



**Legislative Department
Seattle City Council
Memorandum**

Date: May 27, 2011
To: Councilmembers Tim Burgess, Sally Bagshaw, and Sally Clark
Public Safety and Education (PSE) Committee
From: Martha Lester, City Council Central Staff *ML*
Subject: **Indigent Public Defense Contracts: June 1, 2011, PSE Committee Meeting**

The Executive (with the City Budget Office (CBO) in the lead) has negotiated new indigent public defense contracts. The contracts cannot be executed unless and until they are approved by the City Council by ordinance. The proposed legislation to authorize the new contracts will be on the agenda for the June 1, 2011, meeting of the Public Safety and Education (PSE) Committee for discussion only, and then will be on the agenda for the June 15, 2011, committee meeting for vote.

This memo provides background and describes several issues.

Background

Ordinance 122602 and Current Public Defense Contracts

Ordinance 122602, passed in December 2007, established the process for selecting indigent public defense providers and the standards for the services provided. A copy of the ordinance is attached. Some of the key requirements of Ordinance 122602 are:

- There shall be three providers:
 - * primary provider;
 - * secondary provider to handle conflict cases and other cases that may be assigned; and
 - * third provider to represent defendants in cases in which both the primary and secondary providers have a conflict of interest.
- The City will contract with one of the three providers to administer assigned-counsel cases.
- No contract shall exceed three years in duration.
- The Director of Finance and Administrative Services (formerly Director of Executive Administration) shall negotiate and execute contracts.
- No contract shall be executed or become effective unless and until approved by the City Council by ordinance.

In the first half of 2008, the Executive followed Ordinance 122602 by issuing a Request for Proposals (RFP), selecting providers, negotiating contracts with three providers, and submitting those proposed contracts to the Council for approval. In Ordinance 122724, passed on June 23, 2008, the Council authorized the Director of the Department of Executive Administration to execute those contracts. Those current contracts are three-year contracts, with terms from July 1, 2008, through June 30, 2011.

Fall 2010 Change to Requirement that Third Provider Assign One FTE Attorney

Last fall, during the budget review process, the Council considered legislation proposed by the Mayor to change one of the requirements for the third provider. Ordinance 122602 as passed in 2007 stated in part: "The contract with the third provider shall require that a minimum of one full-time equivalent attorney be assigned to Seattle Municipal Court." CBO staff reviewed the third agency's caseload and concluded that a minimum of 1.0 FTE attorney was not needed, and so proposed to delete the quoted sentence. The Council agreed, and in Ordinance 123454, passed in November 2010, the Council amended Ordinance 122602 to delete this sentence. (Ordinance 123454 is attached.) This allowed the Executive to issue the RFP seeking a third provider at a staffing and funding level less than 1.0 FTE attorney.

2011 Executive Process to Negotiate New Contracts

CBO issued a Request for Proposals (RFP) on February 16, 2011, seeking proposals for new three-year contracts for the contract period from July 1, 2011, through June 30, 2014. In the RFP, the scope of services for the third provider included two functions: representing defendants in cases where the other two providers have conflicts, and administering assigned-counsel cases. The RFP stated that the City would require a minimum of a half-time (0.5 FTE) attorney to do these two functions.

CBO received proposals from organizations seeking to be the primary and secondary provider, but no entity responded to be the third provider. On April 5, 2011, CBO issued an amendment to the RFP. Under the amendment, the scope of services for the third provider included just one function – administering assigned-counsel cases – and the City would require a minimum of approximately 0.15 FTE attorney and paralegal assistance of up to 0.25 FTE. CBO received no responses.

CBO followed the process outlined in Ordinance 122602, and selected Associated Counsel for the Accused (ACA) as the primary provider, and Northwest Defenders Association (NDA) as the secondary provider. Because no organization submitted a proposal to be the third provider, CBO is recommending (a) that the City contract with just two providers, and (b) that Ordinance 122602 be amended to require only two providers but allow for a third provider.

Key Elements of Legislation Proposed by CBO

CBO has submitted proposed legislation to the Council that would do the following. Several of these issues are discussed in more detail below.

Sections 1 and 2: Authorize new public defense contracts with ACA (primary) and NDA (secondary).

Section 3: Amend Ordinance 122602 to shift responsibility for public defense contracting from the Director of Finance and Administrative Services to the Mayor or to a person to whom the Mayor delegates this authority.

Amend Ordinance 122602 to state that CBO is the contract administrator for these contracts, and to authorize CBO to make "modifications to performance under the contracts" within existing budget authority.

Section 4: Amend Ordinance 122602 to require a minimum of two providers but also to allow for a third provider.

Section 5: Amend Ordinance 122602 to allow the Council to extend the duration of a contract beyond three years.

Preliminary Analysis of Issues

A. Should responsibility for public defense contracting be shifted from the Director of Finance and Administrative Services to any person to whom the Mayor delegates this authority?

Section 5 of Ordinance 122602, passed in 2007, gave authority to negotiate and execute contracts to the Director of Executive Administration. When Mayor McGinn took office and reorganized various Executive branch functions, Ordinance 123361 (passed July 2010) abolished the Department of Executive Administration and created the Department of Finance and Administrative Services. Section 402 of Ordinance 123361 stated that any reference in a previous uncodified ordinance to the Director of Executive Administration shall be deemed to be a reference to the Director of Finance and Administrative Services. So authority for negotiating and executing public defense contracts currently rests with the Director of Finance and Administrative Services.

In practice, the staff who have administered the public defense contracts are now in the City Budget Office (CBO). Thus it makes sense that authority for negotiating and executing the contracts should rest with the City Budget Director.

The legislation proposed by CBO would amend Ordinance 122602 to state that “the Mayor, or as the Mayor may otherwise delegate, shall select providers for indigent public defense services . . . and negotiate and . . . execute contracts with those providers.”

Is the Council comfortable with allowing the Mayor to delegate this responsibility to *anyone*? Or would Councilmembers prefer to limit the delegation, for example, to “the director of a department or the director of an office within the Executive Department”?

B. Is it acceptable to have only two providers?

Section 7 of Ordinance 122602 states that the City shall contract with three providers, including “a third provider to represent defendants in cases in which both the primary and secondary providers have a conflict of interest.” In a separate section, the ordinance states that “the City will enter into an agreement with one of the three providers to administer assigned counsel cases.”

The legislation proposed by CBO would amend Ordinance 122602 to require a minimum of two providers but would allow for a third provider. It appears that CBO would be the entity that would have discretion to decide how to draft the RFP – whether to request proposals for three providers or for just two providers.

Is the Council comfortable requiring just two providers? Alternatively, the Council could require that the initial RFP seek three providers, but could provide that if no entity responds to the RFP to be the third provider, the Executive could select and negotiate contracts with just two providers.

C. Should the maximum duration of public defense contracts be more than three years?

Section 9.d of Ordinance 122602 states that “no contract shall exceed three years in duration.” The RFP issued on February 16, 2011, solicited proposals for three-year contracts.

However, CBO staff report that the process involved to negotiate and execute new contracts is very time-consuming. It includes at least the following steps: convening an indigent public defense services proposal review panel, soliciting recommendations for panel members from the King County Bar Association, appointing members, developing the RFP, inviting review and comment on the RFP from the panel, finalizing and issuing the RFP, holding a proposers’ conference, responding to questions from the proposers’ conference, receiving and reviewing proposals submitted in response to the RFP, reviewing the panel’s recommendations concerning selection of providers,

selecting providers, negotiating contracts, preparing legislation to authorize contracts, submitting proposed legislation to the Council, and executing contracts.

CBO staff have stated that they would prefer five-year contracts, and that this preference is shared by Seattle Municipal Court and by at least some of the public defender agencies in Seattle.

The legislation proposed by CBO would amend Ordinance 122602 to state: “No contract shall exceed three years in duration, unless such contract is extended by authorization set forth in the contract approved by the Council.” I’m not sure just what the intent is here – whether the Council’s role would be to state a longer duration at the time it authorizes the contract, or whether CBO would be authorized to submit proposed legislation to the Council during the initial three-year term to extend the duration beyond three years.

Is the Council comfortable with a duration for public defense contracts longer than three years? If so, options include:

- Authorize longer contracts at the outset, with a set duration (such as five years).
- Authorize three-year contracts, and give CBO the authority to execute one or two one-year extensions (without additional Council review or action), for a maximum of five years.
- Authorize three-year contracts, and allow CBO to propose legislation for the Council to authorize one or more extensions.

Attachments:

Ordinance 122602
Ordinance 123454

ORDINANCE 122602

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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,**

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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.**

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24 a. There is hereby established an indigent public defense services proposal review panel
25 ("panel"), which shall act in an advisory capacity.
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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.
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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.
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19 f. The remaining four panel members and two alternates shall not be City employees. The
20 City will request that the King County Bar Association (KCBA) identify and evaluate potential
21 candidates for these four panel and two alternate positions, and forward to the Mayor a list
22 containing no fewer than six recommended names. The Mayor shall select the four non-City
23 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.
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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.
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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.
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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.
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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.
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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.
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14 **Section 9. Contract requirements.** City contracts with providers for indigent public-
15 defense services must, among other things, meet the following requirements:
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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.
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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.

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

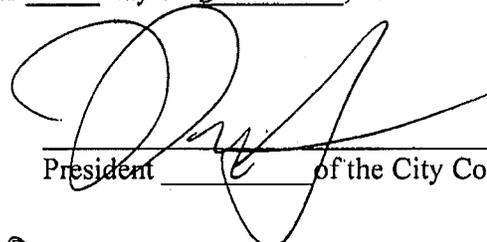
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12 **Section 12. Ordinances repealed.** Ordinance 122493 and Ordinance 121501 are hereby
13 repealed.

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

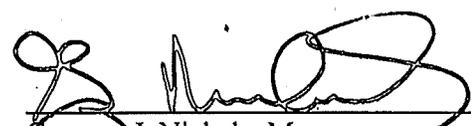
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17 **Section 14. Effective date.** This ordinance shall take effect and be in force thirty (30)
18 days from and after its approval by the Mayor, but if not approved and returned by the Mayor
19 within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section
20 1.04.020.



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

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4 
5 President _____ of the City Council

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7 Approved by me this 20th day of December, 2007, 2007

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10 Gregory I. Nickels, Mayor
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12 Filed by me this 20th day of December, 2007

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14 
15 City Clerk

16 (Seal)

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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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ORDINANCE 123454

AN ORDINANCE concerning indigent public defense services; amending Ordinance 122602 to delete a minimum requirement of 1.0 FTE attorney for the third public defense agency representing indigent persons in Seattle Municipal Court.

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 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 (City), consistent with Chapter 10.101 RCW and other applicable law, to make such services available in an efficient manner that 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, the City Council and Mayor desire Seattle's public defense program to be representative of the community it serves; and

WHEREAS, the City is guided by the standards referenced in Chapter 10.101 RCW and the American Bar Association's Ten Principles of a Public Defense Delivery System (2002); 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 establishing a 380 case per-attorney, per-year limit, and conditions leading to those recommendation have not materially changed; and

WHEREAS, the City Council adopted Ordinance 122602 on December 17, 2007, establishing a process for selecting indigent public defense providers; creating a Request for Proposal (RFP) review panel; setting out standards for those indigent public defense services;



1 establishing contractual requirements for agreements between the City and public defense
2 service providers; requesting that the Seattle City Auditor audit compliance; and
3 repealing Ordinance 122493 and Ordinance 121501; and

4 WHEREAS, the Executive has complied with the directives established in Ordinance 122602;
5 and

6 WHEREAS, pursuant to Ordinance 122724 the Director of Executive Administration executed
7 three-year contract with three nonprofit corporations, the Associated Counsel for the
8 Accused (ACA), and the Defender Association (TDA), and Northwest Defender
9 Association (NDA), to provide indigent public defense services for the period of July 1,
10 2008 through June 30, 2011; and

11 WHEREAS, the City Budget Office (CBO) has managed and annually audited the three public
12 defense contracts, insuring agency contract compliance and the efficient use of City
13 resources; and

14 WHEREAS, the CBO review of agency caseload has shown the third agency, NDA, to be
15 significantly under the caseload limit of 380 assigned cases per attorney, per year limit;

16 NOW, THEREFORE,

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

18 Section 1. Section 9(a) of Ordinance 122602 is amended to eliminate the requirement
19 that the contract with the third public defense provider requires a minimum of one full-time
20 equivalent attorney assigned to Seattle Municipal Court, as follows:

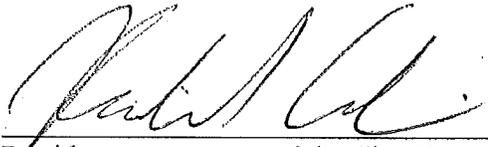
- 21 a. The contract with the primary provider shall require that a minimum of fifteen full-
22 time equivalent attorneys be assigned to Seattle Municipal Court. The contract with the
23 secondary provider shall require that a minimum of seven full-time equivalent attorneys
24 be assigned to Seattle Municipal Court. (~~The contract with the third provider shall~~



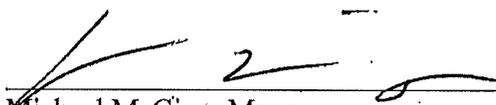
1 ~~require that a minimum of one full time equivalent attorney be assigned to Seattle~~
2 ~~Municipal Court.))~~

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4 Section 2. This ordinance shall take effect and be in force 30 days from and after its
5 approval by the Mayor, but if not approved and returned by the Mayor within ten days after
6 presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

7 Passed by the City Council the 22 day of November, 2010, and
8 signed by me in open session in authentication of its passage this
9 22 day of November, 2010.

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12 
13 President _____ of the City Council

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15 Approved by me this 2nd day of December, 2010.

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17 
18 Michael McGinn, Mayor

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20 Filed by me this 7th day of December, 2010.

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22 
23 City Clerk

24 (Seal)

