes a defender office, a criminal defense attorney in a defender office, a contract attorney, or an attorney in private practice accepting appointments. "Defense" as used herein relates to both the juvenile and adult public defense systems.

<sup>2</sup> National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, Chapter 13, *The Defense* (1973) [hereinafter "NAC"], Standards 13.8, 13.9; National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States* (1976) [hereinafter "NSC"], Guidelines 2.8, 2.18, 5.13; American Bar Association Standards for Criminal Justice, *Providing Defense Services* (3<sup>rd</sup> ed. 1992) [hereinafter "ABA"], Standards 5-1.3, 5-1.6, 5-4.1; *Standards for the Administration of Assigned Counsel Systems* (NLADA 1989) [hereinafter "Assigned Counsel"], Standard 2.2; NLADA *Guidelines for Negotiating and Awarding Contracts for Criminal Defense Services*, (1984) [hereinafter "Contracting"], Guidelines II-1, 2; National Conference of Commissioners on Uniform State Laws, *Model Public Defender Act* (1970) [hereinafter "Model Act"], § 10(d); Institute for Judicial Administration/American Bar Association, *Juvenile Justice Standards Relating to Counsel for Private Parties* (1979) [hereinafter "ABA Counsel for Private Parties"], Standard 2.1(D).

<sup>3</sup> NSC, *supra* note 2, Guidelines 2.10-2.13; ABA, *supra* note 2, Standard 5-1.3(b); Assigned Counsel, *supra* note 2, Standards 3.2.1, 2; Contracting, *supra* note 2, Guidelines II-1, II-3, IV-2; Institute for Judicial Administration/ American Bar Association, *Juvenile Justice Standards Relating to Monitoring* (1979) [hereinafter "ABA Monitoring"], Standard 3.2.

<sup>2</sup> Judicial independence is "the most essential character of a free society" (American Bar Association Standing Committee on Judicial Independence, 1997).

<sup>5</sup> ABA, *supra* note 2, Standard 5-4.1

<sup>6</sup> "Sufficiently high" is described in detail in NAC Standard 13.5 and ABA Standard 5-1.2. The phrase generally can be understood to mean that there are enough assigned cases to support a full-time public defender (taking into account distances, caseload diversity, etc.), and the remaining number of cases are enough to support meaningful involvement of the private bar.

<sup>7</sup> NAC, *supra* note 2, Standard 13.5; ABA, *supra* note 2, Standard 5-1.2; ABA Counsel for Private Parties, *supra* note 2, Standard 2.2. "Defender office" means a full-time public defender office and includes a private nonprofit organization operating in the same manner as a full-time public defender office under a contract with a jurisdiction.

<sup>8</sup> ABA, *supra* note 2, Standard 5-1.2(a) and (b); NSC, *supra* note 2, Guideline 2.3; ABA, *supra* note 2, Standard 5-2.1.

<sup>9</sup> NSC, *supra* note 2, Guideline 2.3; ABA, *supra* note 2, Standard 5-2.1.

<sup>10</sup> ABA, *supra* note 2, Standard 5-2.1 and commentary; Assigned Counsel, *supra* note 2, Standard 3.3.1 and commentary n.5 (duties of Assigned Counsel Administrator such as supervision of attorney work cannot ethically be performed by a non-attorney, citing ABA Model Code of Professional Responsibility and Model Rules of Professional Conduct).

<sup>11</sup> NSC, *supra* note 2, Guideline 2.4; Model Act, *supra* note 2, § 10; ABA, *supra* note 2, Standard 5-1.2(c); *Gideon v. Wainwright*, 372 U.S. 335 (1963) (provision of indigent defense services is obligation of state).

<sup>12</sup> For screening approaches, see NSC, *supra* note 2, Guideline 1.6 and ABA, *supra* note 2, Standard 5-7.3.

<sup>13</sup> NAC, *supra* note 2, Standard 13.3; ABA, *supra* note 2, Standard 5-6.1; Model Act, *supra* note 2, § 3; NSC, *supra* note 2, Guidelines 1.2-1.4; ABA Counsel for Private Parties, *supra* note 2, Standard 2.4(A).

<sup>14</sup> NSC, *supra* note 2, Guideline 1.3.

<sup>15</sup> American Bar Association Standards for Criminal Justice, *Defense Function* (3<sup>rd</sup> ed. 1993) [hereinafter "ABA Defense Function"], Standard 4-3.2; *Performance Guidelines for Criminal Defense Representation* (NLADA 1995) [hereinafter "Performance Guidelines"], Guidelines 2.1-4.1; ABA Counsel for Private Parties, *supra* note 2, Standard 4.2.



<sup>16</sup> NSC, *supra* note 2, Guideline 5.10; ABA Defense Function, *supra* note 15, Standards 4-3.1, 4-3.2; Performance Guidelines, *supra* note 15, Guideline 2.2.

<sup>17</sup> ABA Defense Function, *supra* note 15, Standard 4-3.1.

<sup>18</sup> NSC, *supra* note 2, Guideline 5.1, 5.3; ABA, *supra* note 2, Standards 5-5.3; ABA Defense Function, *supra* note 15, Standard 4-1.3(e); NAC, *supra* note 2, Standard 13.12; Contracting, *supra* note 2, Guidelines III-6, III-12; Assigned Counsel, *supra* note 2, Standards 4.1, 4.1.2; ABA Counsel for Private Parties, *supra* note 2, Standard 2.2(B)(iv).

<sup>19</sup> Numerical caseload limits are specified in NAC Standard 13.12 (maximum cases per year: 150 felonies, 400 misdemeanors, 200 juvenile, 200 mental health, or 25 appeals), and other national standards state that caseloads should "reflect" (NSC Guideline 5.1) or "under no circumstances exceed" (Contracting Guideline III-6) these numerical limits. The workload demands of capital cases are unique: the duty to investigate, prepare, and try both the guilt/innocence and mitigation phases today requires an average of almost 1,900 hours, and over 1,200 hours even where a case is resolved by guilty plea. *Federal Death Penalty Cases: Recommendations Concerning the Cost and Quality of Defense Representation* (Judicial Conference of the United States, 1998). See also ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases (1989) [hereinafter "Death Penalty"].

<sup>20</sup> ABA, *supra* note 2, Standard 5-5.3; NSC, *supra* note 2, Guideline 5.1; *Standards and Evaluation Design for Appellate Defender Offices* (NLADA 1980) [hereinafter "Appellate"], Standard 1-F.

<sup>21</sup> Performance Guidelines, *supra* note 15, Guidelines 1.2, 1.3(a); Death Penalty, *supra* note 19, Guideline 5.1.

<sup>22</sup> NSC, *supra* note 2, Guidelines 5.11, 5.12; ABA, *supra* note 2, Standard 5-6.2; NAC, *supra* note 2, Standard 13.1; Assigned Counsel, *supra* note 2, Standard 2.6; Contracting, *supra* note 2, Guidelines

III-12, III-23; ABA Counsel for Private Parties, *supra* note 2, Standard 2.4(B)(i).

<sup>23</sup> NSC, *supra* note 2, Guideline 3.4; ABA, *supra* note 2, Standards 5-4.1, 5-4.3; Contracting, *supra* note 2, Guideline III-10; Assigned Counsel, *supra* note 2, Standard 4.7.1; Appellate, *supra* note 20 (Performance); ABA Counsel for Private Parties, *supra* note 2, Standard 2.1(B)(iv). See NSC, *supra* note 2, Guideline 4.1 (includes numerical staffing ratios, e.g.: there must be one supervisor for every 10 attorneys, or one part-time supervisor for every 5 attorneys; there must be one investigator for every three attorneys, and at least one investigator in every defender office). Cf. NAC, *supra* note 2, Standards 13.7, 13.11 (chief defender salary should be at parity with chief judge; staff attorneys at parity with private bar).

<sup>24</sup> ABA, *supra* note 2, Standard 5-2.4; Assigned Counsel, *supra* note 2, Standard 4.7.3.

<sup>25</sup> NSC, *supra* note 2, Guideline 2.6; ABA, *supra* note 2, Standards 5-3.1, 5-3.2, 5-3.3; Contracting, *supra* note 2, Guidelines III-6, III-12, and *passim*.

<sup>26</sup> ABA, *supra* note 2, Standard 5-3.3(b)(x); Contracting, *supra* note 2, Guidelines III-8, III-9.

<sup>27</sup> ABA Defense Function, *supra* note 15, Standard 4-1.2(d).

<sup>28</sup> NAC, *supra* note 2, Standards 13.15, 13.16; NSC, *supra* note 2, Guidelines 2.4(4), 5.6-5.8; ABA, *supra* note 2, Standards 5-1.5; Model Act, *supra* note 2, § 10(e); Contracting, *supra* note 2, Guideline III-17; Assigned Counsel, *supra* note 2, Standards 4.2, 4.3.1, 4.3.2, 4.4.1; NLADA *Defender Training and Development Standards* (1997); ABA Counsel for Private Parties, *supra* note 2, Standard 2.1(A).

<sup>29</sup> NSC, *supra* note 2, Guidelines 5.4, 5.5; Contracting, *supra* note 2, Guidelines III-16; Assigned Counsel, *supra* note 2, Standard 4.4; ABA Counsel for Private Parties, *supra* note 2, Standards 2.1 (A), 2.2; ABA Monitoring, *supra* note 3, Standards 3.2, 3.3. Examples of performance standards applicable in conducting these reviews include NLADA Performance Guidelines, ABA Defense Function, and NLADA/ABA Death Penalty.



**FOR MORE INFORMATION OR TO ORDER PUBLICATIONS, CONTACT STAFF AT:**

American Bar Association, Division for Legal Services

321 N. Clark Street, 19<sup>th</sup> Floor

Chicago, Illinois 60610

(312) 988-5750

<http://www.abalegalservices.org/sclaid>





## **FISCAL NOTE FOR NON-CAPITAL PROJECTS**

<b>Department:</b>	<b>Contact Person/Phone:</b>	<b>DOF Analyst/Phone:</b>
OPM	Lisa Herbold/4-5331	n/a

**Legislation Title:** AN ORDINANCE relating to the selection of providers of and standards for indigent public defense services and amending Ordinance 121501.

- **Summary of the Legislation:**

Consistent with each a) Ordinance 121501 passed in 2004, b) 2007 City Auditor recommendations and c) Council Resolution 31008, this bill legislates the establishment of an RFQ review committee; clarifies the definition of a case; provides for an expanded secondary provider and a third provider; requires the selection of a provider to include an assigned Council program.

- **Background:**

Among other things this bill, 1) enforces the case load limits established per ordinance 121501; 2) describes composition of an independent RFP review panel to make recommendations for providers to the Executive per ordinance 121501; 3) includes provision for an Assigned Council Program; and 4) expand the contract for the secondary defense agency provider.

Ordinance 121501 legislated existing standards under a 1989 Budget Statement of Legislative Intent. This bill enforces the standards established in 1989 and reaffirmed in 2004, consequently, there is little, if any, fiscal impact from this bill. Further, the City pays according to number of cases, this bill does nothing to increase the number of cases for which indigent defendants need representation.

The fiscal impact to the city did not arise with the legislation in 2004 of these 1989 pre-existing public defense standards. The 2005 budget action and 2005 contract ended the City of Seattle's funding of the King County Office of Public Defense to select and administer contracts with agencies providing public defense services for City defendants. The Mayor estimated impacts of \$100,000 each year of reduced costs from this action. We now find that the savings from the 2005 budget action was \$400,000 over the three year period that the Office of Planning and Management did not enforce the pre-existing 1989 standards, legislated by Ordinance 121501 in 2004.

A third entity to represent defendants in those cases with which the two primary agencies may have conflicts may have a fiscal **savings** because fewer cases will be referred to more costly, per hour private assigned counsel.

- *Please check one of the following:*

**X** **This legislation does not have any financial implications.** *(Stop here and delete the remainder of this document prior to saving and printing.)*



**Legislative Department  
Office of the City Clerk**

Judith E. Pippin  
City Clerk

To: Ordinance No. 122493 jacket

From: Emilia M. Sanchez

Date: September 28, 2007

Version 2 was introduced to Council and version 7 passed out of the Public Safety, Governmental Relations and Arts Committee.

Versions 3-6 were created and used internally by staff, and were not before the Council.

Version 7 was before the Full Council Committee and subsequent amendments were made. Version 11 was passed by the Full Council.

## ORDINANCE \_\_\_\_\_

AN ORDINANCE relating to the selection of providers of and standards for indigent public defense services and amending Ordinance 121501.

WHEREAS, it is a constitutional requirement, a requirement of Chapter 10.101 RCW and a public purpose that each person charged with a crime punishable by incarceration or involved in certain other proceedings that may result in loss of liberty or loss of fundamental rights, be provided with effective legal representation in order to ensure equal justice under law without regard to his or her ability to pay; and

WHEREAS, effective legal representation should be provided consistent with the constitutional requirements of fairness, equal protection, and due process in all cases where the right to counsel attaches; and

WHEREAS, it is the intention of The City of Seattle (the "City"), consistent with Chapter 10.101 RCW and other applicable law, to make such services available in an efficient manner which provides effective representation at reasonable cost to the city; and

WHEREAS, the provision of indigent public defense services by nonprofit service providers helps ensure a client focus by those entrusted with representing indigent persons; and

WHEREAS, a non-profit board of directors is generally representative of the community it serves, and the City Council desires Seattle's public defense program to be representative of the community it serves; and

WHEREAS, the American Bar Association recommends an average of 6 hours per case bringing the optimum number of cases handled to 275 per year; and

WHEREAS, the King County Bar Indigent Defense Services Task Force developed a 300 case per attorney, per year guideline in 1982; and

WHEREAS, the Seattle City Council adopted Resolution 27696 on September 28, 1987, adopting a framework and schedule for implementing recommendations contained in the 1987 Public Defender Salary and Caseload Review conducted by City Council staff, which report led to a 1989 City Council Budget Intent Statement (attached as Attachment 1 and incorporated herein by reference) establishing a 380 case per-attorney, per-year limit, and conditions leading to those recommendation have not materially changed; and



1 WHEREAS, the City is guided by the standards referenced in Chapter 10.101 RCW and the  
2 American Bar Association's Ten Principles of a Public Defense Delivery System attached  
as Attachment 2 and incorporated herein by reference; and

3 WHEREAS, the City Council adopted Ordinance 121501, and a 2007 City of Seattle Audit  
4 found that the Office of Management and Planning did not adhere to Ordinance 121501  
5 in the areas of enforcement of maximum caseload limits and the use of a Request for  
6 Proposals Review Committee that is free from political influence for purposes of  
7 selecting public defense providers and this 2007 City Audit contains 17 recommendations  
8 for improving the City's public defense program, including a recommendation to have a  
larger secondary public defense agency.

9 NOW, THEREFORE,

10  
11 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

12 Section A. Ordinance 121501 is hereby amended as follows:

13  
14 Section 1. In order to provide for indigent public defense services in a manner that is free  
15 from political influence, ((F))the selection of service providers for indigent public defense  
16 services and the award of contracts with those providers shall be made by the Director of  
17 Executive Administration upon the recommendation of an independent, non-partisan, indigent  
18 public defense services proposal review panel. The members of this panel shall each be  
19 appointed jointly by the Mayor and City Council Public Safety Committee Chair and confirmed  
20 by the City Council and shall include lawyers with criminal legal defense and, or, experience in  
21 Seattle Municipal Court, community members with legal expertise as well as those who hold  
22 firm the interests of low-income communities. Except as provided in Section ((4))6 of this  
23 Ordinance, the City shall enter into agreements to provide indigent defense services only with  
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1 nonprofit corporations formed for the express purpose of providing legal services to persons  
2 eligible for representation through a public defense program.

3 Section 2. The duties of the panel shall be to review, and recommend among, the  
4 proposals submitted in response to the Request for Proposals to provide indigent defense services  
5 received from nonprofit corporations formed for the express purpose of providing legal services  
6 to persons eligible for representation through a public defense program. In addition to any other  
7 materials provided by bidders, the panel shall consider any City Audits of its indigent defense  
8 programs; and to, before the end of the 2008-2011 defense contract term, review the Washington  
9 State Bar Association caseload recommendations and report to the City Council on any need to  
10 amend the caseload standards in this ordinance.

13 Section ((2))3. Until such time as the City Council adopts by ordinance new caseload  
14 standards in response to a recommendation from the panel for new caseload standards, ((F))the  
15 City hereby reaffirms the caseload standards established in the 1989 Budget Intent Statement.  
16 The 1989 Budget Intent Statement, the American Bar Association's Ten Principles of a Public  
17 Defense Delivery System and the provisions of Section 1, 2 and 3 of this Ordinance shall  
18 collectively constitute "standards for public defense services" as that term is used in RCW  
19 10.101.030 until such time as the City Council may by ordinance adjust those standards.  
20 Consistent with the 1989 Budget Intent Statement, City agreements with indigent public defense  
21 service providers shall require caseloads no higher than 380 total assigned cases per-attorney per-  
22 year. The City also affirms the Washington State Bar- endorsed supervision standard of one full-  
23 time supervisor for every ten staff lawyers.

1 Section ((3))4. The Council intends for (A)any new standards for public defense services  
2 established by ordinance as contemplated by RCW 10.101.030 relating to "compensation of  
3 counsel, duties and responsibilities of counsel, case load limits and types of cases, responsibility  
4 for expert witness fees and other costs associated with representation, administrative expenses,  
5 support services, reports of attorney activity and vouchers, training, supervision, monitoring and  
6 evaluation of attorneys, substitution of attorneys or assignment of contracts, limitations on  
7 private practice of contract attorneys, qualifications of attorneys, disposition of client complaints,  
8 cause for termination of contract or removal of attorney, and nondiscrimination," shall be the  
9 outcome of a comprehensive review that involves the Executive, the City Council, Public  
10 Defenders, Law School faculty, and King County Bar Association, and non-profit community  
11 service providers.  
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15 Section ((4))5. Upon receiving the recommendations of the panel, ((F))the Director of  
16 Executive Administration shall negotiate the terms of each proposed agreement with ((a)) each  
17 service provider for indigent public defense services consistent with the standards adopted in  
18 Section 23 of this Ordinance and consistent with the provisions of Section 1 and 2 of this  
19 Ordinance. The Director of Executive Administration may execute agreements for that purpose  
20 not exceeding three years.  
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24 Section ((5))6. The contracts with each the primary and secondary providers selected to  
25 provide indigent public defense services shall each provide sufficient funding to support at two  
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1 attorneys more than the number of courts simultaneously in session. A third agency shall be  
2 selected to represent defendants in those cases in which both the primary and secondary  
3 providers have a conflict of interest, with a caseload adjustment to 275 total assigned cases per-  
4 attorney per year for the third agency. One of the three contracts shall also include the  
5 administration of an assigned counsel services program for ((In)) cases or other proceedings  
6 where conflicts of interest or other special circumstances exist at the three contracting agencies.  
7 the City may, separately from the selection of assigned counsel provide for payment of assigned  
8 counsel services by persons or entities other than nonprofit corporations.

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11 Section 7. In the first quarter of 2010 the Seattle City Auditor will audit compliance with  
12 the standards established by this ordinance for the public defense contract enacted for the 2008 -  
13 2010 period.

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16 Section B. This ordinance shall take effect and be in force thirty (30) days from and after  
17 its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days  
18 after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

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21 Passed by the City Council the \_\_\_\_ day of \_\_\_\_\_, 2007, and signed by me in open  
22 session in authentication of its passage this \_\_\_\_ day of \_\_\_\_\_, 2007.

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25 \_\_\_\_\_  
26 President \_\_\_\_\_ of the City Council





1 Approved by me this \_\_\_\_ day of \_\_\_\_\_, 2007.

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3 \_\_\_\_\_  
4 Gregory J. Nickels, Mayor

5 Filed by me this \_\_\_\_ day of \_\_\_\_\_, 2007.

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8 \_\_\_\_\_  
9 City Clerk

10 (Seal)

11 Attachment 1: 1989 City Council Budget Intent Statement

12 Attachment 2: American Bar Association's Ten Principles of a Public Defense Delivery System  
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**ORDINANCE** \_\_\_\_\_

AN ORDINANCE relating to the selection of providers of and standards for indigent public defense services and amending Ordinance 121501.

WHEREAS, it is a constitutional requirement, a requirement of Chapter 10.101 RCW and a public purpose that each person charged with a crime punishable by incarceration or involved in certain other proceedings that may result in loss of liberty or loss of fundamental rights, be provided with effective legal representation in order to ensure equal justice under law without regard to his or her ability to pay; and

WHEREAS, effective legal representation should be provided consistent with the constitutional requirements of fairness, equal protection, and due process in all cases where the right to counsel attaches; and

WHEREAS, it is the intention of The City of Seattle (the "City"), consistent with Chapter 10.101 RCW and other applicable law, to make such services available in an efficient manner which provides effective representation at reasonable cost to the city; and

WHEREAS, the provision of indigent public defense services by nonprofit service providers helps ensure a client focus by those entrusted with representing indigent persons; and

WHEREAS, a non-profit board of directors is generally representative of the community it serves, and the City Council desires Seattle's public defense program to be representative of the community it serves; and

WHEREAS, the American Bar Association recommends an average of 6 hours per case bringing the optimum number of cases handled to 275 per year; and

WHEREAS, the King County Bar Indigent Defense Services Task Force developed a 300 case per attorney, per year guideline in 1982; and

WHEREAS, the Seattle City Council adopted Resolution 27696 on September 28, 1987, adopting a framework and schedule for implementing recommendations contained in the 1987 Public Defender Salary and Caseload Review conducted by City Council staff, which report led to a 1989 City Council Budget Intent Statement (attached as Attachment 1 and incorporated herein by reference) establishing a 380 case per-attorney, per-year limit, and conditions leading to those recommendation have not materially changed; and

1 WHEREAS, the City is guided by the standards referenced in Chapter 10.101 RCW and the  
2 American Bar Association's Ten Principles of a Public Defense Delivery System attached  
as Attachment 2 and incorporated herein by reference; and

3 WHEREAS, the City Council adopted Ordinance 121501, and a 2007 City of Seattle Audit  
4 found that the Office of Management and Planning did not adhere to Ordinance 121501  
5 in the areas of enforcement of maximum caseload limits and the use of a Request for  
6 Proposals Review Committee that is free from political influence for purposes of  
7 selecting public defense providers and this 2007 City Audit contains 17 recommendations  
8 for improving the City's public defense program, including a recommendation to have a  
larger secondary public defense agency.

9 NOW, THEREFORE,

10  
11 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

12 Section A. Ordinance 121501 is hereby amended as follows:

13 Section 1. In order to provide for indigent public defense services in a manner that is free  
14 from political influence, ((F))the selection of service providers for indigent public defense  
15 services and the award of contracts with those providers shall be made by the Director of  
16 Executive Administration upon receiving the recommendation of an independent, non-partisan,  
17 indigent public defense services proposal review panel or the recommendation(s) of panel  
18 member(s). The panel shall have seven members. A quorum shall consist of four members,  
19 except as provided below. The Chair of the City Council Public Safety, Governmental Relations,  
20 and Arts Committee shall appoint three members subject to confirmation by the City Council.  
21 The Mayor shall appoint three members. The panel as constituted shall appoint a member to fill  
22 the seventh position. If, by 15 days after this ordinance takes effect, either of the appointing  
23 authorities has made no appointments, then the existing panel members, with a minimum of three  
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members required for this purpose, shall appoint a fourth member. If the panel has at least four but fewer than seven members, the panel shall make additional appointment(s) as needed to reach seven members. Members of ((F))this panel shall include, but not be limited to, lawyers with criminal legal defense and, or, experience in Seattle Municipal Court, community members with legal expertise as well as those who hold firm the interests of low-income communities. Except as provided in Section ((4))6 of this Ordinance, the City shall enter into agreements to provide indigent defense services only with nonprofit corporations formed for the express purpose of providing legal services to persons eligible for representation through a public defense program.

Section 2. The duties of the panel shall be to review, and recommend among, the proposals submitted in response to the Request for Proposals to provide indigent defense services received from nonprofit corporations formed for the express purpose of providing legal services to persons eligible for representation through a public defense program. In addition to any other materials provided by proposers, the panel shall consider any City Audits of its indigent defense programs; and to, before the end of the 2008-2010 defense contract term, review the Washington State Bar Association caseload recommendations and report to the City Council on any need to amend the caseload standards in this ordinance.

Section ((2))3. Until such time as the City Council adopts by ordinance new caseload standards in response to a recommendation from the panel for new caseload standards, ((F))the City hereby reaffirms the caseload standards established in the 1989 Budget Intent Statement. The 1989 Budget Intent Statement, the American Bar Association's Ten Principles of a Public Defense Delivery System and the provisions of Sections 1, 2 and 3 of this Ordinance shall

collectively constitute "standards for public defense services" as that term is used in RCW 10.101.030 until such time as the City Council may by ordinance adjust those standards.

Consistent with the 1989 Budget Intent Statement, City agreements with indigent public defense service providers shall require caseloads no higher than 380 total assigned cases per-attorney per-year. The City also affirms the Washington State Bar- endorsed supervision standard of one full-time supervisor for every ten staff lawyers.

Section ((3))4. The Council intends for ((A))any new standards for public defense services established by ordinance as contemplated by RCW 10.101.030 relating to "compensation of counsel, duties and responsibilities of counsel, case load limits and types of cases, responsibility for expert witness fees and other costs associated with representation, administrative expenses, support services, reports of attorney activity and vouchers, training, supervision, monitoring and evaluation of attorneys, substitution of attorneys or assignment of contracts, limitations on private practice of contract attorneys, qualifications of attorneys, disposition of client complaints, cause for termination of contract or removal of attorney, and nondiscrimination," shall be the outcome of a comprehensive review that involves the Executive, the City Council, Public Defenders, Law School faculty, and King County Bar Association, and non-profit community service providers.

Section ((4))5. Upon receiving the recommendations of the panel or panel member(s), ((F))the Director of Executive Administration shall negotiate the terms of each proposed agreement with ((a)) each service provider for indigent public defense services consistent with

1 the standards adopted in Section ((2))3 of this Ordinance and consistent with the provisions of  
2 Section 1 and 2 of this Ordinance. The Director of Executive Administration may execute  
3 agreements for that purpose not exceeding three years, provided that no agreement to provide  
4 indigent public defense services shall be executed or become effective unless and until approved  
5 by the City Council, by ordinance.

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8 Section ((5))6. The contracts with each of the primary and secondary providers selected  
9 to provide indigent public defense services shall each provide sufficient funding to support at  
10 least two attorneys more than the number of courts simultaneously in session. A third agency  
11 shall be selected to represent defendants in those cases in which both the primary and secondary  
12 providers have a conflict of interest, with a caseload adjustment to 275 total assigned cases per-  
13 attorney per year for the third agency. One of the three contracts shall also include the  
14 administration of an assigned counsel services program for ((14)) cases or other proceedings  
15 where conflicts of interest or other special circumstances exist ((;)) at the three contracting  
16 agencies. ((7))the City may, separately from the selection of assigned counsel, provide for  
17 payment of assigned counsel services by persons or entities other than nonprofit corporations.

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19  
20 Section 7. The City Council requests the Seattle City Auditor to audit compliance in the  
21 first quarter of 2010 with the standards established by this ordinance for the public defense  
22 contract enacted for the 2008 – 2010 period.

1 Section B. This ordinance shall take effect and be in force thirty (30) days from and after  
2 its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days  
3 after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

4  
5 Passed by the City Council the 10<sup>th</sup> day of September, 2007, and signed by me in open  
6 session in authentication of its passage this 10<sup>th</sup> day of September, 2007.  
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10 \_\_\_\_\_  
President \_\_\_\_\_ of the City Council

11 Approved by me this \_\_\_\_\_ day of \_\_\_\_\_, 2007.  
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14 \_\_\_\_\_  
Gregory J. Nickels, Mayor  
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16 Filed by me this \_\_\_\_\_ day of \_\_\_\_\_, 2007.  
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19 \_\_\_\_\_  
City Clerk  
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21 (Seal)  
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23 Attachment 1: 1989 City Council Budget Intent Statement

24 Attachment 2: American Bar Association's Ten Principles of a Public Defense Delivery System  
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**FISCAL NOTE FOR NON-CAPITAL PROJECTS**

Department:	Contact Person/Phone:	DOF Analyst/Phone:
OPM	Lisa Herbold/4-5331	n/a

**Legislation Title:** AN ORDINANCE relating to the selection of providers of and standards for indigent public defense services and amending Ordinance 121501.

• **Summary of the Legislation:**

Consistent with per each a) Ordinance 121501 passed in 2004, b) 2007 City Auditor recommendations and c) Council Resolution 31008, this ordinance legislates the establishment of an RFQ review committee; clarifies the definition of a case; provides for an expanded secondary provider and a third provider; requires the selection of a provider to include an assigned Council program

• **Background:**

Among other things, requires the Executive to 1) establish case load limits per ordinance 121501; 2) establish an independent RFP review panel to make recommendations for providers to the Executive; 3) review an Assigned Council Program; and 4) expand the contract for the secondary defense agency provider.

• *Please check one of the following:*

**X** **This legislation does not have any financial implications.** (Stop here and delete the remainder of this document prior to saving and printing.)



## ORDINANCE \_\_\_\_\_

AN ORDINANCE relating to the selection of providers of and standards for indigent public defense services and amending Ordinance 121501.

WHEREAS, it is a constitutional requirement, a requirement of Chapter 10.101 RCW and a public purpose that each person charged with a crime punishable by incarceration or involved in certain other proceedings that may result in loss of liberty or loss of fundamental rights, be provided with effective legal representation in order to ensure equal justice under law without regard to his or her ability to pay; and

WHEREAS, effective legal representation should be provided consistent with the constitutional requirements of fairness, equal protection, and due process in all cases where the right to counsel attaches; and

WHEREAS, it is the intention of The City of Seattle (the "City"), consistent with Chapter 10.101 RCW and other applicable law, to make such services available in an efficient manner which provides effective representation at reasonable cost to the city; and

WHEREAS, the provision of indigent public defense services by nonprofit service providers helps ensure a client focus by those entrusted with representing indigent persons; and

WHEREAS, a non-profit board of directors is generally representative of the community it serves, and the City Council desires Seattle's public defense program to be representative of the community it serves; and

WHEREAS, the American Bar Association recommends an average of 6 hours per case bringing the optimum number of cases handled to 275 per year; and

WHEREAS, the King County Bar Indigent Defense Services Task Force developed a 300 case per attorney, per year guideline in 1982; and

WHEREAS, the Seattle City Council adopted Resolution 27696 on September 28, 1987, adopting a framework and schedule for implementing recommendations contained in the 1987 Public Defender Salary and Caseload Review conducted by City Council staff, which report led to a 1989 City Council Budget Intent Statement (attached as Attachment 1 and incorporated herein by reference) establishing a 380 case per-attorney, per-year limit, and conditions leading to those recommendation have not materially changed; and

WHEREAS, the City is guided by the standards referenced in Chapter 10.101 RCW and the American Bar Association's (ABA's) Ten Principles of a Public Defense Delivery System attached as Attachment 2 and incorporated herein by reference; and

1 WHEREAS, in 2004, the City Council passed Ordinance 121501, stating that public defense  
2 agreements shall require caseloads no higher than 380 cases per attorney per year; and

3 WHEREAS, a 2007 City of Seattle Audit found that the Office of Management and Planning's  
4 (OMP's) method of determining attorney caseload is not an accurate measure of workload  
5 and can conflict with the City caseload standard of 380 annual cases per attorney  
6 specified in Ordinance 121501; and the Auditor further found that in 2005 and 2006, the  
7 current primary public defense agency's caseload exceeded the standard established in  
8 Ordinance 121501; and

9 WHEREAS, the Audit also commented on OMP's Request for Proposals process, observing that  
10 the Mayor appointed all the members of the 2004 proposal review committee, and  
11 recommended that the Executive and City Council should decide whether this Mayoral  
12 role provides sufficient independence as outlined in the ABA principles; and

13 WHEREAS, overall, this 2007 City Audit contains 36 recommendations for improving the City's  
14 public defense program, including a recommendation to have a larger secondary public  
15 defense agency; NOW, THEREFORE,

16 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

17 Section A. Ordinance 121501 is hereby amended as follows:

18 Section 1. In order to provide for indigent public defense services in a manner that is free  
19 from political influence, ((F))the selection of service providers for indigent public defense  
20 services and the award of contracts with those providers shall be made by the Director of  
21 Executive Administration upon receiving the recommendation of an independent, non-partisan,  
22 indigent public defense services/proposal review panel or the recommendation(s) of panel  
23 member(s). The panel shall be advisory only, and shall have seven members. A quorum shall  
24 consist of four members, except as provided elsewhere in this Section 1. The Chair of the City  
25 Council Public Safety, Governmental Relations, and Arts Committee shall appoint three  
26 members subject to confirmation by the City Council. The Mayor shall appoint three members.

1 The panel as constituted shall appoint a member to fill the seventh position. If, by 15 days after  
2 this ordinance takes effect, the appointing authorities have collectively appointed only three panel  
3 members, then the three existing panel members shall appoint a fourth member. At any time  
4 that the panel has at least four but fewer than seven members, the panel shall make additional  
5 appointment(s) as needed to reach seven members. Members thus appointed shall not be subject  
6 to City Council confirmation. When appointing members of ((F))this panel, the appointing  
7 authorities shall make efforts to include, but shall not be limited to, lawyers with criminal  
8 defense experience and/or experience in Seattle Municipal Court, community members with  
9 legal expertise as well as those who hold firm the interests of low-income communities. No City  
10 officer or employee may be a panel member. Except as provided in Section ((4))6 of this  
11 Ordinance, the City shall enter into agreements to provide indigent defense services only with  
12 nonprofit corporations formed for the express purpose of providing legal services to persons  
13 eligible for representation through a public defense program.

14 Section 2. The duties of the panel shall be to review, and recommend from among, the  
15 proposals submitted in response to the Request for Proposals to provide indigent defense services  
16 received from nonprofit corporations formed for the express purpose of providing legal services  
17 to persons eligible for representation through a public defense program. In addition to any other  
18 materials provided by proposers, the panel shall consider any City Audits of its indigent defense  
19 programs; and shall, before the end of the 2008-2010 defense contract term, review the  
20 Washington State Bar Association caseload recommendations and report to the City Council on  
21 any need to amend the caseload standards in this ordinance.

1           Section ((2))3. The City Council intends to review and consider any recommendation  
2 from the panel for new caseload standards, and may adopt new standards, partly in response to  
3 such a recommendation. Until such time as the City Council adopts by ordinance new caseload  
4 standards, ((F))the City hereby reaffirms the caseload standards established in the 1989 Budget  
5 Intent Statement. The 1989 Budget Intent Statement, the American Bar Association's Ten  
6 Principles of a Public Defense Delivery System and the provisions of Sections 1, 2 and 3 of this  
7 Ordinance shall collectively constitute "standards for public defense services" as that term is used  
8 in RCW 10.101.030 until such time as the City Council may by ordinance adjust those standards.  
9 Consistent with the 1989 Budget Intent Statement, City agreements with indigent public defense  
10 service providers shall require caseloads no higher than 380 total assigned cases per-attorney per-  
11 year. The City also affirms the Washington State Bar- endorsed supervision standard of one full-  
12 time supervisor for every ten staff lawyers.

13           Section ((3))4. The Council intends that ((A))any new standards for public defense  
14 services established by ordinance as contemplated by RCW 10.101.030 relating to  
15 "compensation of counsel, duties and responsibilities of counsel, case load limits and types of  
16 cases, responsibility for expert witness fees and other costs associated with representation,  
17 administrative expenses, support services, reports of attorney activity and vouchers, training,  
18 supervision, monitoring and evaluation of attorneys, substitution of attorneys or assignment of  
19 contracts, limitations on private practice of contract attorneys, qualifications of attorneys,  
20 disposition of client complaints, cause for termination of contract or removal of attorney, and  
21 nondiscrimination," shall be the outcome of a comprehensive review that involves the Executive,  
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23  
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28

1 the City Council, Public Defenders, Law School faculty, and King County Bar Association, and  
2 non-profit community service providers, in addition to the panel.

3 Section ((4))5. Upon receiving the recommendations of the panel or panel member(s),  
4 ~~((F))~~the Director of Executive Administration shall negotiate the terms of each proposed  
5 agreement with ((a)) each service provider for indigent public defense services consistent with  
6 the standards adopted in Section ((2))3 of this Ordinance and consistent with the provisions of  
7 Sections 1 and 2 of this Ordinance. The Director of Executive Administration may execute  
8 agreements for that purpose not exceeding three years, provided that no agreement to provide  
9 indigent public defense services shall be executed or become effective unless and until approved  
10 by the City Council, by ordinance.

13 Section ((5))6. The contracts with each of the primary and secondary providers selected  
14 to provide indigent public defense services shall each provide sufficient funding to support at  
15 least two attorneys more than the number of Seattle Municipal Court "departments" provided by  
16 law. A third agency shall be selected to represent defendants in those cases in which both the  
17 primary and secondary providers have a conflict of interest; the contract with the third agency  
18 shall require caseloads no higher than 275 total assigned cases per-attorney per-year. One of the  
19 three contracts shall also include the administration of an assigned counsel services program for  
20 ((In)) cases or other proceedings where conflicts of interest or other special circumstances exist  
21 ((;)) at the three contracting agencies. ((F))the City will pay directly (not via any of the three  
22 contracting agencies) for ((may provide for))assigned counsel services provided by persons or  
23 entities other than nonprofit corporations.

Section 7. The City Council requests the Seattle City Auditor to audit compliance in the first quarter of 2010 with the standards established by this ordinance for the public defense contract enacted for the 2008 – 2010 period.

Section B. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the 10<sup>th</sup> day of September 2007, and signed by me in open session in authentication of its passage this 10<sup>th</sup> day of September 2007.

President / of the City Council

Approved by me this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

Gregory J. Nickels, Mayor

Filed by me this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

City Clerk

(Seal)

Attachment 1: 1989 City Council Budget Intent Statement

Attachment 2: American Bar Association's Ten Principles of a Public Defense Delivery System

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**STATE OF WASHINGTON – KING COUNTY**

--SS.

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215854  
CITY OF SEATTLE, CLERKS OFFICE

No. TITLE ONLY

**Affidavit of Publication**

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12<sup>th</sup> day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

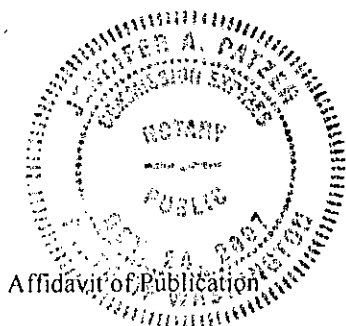
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:122483-88,90,92-94

was published on

09/27/07

The amount of the fee charged for the foregoing publication is the sum of \$ 167.40, which amount has been paid in full.



Affidavit of Publication

Subscribed and sworn to before me on

09/27/07

Notary public for the State of Washington,  
residing in Seattle

## State of Washington, King County

### City of Seattle

#### TITLE-ONLY PUBLICATION

The full text of the following ordinances, passed by the City Council on September 10, 2007, and published here by title only, will be mailed upon request, or can be accessed electronically at <http://clerk.ci.seattle.wa.us>. For further information, contact the Seattle City Clerk at 684-8344.

#### ORDINANCE NO. 122494

AN ORDINANCE appropriating money to pay certain audited claims and ordering the payment thereof.

#### ORDINANCE NO. 122493

AN ORDINANCE relating to the selection of providers of and standards for indigent public defense services and amending Ordinance 121501.

#### ORDINANCE NO. 122492

AN ORDINANCE stating the City Council's intent not to propose or to enact any ordinance that would have the effect of approving any amendment to the Premises Use & Occupancy Agreement between the City of Seattle and the Professional Basketball Club, L.L.C. allowing the Seattle SuperSonics to vacate the KeyArena prior to September 30, 2010.

#### ORDINANCE NO. 122490

AN ORDINANCE authorizing the Fleets and Facilities Department Director to execute an amendment to a lease agreement with the General Services Administration of the U.S. Government for warehouse space at Federal Center South, 4735 East Marginal Way South, in Seattle.

#### ORDINANCE NO. 122488

AN ORDINANCE relating to the Department of Parks and Recreation, authorizing the grant of an easement over an 11,928 square foot parcel of land at the southwest corner of Discovery Park to allow the continued maintenance of a seawall that has existed since before the creation of the Park and to allow the maintenance and landscaping of the area behind the seawall in a manner that is not incompatible with the natural environment of the adjoining portion of Discovery Park, finding that this transaction is not subject to the requirements of Ordinance 118477, and in consideration of the agreement by the National Parks Service to release the area of this easement from the Declaration of Restrictions in the deed conveying this land to the City of Seattle, authorizing the acceptance of a Deed of Release and the execution of a new Declaration of Restrictions to limit the use of the land known as the Kiwanis Ravine Green Space to public park purposes; and authorizing acceptance of funds in exchange for the easement.

#### ORDINANCE NO. 122487

AN ORDINANCE relating to development in the Central Area neighborhood; amending Ordinance 121740; authorizing a loan of federal Section 108 loan proceeds to finance development of 1700 South Jackson Street; appropriating and authorizing the disbursement of Brownfields Economic Development Initiative grant ("BEDI Grant") funds to reduce debt service obligations on the loan, to provide loan loss reserves and to finance project costs associated with the loan; authorizing and ratifying loan documents, amendments, replacements and related documents and actions; authorizing use of the Central Area Capital Fund Program as additional security for the loan; and authorizing amendments to the City's 2005-2008 Consolidated Plan to reflect the transactions contemplated by this ordinance.

#### ORDINANCE NO. 122486