

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 6704

AN ORDINANCE ADDING A NEW SECTION 4.28.125 TO THE BELLEVUE CITY CODE ADOPTING STANDARDS FOR THE PROVISION OF PUBLIC DEFENSE SERVICES; AMENDING SECTION 4.28.230 OF THE BELLEVUE CITY CODE; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Bellevue pursuant to its Criminal Code, Title 10 of the Bellevue City Code, prosecutes misdemeanor and gross misdemeanor offenses (collectively “misdemeanors”) committed by adults within the Bellevue City limits by the Bellevue Prosecuting Attorney filing cases into the King County District Court, East Division in Bellevue; and

WHEREAS, in accordance with the 6th Amendment of the United States Constitution, and Article I, Section 22 of the Washington Constitution, persons charged with misdemeanors who qualify to receive public defense services are entitled to the effective assistance of counsel at the public expense; and

WHEREAS, The legislature found that effective legal representation must be provided for those defendants qualifying for public defense services, consistent with the constitutional requirements of fairness, equal protection, and due process in all cases where the right to counsel attaches; and

WHEREAS, RCW 10.101.030 requires cities to adopt standards for the delivery of public defense services, and the standards endorsed by the Washington State Bar Association for the provision of public defense services should serve as guidelines to the City Council in adopting such standards; and

WHEREAS, the Honorable Robert S. Lasnik of the Federal District Court for Western Washington in *Wilbur, v. City of Mt. Vernon*, 989 F.Supp.2d 1122 (W.D. Wash. 2013), provides guidance to cities regarding the provision of public defense services in the funding and evaluation of such services; and

WHEREAS, the Washington State Supreme Court adopted Standards for Public Defense more specifically, CrRLJ 3.1 and General Rule 42, which rule becomes effective on January 1, 2023; now therefore,

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. A new section 4.28.125 Public Defense Standards is added to Chapter 4.28 of the Bellevue City Code to read as follows:

- A. Purpose. The purpose of these Public Defense Standards is to support quality and effective representation in the provision of public defense services to those qualifying for such services, and to address constitutional requirements of fairness, equal protection, and due process. The standards detail the minimum level of attention, care, and skill that Bellevue citizens expect of their criminal justice system and shall be liberally and broadly construed to achieve the stated purpose. These standards may be amended from time to time to reflect changes in the rules or standards established by the Washington State Supreme Court, the Washington State Bar Association, or interpretation of the rules or standards by Washington courts.
- B. Application. The following standards for public defense apply to all attorneys providing public defense services to the City of Bellevue. Compliance with these standards are not waivers of the requirements of any other laws, regulations, rules, or court orders nor do they indicate compliance with any other laws, regulations, rules, or court orders. Compliance is still required with all applicable federal, state, and local laws, regulations, rules, and court orders.
- C. Definitions. For the purposes of this section, the following definitions apply:
1. Attorney. The term "attorney" shall mean an attorney under contract with the City of Bellevue for the provision of public defense services and shall also mean the law firm for which the attorney works. The terms attorney and public defender are synonymous.
  2. Defendant. The term "defendant" shall mean a person who has been charged with a misdemeanor offense in the King County District Court, East Division, and who is represented by an attorney as the term is defined in these standards.
  3. Case. The term "case" shall mean the filing of a document with the court naming a person as defendant or respondent, to which an attorney is appointed to provide representation in courts of limited jurisdiction. In courts of limited jurisdiction, multiple citations from the same incident may be counted as one case.
  4. Gross misdemeanor. The term "gross misdemeanor" shall have the same meaning as provided in BCC 1.16.010.C, now or as hereafter amended.
  5. King County District Court, East Division. The term "King County District Court, East Division" shall mean the King County District Court located in Bellevue, Washington.
  6. Misdemeanor. The term "misdemeanor" shall have the same meaning as provided in BCC 1.16.010.D, now or as hereafter amended.
- D. Representations and Warranties. The Public Defender, Conflict Counsel, and every attorney providing public defense services by contract shall warrant that the attorney has:
1. Read *Wilbur, v. City of Mt. Vernon*, 989 F.Supp.2d 1122 (W.D. Wash. 2013) and will provide service in accord with its provisions; and

2. Read the WSBA's *Performance Guidelines for Criminal Defense Representation*, approved June 3, 2011, (as amended by Board of Governors September 18, 2020), now or as hereafter amended, and will provide service in accordance with its provisions; and
3. Ensured the compensation specified in the contract is sufficient to adequately provide for training, administrative and staff services, investigators, expert witnesses, and infrastructure required by these standards, applicable court rules, and the federal and state constitutions.

E. Compensation.

1. The City's contracts for public defense services shall be established through negotiation of a contract for public defender services. The compensation package should be within the range for prosecutorial services provided by publicly paid attorneys and staff to a public client by comparable jurisdictions. The city shall consider training, experience, and the nature and extent of services requested and the time and labor required of the attorney undertaking defender services. Services which require extraordinary fees should be defined in the contract. Among the reasonable expenses to be covered by the contract include expert witnesses, investigative costs, and the administrative overhead costs of paraprofessionals, including, as needed, mental health professionals, social workers, certified interpreters, and translators.
2. No contract for public defense services shall require the public defense attorney to pay any compensation to another attorney in the event the attorney is disqualified from representing a defendant because of a conflict of interest.

F. Duties and Responsibilities of Counsel.

Attorneys shall provide services in a professional and skilled manner consistent with the minimum standards of the Washington State Bar Association, Washington's Rules of Professional Conduct, applicable case law, the Constitutions of the United States and Washington, and the court rules that define the duties of counsel and the rights of defendants. The public defender's primary and most fundamental responsibility is to promote and protect the interests of the client.

G. Case Load Limits, Private Practice Limits, and Types of Cases.

1. Attorneys shall maintain a caseload such that the attorney can provide each defendant effective assistance of counsel as provided by these standards. Attorneys shall not accept caseloads that, by reason of their excessive size, interfere with the provision of quality and effective representation to defendants. Attorneys shall set limits on the amount of privately retained work which can be accepted. These limits shall be based on the percentage of a full-time caseload which the public defense cases represent.

2. No attorney representing public defendants shall accept a caseload of more than 400 misdemeanor cases in a calendar year. The following types of cases fall within the intended scope of this limit: partial case representations, sentence violations, specialty or therapeutic courts, transfers, extraditions, representation of material witnesses, petitions for conditional release or final discharge, and other matters that do not involve a new criminal charge. In the King County District Court, East Division, multiple citations from the same incident can be counted as one case.

H. Responsibility for Expert Witnesses, Fees, and Other Costs Associated with Representation.

Attorneys shall be free to retain experts and investigators of the attorney's choosing and may apply to the court for such services pursuant to applicable local court rules. The City's contract shall provide reasonable compensation for expert witnesses and investigators necessary to prepare and present the defense case. Attorneys should employ investigators with investigation training and experience.

I. Administrative Costs and Support Services.

1. Contracts for the provision of public defense services and proposals submitted in pursuit of such contracts shall provide for or include adequate administrative costs and support, associated with providing public defense services under the contract. Such costs include but are not limited to travel, telephones, law library and/or electronic research capabilities, financial accounting, case management systems, computers and software, reporting requirements under the contract, and other administrative costs necessarily incurred in the day to day management of the contract.
2. The public defense attorney shall have access to an office that accommodates confidential meetings with clients and a telephone system, internet access and postal address to ensure prompt response to client contact.
3. Public defense attorneys shall have adequate support staff to ensure the effective performance of defense counsel.
4. Each attorney or agency providing public defense services should have access to adequate and competent interpreters or other services necessary to facilitate communication between clients with limited English proficiency or who may have other language access needs with attorneys, investigators, social workers, and administrative staff.

J. Investigators.

Public defense attorneys shall use investigation services as appropriate. The investigator shall have appropriate training and experience in the area of criminal defense and investigations relating to criminal matters. Normally, a ratio of one investigator to four attorneys shall be provided as necessary. Contracts for public defense services shall include investigative services as a part of reimbursed overhead.

K. Monitoring and Evaluation of Reports of Attorney Activity and Vouchers.

1. Contracts for public defender services shall include the following reporting requirements. Attorneys shall maintain a case reporting and case management information system, and the attorneys shall provide reports to the City as set forth herein, or as otherwise agreed to in writing by the City and attorney. Attorneys shall not be required to compromise any attorney confidences when providing these reports.
2. All attorneys providing services by contract shall certify quarterly their compliance with the standards for public defense by filing a certification of compliance as required by CrRLJ 3.1. Such forms shall be filed with the King County District Court, East Division, and a copy provided to the contract manager.
3. Reporting Requirements. Reports shall be due as detailed in the contract, unless otherwise agreed to in writing by the parties. At a minimum, the report shall include the following information and data:
  - a. Caseloads. New cases assigned to each attorney, including a breakdown of cases assigned monthly by category (e.g. 4 simple assaults, 8 theft third, 2 assault DV, etc.); year to date total case assignments; and the number of other criminal and civil cases for the reporting period. The number of open cases, means any case in which no Notice of Withdrawal of Counsel has been filed with the King County District Court, East Division;
  - b. Hours. The number of attorney hours per case. This number includes, but is not limited to client communication, court time, and case preparation. This category also includes attorney hours spent on public cases for the quarter;
  - c. Experts and Investigators. An itemized accounting of costs for investigators and experts for the reporting period. Information should also include the number of closed cases for the reporting period in which expert or investigator services were requested, and the number of closed cases where expert or investigator services were used;
  - d. Interpreters. Number of closed cases in which Interpreter services were used for out-of-court communication. This includes other services used for facilitating communication based on a client's communication disability;
  - e. Substantive motions. The number of closed cases in which substantive motions were filed with the court;
  - f. Trials. Number of closed cases involving a jury or bench trial, and the number of closed cases where on the trial date the charges were dismissed or significantly reduced;

- g. Case resolution. Number of closed cases resolved by dismissals, significant reduction in charges dismissal of other cases, guilty pleas, or cases reversed on appeal;
  - h. Attendance of attorneys at any CLE as required by BCC 4.28.125.L;
  - i. A description of any defendant complaints received by Attorneys, and a description of how the complaint was resolved (see BCC 4.28.125.O); and
  - j. Any additional information as agreed to by the parties.
4. Attorneys under contract should be paid monthly, or at times agreed to by the parties, without regard to the number of cases closed in the period. Assigned counsel attorneys shall use a standardized voucher form for seeking payment upon completion of a case.

#### L. Training and Supervision.

1. Training. Attorneys shall complete a minimum of seven (7) hours of continuing legal education (CLE) within each calendar year in courses relating to their public defense practice. At least one of the CLE courses each year shall be approved by the state Office of Public Defense. Attorneys shall report their attendance to CLEs to the contract manager in the report required under BCC 4.28.125.K.3, which next follows the attorney's attendance at the CLE. Attorneys should engage in regular training in the areas of criminal defense law, criminal process, trial advocacy, legal writing, appellate work, law practice management, or any other subject that, in the opinion of the attorney, is applicable to the work of public defense services. Every attorney providing public defense services should have the opportunity to attend courses that foster trial advocacy skills and to review professional publications and other media.
2. Supervision. Attorneys shall establish a system in which more senior attorneys regularly review the work of more junior attorneys. The more senior attorneys shall review the case outcomes, caseloads, and any other information deemed appropriate, and shall regularly monitor the attorney's interactions with defendants and case preparation, and in-court activities of more junior attorneys. Attorneys may seek input from judges and other attorneys if appropriate.

#### M. Substitution of Counsel, Assignment of Contracts.

1. The selection process for a public defender shall be by review of names and experience levels of the attorneys who will actually provide services, to ensure that they meet minimum qualifications. The public defender shall be prohibited from sub-contracting defense services without the express written consent of the city.
2. Attorneys shall not assign a defendant to another law firm or subcontract with another law firm without first obtaining the express written permission of the City and shall remain directly involved in the representation of assigned defendants.

3. In the event of conflict or removal of the attorney, conflict counsel shall be available, either through a joint contract with the public defender and conflict counsel, by separate contract with conflict counsel, or by court appointment. If alternative or conflict counsel is required to be assigned, the public defender shall bear no part of the costs associated with the appointment of alternative or sub-conflict counsel. The public defender shall continue representation of clients as necessary upon conclusion of the agreement for public defense services.
4. Conflict counsel shall adhere to the standards established by this section, including but not limited to, an evaluation and reporting of the case count under the procedures set forth in this chapter.
5. Conflict counsel may be assigned by the district court upon the request of the public defender.

N. Attorney Qualifications.

Attorneys shall endeavor to provide the highest quality public defense services. At a minimum, every attorney performing services under contract with the City shall satisfy the minimum requirements to practice law in the State of Washington as determined by the Washington State Supreme Court and possess a current license to practice law in the state. Attorneys performing services under contract shall be familiar with:

1. The statutes, court rules, constitutional provisions, and case law relevant to the practice area;
2. The Washington Rules of Professional Conduct;
3. The Performance Guidelines for Criminal Defense Representation approved by the Washington State Bar Association;
4. The consequences of a conviction or adjudication, including possible immigration consequences and the possibility of civil commitment proceedings based upon a criminal conviction; and
5. Mental health issues and be able to identify the need to obtain expert services;

O. Disposition of Client Complaints.

The public defender shall provide a method to respond promptly to client complaints. Complaints should first be directed to the attorney, firm or agency which provided representation. If the client feels that he or she has not received an adequate response, the city shall designate a person or agency to evaluate the legitimacy of complaints and to follow up meritorious ones. The complaining client should be informed as to the disposition of his or her complaint within one week, unless otherwise agreed to in writing. Nothing herein shall bar a client from also filing a complaint with the Washington State Bar Association

P. Cause for Termination of Contract or Removal of Attorney.

1. The contract for public defense services shall include the grounds for termination of the contract by the parties. Termination of the contract may occur for cause, without cause, or both.
2. Cause for termination may include, but not be limited to, the failure of the contract public defender to protect client interests, a failure to meet or disregard required standards, render adequate representation to clients as evidenced by these standards, or disregarding of the rights and best interests of the client. Termination may also occur for violation of the express terms of the contract and these standards, provided, however, that the public defender shall be provided reasonable opportunity, following notice, to cure any technical contract violations that do not impair the provision of quality representation to the public defense client.
3. Termination without cause must include written notice to the other party no less than one hundred and twenty days before December 31st of any year during the term of the contract. The contract shall remain effective through December 31st of the year notice is given, and as otherwise provided in the contract.
4. Removal by the court of counsel from representation normally should not occur over the objection of the attorney and the client.

Q. Non-discrimination.

Neither the city, in its selection of an attorney, firm or agency 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 disability. Both the city and the contractor shall comply with all federal, state, and local nondiscrimination requirements.

R. Guidelines for awarding public defense contracts.

City attorneys and law enforcement officers shall not select the attorneys who will provide public defense services. The City should award contracts for public defense services only after determining that the attorney or firm chosen can meet accepted professional standards. Under no circumstances should a contract be awarded on the basis of cost alone. Attorneys or firms bidding for contracts must demonstrate their ability to meet these standards. Contracts should only be awarded to attorneys who have at least one year's trial experience.

Section 2. Section 4.28.230 of the Bellevue City Code is hereby amended to read as follows:

Except for contracts under section BCC 4.28.125, ~~The~~ the director of finance and asset management or his/her designee may promulgate procedures for the approval of all other contracts not otherwise covered by this chapter. These contracts shall include but shall not be limited to: nonprofessional service contracts, maintenance agreements and contracts, instructor contracts, entertainment contracts and any other personal service contract. Section 3. Severability. If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or



invalid for any reason, such decision shall not affect the validity of the remaining ordinance.

Section 4. This Ordinance shall take effect and be in force five (5) days after its passage and legal publication.

Passed by the City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2022 and signed in authentication of its passage this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

(SEAL)

\_\_\_\_\_  
Lynne Robinson, Mayor

Approved as to form:  
Kathryn L. Gerla, City Attorney

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Catherine A. Drews, Assistant City Attorney

Attest:

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Charmaine Arredondo, City Clerk

Published \_\_\_\_\_