



**Legislative Department  
Seattle City Council  
Memorandum**

Date: June 10, 2011  
To: Councilmembers Tim Burgess, Sally Bagshaw, and Sally Clark  
Public Safety and Education (PSE) Committee  
From: Martha Lester, City Council Central Staff  
Subject: **Indigent Public Defense Contracts (C.B. 117203): June 15, 2011, PSE Comm. Meeting**

At the June 1, 2011, meeting of the Public Safety and Education (PSE) Committee, Councilmembers discussed the draft legislation proposed by the City Budget Office (CBO) that would (a) authorize new public defense contracts, and (b) amend several provisions of the Ordinance 122602, which governs public defense services contracting.

Based on input from Councilmembers, the draft legislation was revised. The result is C.B. 117203, which was introduced on June 13, 2011. It will be before the PSE Committee on June 15, 2011, for discussion and vote. This memo describes key elements reflected in C.B. 117203.

In addition, Councilmembers expressed interest in revisiting some public defense contracting issues outside the context of authorizing new public defense contracts. This memo includes a preliminary list of possible issues. I will work with the chair of the committee that has responsibility for public safety next year to reflect these issues on the committee work program.

**Key Elements Reflected in C.B. 117203**

**A. Authorize new public defense contracts**

C.B. 117203 would authorize a contract with Associated Counsel for the Accused (ACA) as primary provider, and with Northwest Defenders Association (NDA) as secondary provider.

Note that the Office of City Auditor conducted an audit of public defense contracting in 2007, and conducted a follow-up audit in 2010 as requested by the Council in Ordinance 122602. The Auditor noted significant improvement in its 2010 review.

On one issue, the Auditor requested additional CBO attention. Sections 5.A.5 and 5.A.6 of each public defense contract address the timing and documentation for the initial contact between the public defense attorney and an in-custody or out-of-custody defendant in a case assigned to that agency. Each contract notes that the initial contact may occur *before* the case is officially assigned to the agency by Seattle Municipal Court. The Auditor recommends that “the situations in which a contact before assignment would meet contract terms should be spelled out somewhere” – this could be in a memorandum of agreement between CBO and each provider. CBO has committed to follow through and implement this recommendation.

**B. Responsibility for public defense contracting**

C.B. 117203 would shift responsibility for selecting providers and negotiating and executing contracts from the Director of Finance and Administrative Services to the City Budget Director.

### **C. Number of providers**

C.B. 117203 provides that the City shall issue the request for proposals (RFP) for three providers, but that if no responsive proposal is submitted for a third provider, then the City may enter into contracts with just a primary provider and a secondary provider.

### **D. Duration**

C.B. 117203 makes no change to the existing language in Ordinance 122602, which states that “no contract shall exceed three years in duration.”

### **E. Immediate effective date**

C.B. 117203 includes a declaration of an emergency under the Charter so that this ordinance may take effect immediately after passage by a  $\frac{3}{4}$  vote of the Council and approval by the Mayor, to ensure there will be no break in public defense services provided after the existing contracts expire on June 30, 2011.

## **Preliminary List of Possible Issues for Review in 2012**

Review by the Council in 2012 could include the issues listed below and/or other issues of interest to Councilmembers. The Council could invite participation by CBO, Seattle Municipal Court, the public defense agencies that operate in Seattle, the City Auditor, and other entities as appropriate.

Note that the issues that I have heard Councilmembers raise to date do not involve the “standards for public defense services” as that term is used in RCW 10.101.030 and in Section 2 of Ordinance 122602. The RCW section on “standards” is attached for reference. Ordinance 122602 expressly provides that, “The Council and Mayor intend that any future standards for public defense services established by ordinance as contemplated by RCW 10.101.030 . . . shall be made following a comprehensive review that involves the Executive, the City Council, public defenders, law school faculty, KCBA, and non-profit community service providers.”

Possible issues for City Council review in 2012 include:

- Pros and cons of contracting with public defense agencies directly, as opposed to contracting through King County as was done before 2005, or other models.
- Rationale for requiring that contracts be with non-profit corporations formed for the express purpose of providing legal services to persons eligible for representation through a public defense program.
- Pros and cons of having one, two, three, or more providers under contract, and pros and cons of various ways of allocating case load among providers.
- Pros and cons of authorizing contracts longer than three years; or authorizing extensions to contracts, either administratively by CBO or with Council approval.
- Whether provisions of Ordinance 122602 (as amended) should be codified in the Seattle Municipal Code for easy access and reference.

Attachment: RCW 10.101.030

## **Chapter 10.101 RCW: Indigent defense services**

### **RCW 10.101.030**

#### **Standards.**

Each county or city under this chapter shall adopt standards for the delivery of public defense services, whether those services are provided by contract, assigned counsel, or a public defender office. Standards shall include the following: 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. The standards endorsed by the Washington state bar association for the provision of public defense services should serve as guidelines to local legislative authorities in adopting standards.

[2005 c 157 § 2; 1989 c 409 § 4.]