

Ordinance No. 122602

Council Bill No. 116093

AN ORDINANCE concerning indigent public defense services; establishing a process for selecting providers of those services; creating a proposal review panel; setting out standards for those services; establishing contractual requirements for agreements between the City and public defense service providers; requesting the Seattle City Auditor to audit compliance; repealing Ordinance 122493 and Ordinance 121501; and ratifying and confirming certain prior acts.

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

Date Introduced:		
Date 1st Referred: <u>Dec. 3, 2007</u>	To: (committee) <u>Public Safety, Governmental</u>	
Date Re - Referred:	To: (committee) <u>Relations + Arts</u>	
Date Re - Referred:	To: (committee)	
Date of Final Passage: <u>12-17-07</u>	Full Council Vote: <u>8-0</u>	
Date Presented to Mayor: <u>12-18-07</u>	Date Approved: <u>12-20-07</u>	
Date Returned to City Clerk: <u>12-20-07</u>	Date Published: <u>8</u>	T.O. <input checked="" type="checkbox"/> F.T. <input type="checkbox"/>
Date Vetoed by Mayor:	Date Veto Published:	
Date Passed Over Veto:	Veto Sustained:	

# The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: [Signature]  
Councilmember

## Committee Action:

pass 30 NL, JR, RC 12/13/07 (UH)

12-17-07 Passed 8-0 (Absent: Drago)

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

*Law Department*

Law Dept. Review

OMP Review

City Clerk Review

Electronic Copy Loaded

Indexed

ORDINANCE 122602

1  
2 AN ORDINANCE concerning indigent public defense services; establishing a process for  
3 selecting providers of those services; creating a proposal review panel; setting out standards for  
4 those services; establishing contractual requirements for agreements between the City and public  
5 defense service providers; requesting the Seattle City Auditor to audit compliance; repealing  
6 Ordinance 122493 and Ordinance 121501; and ratifying and confirming certain prior acts.

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

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

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

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

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

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

25 WHEREAS, the Seattle City Council adopted Resolution 27696 on September 28, 1987,  
26 adopting a framework and schedule for implementing recommendations contained in the  
27 1987 Public Defender Salary and Caseload Review conducted by City Council staff,  
28 which report led to a 1989 City Council Budget Intent Statement 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 (ABA's) Ten Principles of a Public Defense Delivery  
System; and

3 WHEREAS, in 2004, the City Council passed Ordinance 121501, stating that public defense  
4 contracts shall require caseloads no higher than 380 cases per-attorney per-year; and

5 WHEREAS, in September 2007, the City Council passed Ordinance 122493, stating that public  
6 defense contracts shall require caseloads no higher than 380 total assigned cases per-  
attorney per-year; and

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

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

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

17 **NOW, THEREFORE,**

18  
19 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

20  
21 **Section 1. Indigent public defense services proposal review panel established; panel**  
22 **appointment, functions and duration.**

23  
24 a. There is hereby established an indigent public defense services proposal review panel  
25 ("panel"), which shall act in an advisory capacity.



1           b. The duties of the panel are to review and comment upon the request for proposals  
2 (RFP) for indigent public defense services before its issuance, review and comment upon  
3 providers' responses to the RFP, and make recommendations concerning the selection of  
4 providers.

5           c. The panel shall have six members and four alternates, all to be appointed by the Mayor.

6           d. The Mayor shall appoint a new panel for each RFP process. Panelists must be  
7 appointed before the RFP process for new indigent public-defense services contracts is to begin,  
8 and will serve only for the duration of that process. However, there is no limit to the number of  
9 times a person may be appointed to the panel. Members from the 2007 panel shall not serve on  
10 the 2008 panel.  
11

12           e. Two panel members and two alternates shall be City employees. Of these, one panel  
13 member and one alternate shall have expertise in financial management, and the other panel  
14 member and alternate shall have expertise in contract administration. Alternates may serve on  
15 the panel when a City employee panel member is prevented from doing so by absence due to  
16 illness or other unavoidable reason.  
17

18           f. The remaining four panel members and two alternates shall not be City employees. The  
19 City will request that the King County Bar Association (KCBA) identify and evaluate potential  
20 candidates for these four panel and two alternate positions, and forward to the Mayor a list  
21 containing no fewer than six recommended names. The Mayor shall select the four non-City  
22 employee panelists and two non-City employee alternates from among the names provided by  
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1 KCBA. An alternate may serve on the panel when a non-City employee panel member is  
2 prevented from doing so by absence due to illness or other reason.

3 g. In its recommendations for persons to serve on the panel, KCBA shall attempt to  
4 include, but shall not be limited to, lawyers with criminal-defense experience and/or experience  
5 in Seattle Municipal Court, community members with legal experience, and those who hold firm  
6 the interests of low-income communities.  
7

8 h. The following persons may not serve on the panel:

9 i. Employees, officers or board members of non-profit indigent public-  
10 defense agencies that are responding or are intending to respond to the RFP;

11 ii. City attorneys, county prosecutors, and law-enforcement officers and their  
12 assistants or deputies; or

13 iii. Any person whose service on the panel would constitute a financial  
14 conflict of interest.  
15

16 **Section 2. Standards for indigent public defense services.** The City's 1989 Budget  
17 Intent Statement, the American Bar Association's (ABA's) Ten Principles of a Public Defense  
18 Delivery System, and the provisions of Sections 2 and 3 of this Ordinance shall collectively  
19 constitute "standards for public defense services" as that term is used in RCW 10.101.030 until  
20 such time as the City Council may by ordinance adjust those standards. A copy of the 1989  
21 Budget Intent Statement is attached to this ordinance as Attachment 1, and is incorporated herein.  
22 A copy of the ABA's Ten Principles is attached to this ordinance as Attachment 2, and is  
23 incorporated herein.  
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1           **Section 3. Supervision standards affirmed.** The City affirms the Washington State Bar-  
2 endorsed supervision standard of one full-time supervisor for every ten staff lawyers.

3           **Section 4. Statement of intent concerning future standards for public defense**  
4 **services.** The Council and Mayor intend that any future standards for public defense services  
5 established by ordinance as contemplated by RCW 10.101.030 relating to "compensation of  
6 counsel, duties and responsibilities of counsel, case load limits and types of cases, responsibility  
7 for expert witness fees and other costs associated with representation, administrative expenses,  
8 support services, reports of attorney activity and vouchers, training, supervision, monitoring and  
9 evaluation of attorneys, substitution of attorneys or assignment of contracts, limitations on  
10 private practice of contract attorneys, qualifications of attorneys, disposition of client complaints,  
11 cause for termination of contract or removal of attorney, and nondiscrimination," shall be made  
12 following a comprehensive review that involves the Executive, the City Council, public  
13 defenders, law school faculty, KCBA, and non-profit community service providers.  
14  
15

16           **Section 5. Selecting service providers.** After having received the panel's  
17 recommendations, the Director of Executive Administration shall select providers for indigent  
18 public defense services ("providers"), and negotiate and, upon City Council approval as required  
19 by Section 10 of this ordinance, execute contracts with those providers.  
20

21           **Section 6. Contracts only with non-profit corporations; exception.** Except as provided  
22 in Section 8 of this Ordinance, the City shall enter into contracts for indigent public defense  
23 services only with non-profit corporations formed for the express purpose of providing legal  
24 services to persons eligible for representation through a public defense program.  
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1           **Section 7. Three providers.** The City shall enter into contracts for indigent public  
2 defense services with three providers: a primary provider; a secondary provider to handle conflict  
3 cases and other cases as may be assigned by the contract administrator; and a third provider to  
4 represent defendants in cases in which both the primary and secondary providers have a conflict  
5 of interest.  
6

7           **Section 8. Assigned counsel services.** In cases or other proceedings where conflicts of  
8 interest or other special circumstances exist at the three providers, the City may provide for  
9 assigned counsel services by persons or entities other than nonprofit corporations. The City will  
10 enter into an agreement with one of the three providers to administer assigned counsel cases.  
11 The City will pay directly, not via any of the three providers, for assigned counsel services  
12 provided by persons or entities other than nonprofit corporations.  
13

14           **Section 9. Contract requirements.** City contracts with providers for indigent public-  
15 defense services must, among other things, meet the following requirements:  
16

17           a. The contract with the primary provider shall require that a minimum of fifteen  
18 full-time equivalent attorneys be assigned to Seattle Municipal Court. The contract with the  
19 secondary provider shall require that a minimum of seven full-time equivalent attorneys be  
20 assigned to Seattle Municipal Court. The contract with the third provider shall require that a  
21 minimum of one full-time equivalent attorney be assigned to Seattle Municipal Court.  
22

23           b. All contracts must conform to the standards for public defense as established in  
24 Sections 2 and 3 of this ordinance, or as may be established by future ordinance.  
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1                   c. No contract shall permit a caseload of more than 380 total assigned cases per-  
2 attorney per-year.

3                   d. No contract shall exceed three years in duration.

4                   **Section 10. Approval by ordinance required.** No agreement to provide indigent public  
5 defense services shall be executed or become effective unless and until approved by the City  
6 Council by ordinance.

7                   **Section 11. Audit requested.** The City Council requests the Seattle City Auditor to audit  
8 compliance in the first quarter of 2010 with the standards established by this Ordinance for the  
9 public defense agreements enacted for the 2008 to 2010 period.

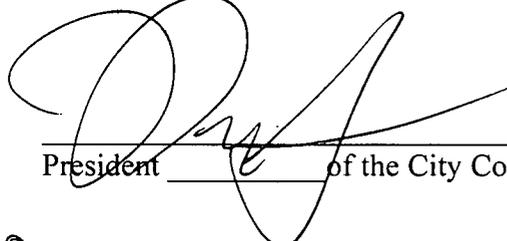
10                   **Section 12. Ordinances repealed.** Ordinance 122493 and Ordinance 121501 are hereby  
11 repealed.

12                   **Section 13. Certain acts ratified.** Any act consistent with the authority and prior to the  
13 effective date of this ordinance is hereby ratified and confirmed.

14                   **Section 14. Effective date.** This ordinance shall take effect and be in force thirty (30)  
15 days from and after its approval by the Mayor, but if not approved and returned by the Mayor  
16 within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section  
17 1.04.020.  
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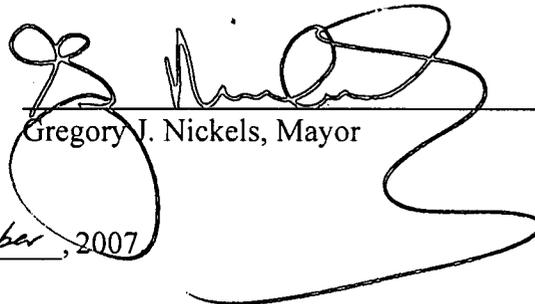


1 Passed by the City Council the 17<sup>th</sup> day of December, 2007, and signed by me in open  
2 session in authentication of its passage this 17<sup>th</sup> day of December, 2007.

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5 \_\_\_\_\_

President \_\_\_\_\_ of the City Council

6  
7 Approved by me this 20<sup>th</sup> day of December, 2007

8  
9   
10 \_\_\_\_\_

Gregory I. Nickels, Mayor

11  
12 Filed by me this 20<sup>th</sup> day of December, 2007

13  
14   
15 \_\_\_\_\_

City Clerk

(Seal)

16  
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18 Attachment 1: 1989 Budget Intent Statement

19 Attachment 2: ABA's Ten Principles of a Public Defense Delivery System  
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## City of Seattle 1989 Budget Intent Statement

### LEGISLATIVE INTENT

In approving the 1989 budget of the Department of Finance General, the City Council expressed the following intent:

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 \$75,000 is to be used to lower the contracting standard from 390 cases per attorney to 380 cases per attorney annually.

If a public defender program is already meeting the lower standard of 380 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 the Municipal Court. OMB shall report to the Council no later than June 30, 1989, on the status of these issues.

It is the further intent of the Council that OMB shall monitor:

- a. the agencies' performance to ensure that public defenders practicing at Municipal Court carry caseloads no higher than 385 per FTE attorney; and
- b. the experience level of public defenders assigned to Municipal Court.

Furthermore, it is the intent of the City to continue to work with the County to reach agreement on uniform caseload and salary standards.

**ABA**

TEN

PRINCIPLES

OF A PUBLIC DEFENSE DELIVERY SYSTEM

*February 2002*

Attachment 2 to the Ordinance



ABA STANDING COMMITTEE  
ON LEGAL AID AND INDIGENT DEFENDANTS

---

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.

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

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.

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

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.

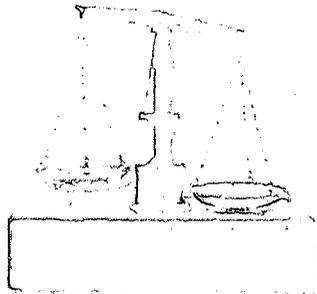
There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.

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

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

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

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*

1 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>

2 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>

9 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.

10 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.

9 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>

10 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	Julien Loh 5-0870	Aimee Strasko Carlisle 6-4090

**Legislation Title:**

AN ORDINANCE concerning indigent public defense services; establishing a process for selecting providers of those services; creating a proposal review panel; setting out standards for those services; establishing contractual requirements for agreements between the City and public defense service providers; requesting the Seattle City Auditor to audit compliance; repealing Ordinance 122493 and Ordinance 121501; and ratifying and confirming certain prior acts.

• **Summary of the Legislation:**

Outlines process for selecting public defense providers as well as standards for indigent public defense services; repeals Ordinances 122493 and 121501.

• **Background:**

On June 14, 2004, the City Council passed Ordinance 121501 which established standards for indigent public defense services. On September 10, 2007, the City Council passed Ordinance 122493 which outlined new provisions for the selection of public defense providers. This proposed legislation establishes requirements for the selection of public defense providers as well as standards for public defense services and repeals the prior ordinances.

• *Please check one of the following:*

  X   This legislation does not have any financial implications.





# City of Seattle

Gregory J. Nickels, Mayor

## Office of the Mayor

November 20, 2007

Honorable Nick Licata  
President  
Seattle City Council  
City Hall, 2<sup>nd</sup> Floor

Dear Council President Licata:

I am pleased to transmit the attached proposed Council Bill concerning indigent public defense services. This legislation will create a new Request for Proposals process for public defense as outlined in the September 21 letter we jointly sent to all the Councilmembers while continuing the City's commitment to high quality indigent public defense services.

The legislation establishes a process for selecting indigent public defense service providers, which includes the creation of a proposal review panel. The legislation continues the City's high standards for indigent public defense that were established in prior ordinances. This Council Bill creates new contractual requirements between the City and public-defense providers. Finally, the proposed Council Bill requests that the Seattle City Auditor audit the new public defense agreements in 2010 for compliance with the standards established in this ordinance.

Seattle provides some of the highest quality public defense services in the country. For instance, since 1989, Seattle has funded a caseload standard of 380 misdemeanor cases per public defense attorney. There are only a few other jurisdictions in the country that have a lower caseload than the City. The major components contained in this Council Bill will both maintain this standard and enhance Seattle's practice of high quality indigent public defense services.

Adoption of this proposed Council Bill will ensure that all persons, regardless of his or her ability to pay, will continue receiving effective legal representation in order to secure equal justice under law. Thank you for your consideration of this legislation. Should you have questions, please contact Julien Loh at 206-615-0870.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Nickels", written over a large, stylized scribble.

GREG NICKELS  
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

600 Fourth Avenue, 7<sup>th</sup> Floor, P.O. Box 94749, Seattle, WA 98124-4749

Tel: (206) 684-4000, TDD: (206) 615-0476 Fax: (206) 684-5360, Email: [mayors.office@seattle.gov](mailto:mayors.office@seattle.gov)

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# State of Washington, King County

## City of Seattle

### TITLE-ONLY PUBLICATION

The full text of the following ordinances, passed by the City Council on December 17, 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. 122616

AN ORDINANCE relating to the Seattle Municipal Court, authorizing execution pursuant to the Interlocal Cooperation Act of an agreement with the Washington State Department of Social and Health Services regarding the funding of a part-time State of Washington Funding Services Specialist in the Seattle Municipal Court Resource Center to provide screening services to Court defendants and the community and declaring an emergency requiring a 3/4 vote of the Seattle City Council so that the Ordinance may take effect immediately.

#### ORDINANCE NO. 122618

AN ORDINANCE authorizing the Mayor to sign an agreement between the City of Seattle and the King County Rural Library District for the transfer of the White Center and Boulevard Park libraries to the City of Seattle in the event of certain annexations in the unincorporated North Highline area.

#### ORDINANCE NO. 122612

AN ORDINANCE related to the sale and redevelopment of the former Public Safety Building block, authorizing the execution of a Purchase and Sale Agreement, Project Agreement and other related documents, necessary to implement the sale and redevelopment of such property, and exempting the sale of such property from the requirements of Resolution 29799 as amended by Resolution 30562.

#### ORDINANCE NO. 122610

AN ORDINANCE amending the Seattle Comprehensive Plan to incorporate changes proposed as part of the 2007 Comprehensive Plan annual amendment process.

#### ORDINANCE NO. 122609

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

#### ORDINANCE NO. 122608

AN ORDINANCE authorizing the Mayor to sign and/or execute a collective bargaining agreement by and between the City of Seattle and the Public Service & Industrial Employees Local 1239 Recreation Unit to be effective through December 31, 2010.

#### ORDINANCE NO. 122608

AN ORDINANCE relating to the Seattle Center Department authorizing the execution of a revocable, non-exclusive license agreement with Teatro ZinZanni to construct certain improvements on City property for the purpose of public ingress and egress to the circus dinner theater on an adjacent property.

#### ORDINANCE NO. 122604

AN ORDINANCE relating to the Filipino Community Center, removing a budget provision restricting expenditures of an appropriation in the 2007 Budget, and authorizing the expenditure of the funds for purchase and acceptance of an easement with restrictive covenants from Filipino Community of Seattle to provide for City and public access uses and the provision of social services on the property at 5740 M.L. King Jr. Way South, Seattle, Washington.

#### ORDINANCE NO. 122603

AN ORDINANCE relating to the financing of the South Lake Union Streetcar Project, authorizing the loan of funds from the City's Consolidated (Residual) Cash Pool, or its participating funds, to the Transportation Master Fund and providing for the repayment thereof.

#### ORDINANCE NO. 122602

AN ORDINANCE concerning indigent public defense services, establishing a process for selecting providers of those services, creating a proposal review panel, setting out standards for those services, establishing contractual requirements for agreements between the City and public defense service providers, requesting the Seattle City Auditor to audit compliance, repealing Ordinance 122493 and Ordinance 123501, and ratifying and confirming certain prior acts.

#### ORDINANCE NO. 122600

AN ORDINANCE amending the Seattle Comprehensive Plan to incorporate a change proposed as part of the 2007 Comprehensive Plan annual amendment process for a new policy governing expansion of major employers located in manufacturing/industrial centers.

#### ORDINANCE NO. 122599

AN ORDINANCE authorizing the Director of Seattle Public Utilities to execute a contract with the City of North Bend to provide North Bend with a supply of irrigation water.

Publication ordered by JUDITH PIPPIN, City Clerk.  
Date of publication in the Seattle Daily Journal of Commerce: December 31, 2007.  
12/31(218880)