

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
City Budget Office (CBO)	Linda Taylor-Manning 4-8376	Linda Taylor-Manning 4-8376

Legislation Title:

AN ORDINANCE related to indigent public defense legal services; authorizing an alternative to the method under Ordinance 122602 for selecting providers of public defense legal services; authorizing an interlocal agreement with King County for public defense legal services; and superseding the provisions of Ordinance 122602, as amended, to the extent it is inconsistent with the provisions of this ordinance.

Summary of the Legislation:

This legislation will authorize the Director of the City Budget Office to execute an 18 month Interlocal Agreement (with an option to extend up to an additional 24 months) with the King County Department of Public Defense for the provision of indigent defense legal services in Seattle Municipal Court. Previous legislation related to indigent public defense required the City to only contract with non-profit law firms. This legislation adds to the previous ordinance (122602, as amended) that the City could, alternatively, negotiate a contract without an RFP process with King County to provide public defense legal service to the City, subject to City Council approval of the resulting contract.

Background:

The City first began providing public defense of indigent defendants charged with crimes in Seattle Municipal Court in 1969. Since then, the City has used several models including contracting with King County, which in turn contracted with non-profit law firms. Starting in 2005, the City has contracted directly with three non-profit firms: Associated Counsel for the Accused (ACA); Northwest Defender Association (NDA); and The Defender Association (TDA). King County has also contracted with these agencies and a fourth, Society of Counsel Representing Accused Persons (SCRAP).

In 2006, Kevin Dolan of ACA filed a class action suit against King County seeking membership in the state retirement system (PERS). In August 2011, the Washington Supreme Court ruled in Dolan's favor that the "...employees of the agencies are also county employees for the purposes of PERS." The King County Executive implemented the settlement by creating an in-house Department of Public Defense (DPD). Effective July 1, 2013, all staff of the four agencies became King County employees. This included those employees representing defendants in Seattle Municipal Court (SMC).

As a short-term solution, CBO allowed the agencies to assign their contracts to King County. This agreement between the agencies and King County took effect on July 1, 2013. The same

attorneys who staffed the SMC courtrooms continue to work there, and the transition has been very smooth. The agency contracts, which have been assigned to King County, end on June 30, 2014.

The non-profit law firms the City and County contracted with in the past no longer have staff, equipment or facilities. To continue indigent defense services in SMC, a new agreement with King County is recommended. The proposed Interlocal Agreement with the County is similar in form to the contracts between the City and the former agencies. The Agreement cost for July 1, 2014 through December 31, 2014 is estimated to be \$3,051,272 with a cost per credit of \$555.94 as detailed on Attachment 1 of the Agreement.

Both the Council Bill and the Agreement allow the CBO Director and KC Public Defender to amend the Agreement. In particular, CBO and the County DPD will be authorized to negotiate caseload to meet the Washington Supreme Court Order of June 2012. The Supreme Court set a maximum of 400 new cases annually per attorney. Alternatively, the City could adopt a maximum of 300 *weighted* credits per year. The Supreme Court asked the State Office of Public Defense to establish a model misdemeanor case weighting policy. This policy was just released in March and is under analysis. The Supreme Court has delayed compliance with this standard to January 2015 to allow jurisdictions to review the model.

In accordance with State law, the agreement was reviewed by Foster Pepper, the City's outside counsel. Review by outside counsel is appropriate in order for the City to avoid any potential or perceived conflict of interest that might result from legal advice by the City's Law Department as set forth in RCW 10.101.040. The Law Department was consulted to review the legislation and agreement as to form.

This legislation does not have any financial implications.

This legislation has financial implications.

Appropriations:

Appropriations Notes:

Funds to pay this contract are included in the 2014 Adopted Criminal Justice Contracted Services Department Budget through the Indigent Defense Services Budget Control Level (BCL).

Revenue/Reimbursement Notes: Not applicable.

Total Regular Positions Created, Modified, or Abrogated through this Legislation, Including FTE Impact:

Position Notes: Not applicable.

Do positions sunset in the future? Not applicable.

Spending/Cash Flow:

Spending/Cash Flow Notes: Not applicable.

Other Implications:

a) Does the legislation have indirect financial implications, or long-term implications?

No.

b) What is the financial cost of not implementing the legislation?

Indigent public defense services are a constitutional requirement and a requirement of RCW 10.101. The current contracts expire June 30, 2014. Not implementing this legislation will mean the City is unable to provide the legally required public defense services to indigent defendants.

c) Does this legislation affect any departments besides the originating department?

This legislation impacts proceedings at Seattle Municipal Court when an accused person must be provided with effective legal representation in order to ensure equal justice under law without regard to his or her ability to pay.

d) What are the possible alternatives to the legislation that could achieve the same or similar objectives?

1. Establish an Office of Public Defense within City government: The City could bring public defense services in-house (similar to King County's current model). This option would require a transition period to identify and build out space, purchase and setup equipment and hire staff. There are significant upfront costs to accommodate approximately 40-45 FTEs. Further, with only misdemeanor cases, the in-house model may not attract the quality staffing needed to provide rigorous defense.

2. Contract with either non-profit or for-profit law firms in the community: Current Seattle ordinance #122602 dictates that law firms providing public defense services be non-profits chosen through a Request for Proposal (RFP) process. In previous RFP's, a minimum qualification was five years of criminal defense practice in Washington State. The non-profit law firms the City and County contracted with in the past no longer have staff, equipment or facilities. Likely, there are no other existing non-profit law firms in Seattle meeting these criteria.

e) Is a public hearing required for this legislation?

No.

f) Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?

No.

g) Does this legislation affect a piece of property?

No.

h) Other Issues: Not applicable.

List attachments to the fiscal note below: Not applicable.