

HOUSE BILL ANALYSIS

HB 2039

Title: An act relating to establishing a death penalty appellate unit.

Brief Description: Establishing a death penalty appellate unit.

Sponsors: Representatives Murray, Constantine and Miloscia.

Brief Summary of Bill

- Creates a death penalty appellate unit within the office of public defense to handle post-conviction appeals for indigent defendants who have received the death sentence.

HOUSE COMMITTEE ON JUDICIARY

Staff: Trudes Hutcheson (786-7384).

Background:

The Office of Public Defense (OPD), which the Legislature created in 1996, administers all appellate indigent defense services. The OPD does not provide actual legal representation, but manages the funds used to pay attorneys, court reporters, and court clerks for appellate defense. Funds appropriated to the OPD come from the Public Safety and Education Account.

Defendants who have received the death sentence have a federal and state constitutional right to appeal the verdict and sentence. Defendants also have a statutory right to collaterally attack their convictions by filing a personal restraint petition. A defendant with a death sentence has a statutory right to representation in a personal restraint petition, and if the defendant cannot afford an attorney, one is provided at public expense.

The state supreme court appoints attorneys in death penalty cases. Court rules establish the qualifications required for death penalty attorneys and require that two defense attorneys be appointed in direct appeals. The attorneys submit invoices to the OPD for payment.

Attorneys assigned to death penalty appellate work are paid \$90 per hour. Before payment, the OPD examines the invoices to determine if the actual hours spent were necessary and appropriate. According to the OPD, between 1981 and 1998, the state paid under \$2 million (\$1,853,016) for death penalty appeals.

In 1997, the Legislature asked the OPD to study the current methods for reimbursing attorneys for death penalty appeals and to develop standards and criteria to control costs in legal services in death penalty appeals. The OPD submitted its report to the supreme court and the Legislature in September 1998. The report listed six alternatives for controlling costs for appellate death penalty defense. One of the alternatives included creating an appellate death penalty defense office within the OPD.

Summary of Bill:

A death penalty appellate unit is created within the OPD to provide appellate legal representation to indigent defendants who have received a death sentence.

In administering the death penalty appellate unit, the OPD must employ qualified attorneys to the unit, provide investigative and clerical support, and contract with qualified private or nonprofit attorneys for services when there is a conflict of interest. The OPD must also establish standards for the delivery of death penalty appellate services that include attorney compensation, caseload limits, training, evaluations, compensation for expert witness fees, administrative expenses, support services, and other costs associated with representation. The OPD may work with the Washington State Bar Association and the state supreme court in establishing these standards.

Fiscal Note: Requested February 21, 1999.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Office of Program Research