

KING COUNTY PUBLIC DEFENSE ADVISORY BOARD

August 6, 2018

Councilmember Dave Upthegrove
516 Third Ave, Room 1200
Seattle, WA 98104

RE: Independence of the Department of Public Defense

Dear Councilmember Upthegrove:

On behalf of the King County Public Defense Advisory Board, I write to express concern about comments and actions attributed to you in a recent article published on Crosscut concerning the independence of the Department of Public Defense (DPD). As described in the enclosed policy paper, which the Board has adopted, the fairness and effectiveness of the justice system require that public defenders speak out on issues related to equity and social justice that affect their clients' interests. Defenders – and especially their leaders – must be able to speak out strongly even when their position runs contrary to those taken by other county officials.

In the article, you are quoted as saying “I don’t like to have county dollars spent to try to work against adopted county policy.” The policy in question here, of course, is the county’s plan to complete construction of the Children and Family Justice Center. In signing on to the broad-based moratorium against construction, Anita Khandelwal, Interim Director of DPD, was doing what public defenders are obligated to do, that is, she was speaking up for the department’s clients. The failure to provide a strong voice on issues of concern to the department’s clients – and employees – was one of the factors that led many in and outside the Department to call for a change in Department leadership earlier this year.

We appreciate your statement in the article that you have no intention of allowing your dissatisfaction with this position to affect the Department’s budget, but we want to underscore that the distinction you attempt to draw between the department’s legal work and its policy positions is not tenable. The King County Prosecuting Attorney is indisputably –and quite appropriately- a prominent voice on a wide range of policy issues affecting the justice system. In taking these positions, he advances the priorities of his office and enhances its ability to achieve its objectives on a daily basis. Although not a separately elected official, the Director of the Department of Public Defense must have the ability to serve as an equally strong and clear voice on important issues. Of course, other policymakers need not accept or agree with the Director’s positions, but she deserves respect when taking them. For an elected official to dismiss such a position as a “stunt” and to refuse to meet with the Director because she expressed it at the time and in the manner she felt appropriate compromises the independence that is guaranteed in the King County Code and essential to robust public defense.

Finally, we are troubled by the statement in the article that you would not vote to confirm Ms. Khandelwal as Director if Executive Constantine were to submit her name to the Council. The Board is responsible for the first stage of the search, and we intend to fulfill our duty to present the Executive with the names of the three most-qualified candidates. We do not know whether Ms. Khandelwal will apply and, having not reviewed any applications at this time, the Board has no position on her possible

candidacy or that of any other applicant. However, we are fully committed to a fair and open process, and we believe it is harmful to our ability to recruit the best candidates and to the integrity of the process in the eyes of the public for anyone involved in the process to pre-judge any potential applicant. Accordingly, we call upon you to make a clear public statement that you intend to provide whoever is nominated a full and fair review at that time.

Thank you for your attention to this matter. Should you wish to discuss it further, members of the Board will be glad to meet with you at your convenience.

Sincerely,

A handwritten signature in cursive script that reads "Paul Holland". The signature is written in black ink and is positioned above the typed name and title.

Paul Holland, Chair
King County Public Defense Advisory Board