

**BOARD OF COUNTY COMMISSIONERS
COUNTY OF KITTITAS
STATE OF WASHINGTON**

ORDINANCE NO. 2022-010

AN ORDINANCE DIRECTING THE CREATION OF A PUBLIC DEFENSE DEPARTMENT, ESTABLISHING THE OFFICE OF DIRECTOR OF THAT DEPARTMENT, ESTABLISHING THE AUTHORITY AND RESPONSIBILITIES OF THE DEPARTMENT AND ITS PERSONNEL, AND AMENDING CHAPTER 2.09 OF THE KITTITAS COUNTY CODE ACCORDINGLY.

WHEREAS, the Board of Kittitas County Commissioners by Resolution No. 2022 – 77 created a Public Defender Advisory Committee to study the future of public defense in the county; and

WHEREAS, the revised system must take into account the adoption of Washington General Rule 42 effective January 1, 2023 which prohibits judicial officers and staff from selecting public defense administrators or attorneys or being otherwise involved in the management or oversight of public defense services, and advocates encouragement of systems that use attorneys experienced in public defense; and

WHEREAS, the Washington State Bar Association “Standards for Indigent Defense” as revised September 1, 2021 at Standards Eighteen and Nineteen have similar effect; and

WHEREAS, there is an anticipated need for additional counsel based on the shortages in contracted counsel and predicted downward revision of caseload standards, and

WHEREAS, this need must be addressed promptly to avert a potential crisis of Constitutional magnitude that could result by the end of the current calendar year, and

WHEREAS, the Public Defender Advisory Committee has completed its work and presented its recommendations to the Board in writing and orally, and

WHEREAS, the Board of County Commissioners has reviewed the staff report, its attachments, and the recommendations therein, and has concluded that it is in the public interest and the best interests of the County to implement those recommendations,

NOW, THEREFORE, BE IT ORDAINED, that:

1. Department of Public Defense Created. Pursuant to RCW 36.26.900 and other applicable laws of the State of Washington, the Department of Public Defense (hereafter “Department”) is hereby established which shall be generally organized and function as a department of the county. This Department shall be provided with the same type and level of support services as any other Department of the County. The Civil Division of the Prosecuting Attorney’s Office shall provide legal advice and support to the Department as required by RCW 36.27.020(2).
2. The Department shall be assigned a departmental organizational number for budget

purposes, which will be 0134 for current expense and not applicable for 3/10th special funds. The Office of the Auditor shall take such action as needed to implement this direction.

3. The purpose of the Department will be to provide effective legal representation of persons determined to be indigent or indigent and able to contribute pursuant to RCW 10.101.010, consistent with the constitutional requirements of fairness, equal protection, and due process, in all cases where the county provides defense services that are or may be required by law [hereafter “Indigents”]. The American Bar Association Ten Principles for a Public Defense Delivery System, as approved by the American Bar Association House of Delegates in February 2022 will guide the management of the department.

4. Director. The office/position of “Director of the Department of Public Defense” is created. The Director will be an attorney licensed in Washington and qualified under the rules of the Supreme Court to represent persons charged with Class A felonies in Superior Court. The Director shall be appointed by the Board of County Commissioners.

a. In order to assure independence of function the director will serve a term of office of four years which term will coincide with the term of the prosecuting attorney as provided by RCW 36.26.040. During such term the director may be removed by the Board of County Commissioners for good cause such as incompetence, gross neglect, willful dishonesty, malfeasance, or conviction of a crime of moral turpitude or any basis that causes a forfeiture of employment pursuant to RCW 9.92.120.

b. The Director will serve and function within the county as the department head for the Department and serve as the Department’s authorizing officer for purposes of expenditures.

c. The Director shall administer and govern the Department and will have such authority and perform such duties and responsibilities as provided by this resolution, by RCW Chapter 36.26, and by the other laws of Washington.

d. The Director shall abide by the ethical requirements and standards for attorney licensed in Washington and the rules adopted by the Washington State Supreme Court.

5. Specific Authority. The Department and its Director are authorized to develop and maintain a centrally administered system for the assignment of counsel to represent Indigents consisting of (1) a public defender office within the Department of Public Defense (2) contracts with attorneys offering public defender services, and (3) a list of attorneys who wish to provide public defense services. Such authority includes the following:

5.1 Public Defender Office: Form and administer a public defender office to directly provide public defense and to employ, supervise, and dismiss the staff of such office. The Kittitas County Human Resources Department shall take such steps as are needed to create job descriptions and advertise positions, with initial priority being the Director and the Office Administrator. The job pay scales for the Attorney I – III positions shall match those existing for Deputy Prosecutors.

5.2 Contracted Attorney Services: To develop and administer a system of contracts for professional attorney services, including the authority to determine the appropriate number and placement of them in the public defense system. In doing so the Director has the authority to:

5.2.1 After consultation with the Board of County Commissions to establish compensation for attorneys under contract within the Department's budget.

5.2.2 Revise and/or develop the form of contract, including revised and/or new terms and conditions. Provided: The general form of contract must be approved as to form by the civil division of the prosecuting attorney's office and otherwise consistent with then existing County policies pertaining to contracting.

5.2.3 To sign, administer, enforce, provide appropriate oversight and terminate such contracts on behalf of the county.

5.2.4 Effective January 1, 2023, to assume responsibility for any existing contracts with attorneys to provide professional services for indigent defense and thereafter to administer the same, including the authority to revise or terminate such contracts.

5.3 Panel Attorneys: To develop and administer a list or 'panel' of attorneys of lawyers who wish to participate in the defense of indigent defendants and to provide for reasonable or necessary fees for their services.

5.4 Support Services: To develop and administer a system for the support services necessary or appropriate for attorneys representing indigent persons, including but not limited to experts, interpreters, investigators, social workers, court reporting, and transcription services.

5.4.1 The Director will develop and establish written policies and procedures for such purposes and will work with the court to establish protocols and procedures for the filing and/or sealing of records and for appeal of the Director's decision on any request.

5.4.2 To comply with *State vs. Punsalan, 156 Wn. 2d. 875 (2006)*, such services will be available to retained counsel if the presiding court determines in advance that the defendant/respondent is then indigent and/or the person paying for their defense has exhausted all resources and is otherwise indigent.

5.4.3 Effective January 1, 2023, to assume responsibility for any then outstanding orders for support services, excluding any payments already processed for payment.

5.5 Assistance at First Appearance: As a general service to the court and justice system, to provide for the representation of persons at their first appearance in court on issues such as probable cause and terms of release or bail.

5.6 Assignment of Attorneys to Particular Cases: To designate/assign qualified attorneys to represent persons determined to be indigent by the court. To assess the existence or potential for conflicts of interest in cases referred to it for assignment of counsel based on information then available and to designate qualified attorneys to reasonably attempt to avoid actual conflicts of interest. To the extent necessary to support conflict management, the Director

is authorized to research and obtain professionally appropriate software and the IT Department is directed to support such efforts.

5.7 Client Complaints. To investigate and attempt to resolve complaints by a - recipient of service against the lawyer or lawyers representing them. This provision shall not be interpreted or applied in such a manner as to inhibit the right of a person to make inquiries of or complaints to the Washington State Bar Association.

5.8 To adopt such policies, rules, and procedures, not in conflict with this resolution, which may be necessary and appropriate for the discharge of the duties and responsibilities of the Department. Such policies shall be consistent with applicable Human Resources policies and other general county policies which are not inapplicable as being inconsistent with the duties of defense counsel.

5.9 The Director's role shall include fostering and promoting system improvements, efficiencies, access to justice, and equity in the criminal and juvenile justice systems.

6. Relationship with Other Justice System Departments: The Director may routinely confer with other justice agencies, including the prosecuting attorney, judges, court administrators, clerk, law enforcement, and county corrections to review, identify and attempt to resolve any problems affecting any department and/or to review and assess any suggestions for improvement to the justice system.

7. The Department of Public Defense may provide its services in Kittitas County to municipalities and agencies of the State of Washington, on a full cost recovery basis and is authorized to negotiate appropriate contractual agreements, subject to Board of County Commissioners approval.

8. Kittitas County Code Chapter 2.09 is amended to read as follows (deletions marked by strikethrough; additions by underling) and Kittitas County Information Technology (IT) is hereby directed to make such changes to the published online version of Kittitas County code:

Chapter 2.09

DELIVERY OF PUBLIC DEFENSE SERVICES

Sections

2.09.010 Creation of Department of Public Defense

~~2.09.010~~20 Standards of representation.

~~2.09.020~~30 Selection of attorneys.

~~2.09.030~~40 Duties and responsibilities of counsel.

~~2.09.040~~50 Non-discrimination.

~~2.09.050~~60 Effective date and expiration date.

~~2.09.060~~70 Severability.

~~2.09.080~~ No third-party benefit.

2.09.010 Creation of Department of Public Defense

Pursuant to RCW 36.26.900 and other applicable laws of the State of Washington, the Department of Public Defense (hereafter "Department") is hereby established which shall be generally organized and function as a department of the county. This Department shall be provided with the same type and level of support services as any other Department of the County. The Civil Division of the Prosecuting Attorney's Office shall provide legal advice and support to the Department as required by RCW 36.27.020(2).

The purpose of the Department will be to provide representation of persons determined to be indigent and charged with criminal offenses or otherwise at risk of a deprivation of liberty in the courts of the county [hereafter "Indigents"].

The office/position of "Director of the Department of Public Defense" is created. The Director will be an attorney licensed in Washington and qualified under the rules of the Supreme Court to represent persons charged with Class A felonies in Superior Court. The Director shall be appointed by the Board of County Commissioners. The director will serve a term of office of four years which term will coincide with the term of the prosecuting attorney as provided by RCW 36.26.040. Nothing in this provision will limit the ability of the Board of County Commissioners to reappoint the Director for additional terms. During such term the director may be removed by the Board of County Commissioners for good cause such as incompetence, gross neglect, willful dishonesty, malfeasance, or conviction of a crime of moral turpitude or any basis that causes a forfeiture of employment pursuant to RCW 9.92.120.

The powers and duties of the Department and its Director shall be as adopted in this amendatory Ordinance.

2.09.01020 Standards of representation.

Kittitas County hereby adopts standards for the delivery of public defender services consistent with RCW 10.101.030 and the Washington Defender State Bar Association (WSBA) Standards for Public Indigent Defense Services. Kittitas County is rural in nature, has two sitting Superior Court judges, a full-time district court judge serving the Lower Kittitas County District Court and a part-time district court judge serving the Upper Kittitas County District Court; and appoints attorneys from a list of qualified, interested, and dedicated attorneys for cases in Superior Court and Upper Kittitas County District Court and has most recently utilized contracts with attorneys in Lower Kittitas County District these Courts. Therefore, the standards set forth in this rule have been tailored to the assigned counsel model for delivery of public defender services. Due to the changes in the WSBA Standards and the impending implementation of GR 42 by the Washington Supreme Court, judicial officers and their staff shall not have any role in the selection and appointment of counsel except as consistent with those provisions. (Ord. 2008-12, 2008)

2.09.02030 Selection of attorneys.

Attorneys appointed for indigent defense shall be selected solely by the court by the Director of the Department. (Ord. 2008-12, 2008)

2.09.03040 Duties and responsibilities of counsel.

Defense services shall be provided to all clients in a professional, skilled manner consistent with minimum standards set forth by the American Bar Association, applicable state bar association

standards, the Rules of Professional Conduct, case law and court rules defining the duties of counsel and the rights of defendants in criminal cases. Counsel's primary and most fundamental responsibility is to promote and protect the best interests of the client. (Ord. 2008-12, 2008)

2.09.04050 Non-discrimination.

Neither the ~~court~~ Department, in its process of selection of an attorney attorneys to provide public defense representation, nor the attorneys selected, in their hiring practices or in their representation of clients, shall discriminate on the grounds of race, color, religion, national origin, age, marital status, sex, sexual orientation or handicap. Both the court and the attorney shall comply with all federal, state, and local non-discrimination requirements. (Formerly 2.09.130 renumbered by Ord. 2021-012, 2021; Ord. 2008-12, 2008)

2.09.05060 Effective date and expiration date.

This ordinance shall take effect immediately and shall not expire until formally amended or repealed by legislative action. (Formerly 2.09.140 renumbered by Ord. 2021-012, 2021; Ord. 2008-12, 2008)

2.09.06070 Severability.

If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of this chapter or the application of the provisions to other persons or circumstances is not affected. (Formerly 2.09.150 renumbered by Ord. 2021-012, 2021; Ord. 2008-12, 2008)

2.09.080 No Third-party benefit.

This ordinance shall be administered exclusively by the Director of the Department, or his/her designees, and shall not give rise to rights or powers of administration or enforcement by other parties or agencies. The adoption of this ordinance is not intended to and shall not be relied upon to create a right or benefit, substantive or procedural, enforceable at law by a party in litigation with the county or its officers.

Effective Date. The effective date of this Ordinance is September 1, 2022, and funds in an amount determined by the Board will be transferred to the Department to establish its office component, limited to the Director and Office Administrator until January 1, 2023.

9. The Prosecuting attorney's Office, at its sole discretion, is hereby given the authority to direct IT to correct scrivener's errors in the published website version of this code without needing to return to the BOCC for any further authorization.

ADOPTED this 23rd day of August 2022.

**BOARD OF COUNTY COMMISSIONERS
KITTITAS COUNTY, WASHINGTON**

Chair

Vice Chair

