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**SUBSTITUTE HOUSE BILL 1542**

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**State of Washington**

**59th Legislature**

**2005 Regular Session**

**By** House Committee on Judiciary (originally sponsored by Representatives Lantz, Hinkle, Appleton, Rodne, Lovick, Newhouse, Buri, Darneille, Williams, McDermott, Clibborn, Schual-Berke, O'Brien, McIntire, Kagi, Hasegawa, Dickerson, Green, Kenney and Kilmer)

READ FIRST TIME 02/21/05.

1 AN ACT Relating to indigent defense services; amending RCW  
2 10.101.005 and 10.101.030; and adding new sections to chapter 10.101  
3 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 10.101.005 and 1989 c 409 s 1 are each amended to read  
6 as follows:

7 The legislature finds that effective legal representation  
8 (~~should~~) must be provided for indigent persons and persons who are  
9 indigent and able to contribute, consistent with the constitutional  
10 requirements of fairness, equal protection, and due process in all  
11 cases where the right to counsel attaches.

12 **Sec. 2.** RCW 10.101.030 and 1989 c 409 s 4 are each amended to read  
13 as follows:

14 Each county or city under this chapter shall adopt standards for  
15 the delivery of public defense services, whether those services are  
16 provided by contract, assigned counsel, or a public defender office.  
17 Standards shall include the following: Compensation of counsel, duties  
18 and responsibilities of counsel, case load limits and types of cases,

1 responsibility for expert witness fees and other costs associated with  
2 representation, administrative expenses, support services, reports of  
3 attorney activity and vouchers, training, supervision, monitoring and  
4 evaluation of attorneys, substitution of attorneys or assignment of  
5 contracts, limitations on private practice of contract attorneys,  
6 qualifications of attorneys, disposition of client complaints, cause  
7 for termination of contract or removal of attorney, and  
8 nondiscrimination. The standards endorsed by the Washington state bar  
9 association for the provision of public defense services (~~may~~) should  
10 serve as guidelines to (~~contracting~~) local legislative authorities in  
11 adopting standards.

12 NEW SECTION. Sec. 3. A new section is added to chapter 10.101 RCW  
13 to read as follows:

14 The Washington state office of public defense shall disburse  
15 appropriated funds to counties and cities for the purpose of improving  
16 the quality of public defense services. Counties may apply for up to  
17 their pro rata share as set forth in section 4 of this act provided  
18 that counties conform to application procedures established by the  
19 office of public defense and improve the quality of services for both  
20 juveniles and adults. Cities may apply for moneys pursuant to the  
21 grant program set forth in section 6 of this act. In order to receive  
22 funds, each applying county or city must require that attorneys  
23 providing public defense services attend training approved by the  
24 office of public defense at least once per calendar year. Each  
25 applying county or city shall report the expenditure for all public  
26 defense services in the previous calendar year, as well as case  
27 statistics for that year, including per attorney caseloads, and shall  
28 provide a copy of each current public defense contract to the office of  
29 public defense with its application. Each individual or organization  
30 that contracts to perform public defense services for a county or city  
31 shall report to the county or city hours billed for nonpublic defense  
32 legal services in the previous calendar year, including number and  
33 types of private cases.

34 NEW SECTION. Sec. 4. A new section is added to chapter 10.101 RCW  
35 to read as follows:

36 (1)(a) Subject to the availability of funds appropriated for this

1 purpose, the office of public defense shall disburse to applying  
2 counties that meet the requirements of section 3 of this act designated  
3 funds under this chapter on a pro rata basis pursuant to the formula  
4 set forth in section 5 of this act and shall disburse to eligible  
5 cities, funds pursuant to section 6 of this act. Each fiscal year for  
6 which it receives state funds under this chapter, a county or city must  
7 document to the office of public defense that it is meeting the  
8 standards for provision of indigent defense services as endorsed by the  
9 Washington state bar association or that the funds received under this  
10 chapter have been used to make appreciable demonstrable improvements in  
11 the delivery of public defense services, including the following:

12 (i) Adoption by ordinance of a legal representation plan that  
13 addresses the factors in RCW 10.101.030. The plan must apply to any  
14 contract or agency providing indigent defense services for the county  
15 or city;

16 (ii) Requiring attorneys who provide public defense services to  
17 attend training under section 3 of this act;

18 (iii) Requiring attorneys who handle the most serious cases to meet  
19 specified qualifications as set forth in the Washington state bar  
20 association endorsed standards for public defense services or  
21 participate in at least one case consultation per case with office of  
22 public defense resource attorneys who are so qualified. The most  
23 serious cases include all cases of murder in the first or second  
24 degree, persistent offender cases, and class A felonies. This  
25 subsection (1)(a)(iii) does not apply to cities receiving funds under  
26 sections 3 through 6 of this act;

27 (iv) Requiring contracts to address the subject of compensation for  
28 extraordinary cases;

29 (v) Identifying funding specifically for the purpose of paying  
30 experts (A) for which public defense attorneys may file ex parte  
31 motions, or (B) which should be specifically designated within a public  
32 defender agency budget;

33 (vi) Identifying funding specifically for the purpose of paying  
34 investigators (A) for which public defense attorneys may file ex parte  
35 motions, and (B) which should be specifically designated within a  
36 public defender agency budget.

37 (b) The cost of providing counsel in cases where there is a

1 conflict of interest shall not be borne by the attorney or agency who  
2 has the conflict.

3 (2) The office of public defense shall determine eligibility of  
4 counties and cities to receive state funds under this chapter. If a  
5 determination is made that a county or city receiving state funds under  
6 this chapter did not substantially comply with this section, the office  
7 of public defense shall notify the county or city of the failure to  
8 comply and unless the county or city contacts the office of public  
9 defense and substantially corrects the deficiencies within ninety days  
10 after the date of notice, or some other mutually agreed period of time,  
11 the county's or city's eligibility to continue receiving funds under  
12 this chapter is terminated. If an applying county or city disagrees  
13 with the determination of the office of public defense as to the  
14 county's or city's eligibility, the county or city may file an appeal  
15 with the advisory committee of the office of public defense within  
16 thirty days of the eligibility determination. The decision of the  
17 advisory committee is final.

18 NEW SECTION. **Sec. 5.** A new section is added to chapter 10.101 RCW  
19 to read as follows:

20 The moneys shall be distributed to each county determined to be  
21 eligible to receive moneys by the office of public defense as  
22 determined under this section. Ninety percent of the funding  
23 appropriated shall be designated as "county moneys" and shall be  
24 distributed as follows:

25 (1) Six percent of the county moneys appropriated shall be  
26 distributed as a base allocation among the eligible counties. A  
27 county's base allocation shall be equal to this six percent divided by  
28 the total number of eligible counties.

29 (2) Ninety-four percent of the county moneys appropriated shall be  
30 distributed among the eligible counties as follows:

31 (a) Fifty percent of this amount shall be distributed on a pro rata  
32 basis to each eligible county based upon the population of the county  
33 as a percentage of the total population of all eligible counties; and

34 (b) Fifty percent of this amount shall be distributed on a pro rata  
35 basis to each eligible county based upon the annual number of criminal  
36 cases filed in the county superior court as a percentage of the total

1 annual number of criminal cases filed in the superior courts of all  
2 eligible counties.

3 (3) Under this section:

4 (a) The population of the county is the most recent number  
5 determined by the office of financial management;

6 (b) The annual number of criminal cases filed in the county  
7 superior court is determined by the most recent annual report of the  
8 courts of Washington, as published by the office of the administrator  
9 for the courts;

10 (c) Distributions and eligibility for distributions in the  
11 2005-2007 biennium shall be based on 2004 figures for the annual number  
12 of criminal cases that are filed as described under (b) of this  
13 subsection. Future distributions shall be based on the most recent  
14 figures for the annual number of criminal cases that are filed as  
15 described under (b) of this subsection.

16 NEW SECTION. **Sec. 6.** A new section is added to chapter 10.101 RCW  
17 to read as follows:

18 The moneys under section 3 of this act shall be distributed to each  
19 city determined to be eligible under this section by the office of  
20 public defense. Ten percent of the funding appropriated shall be  
21 designated as "city moneys" and distributed as follows:

22 (1) The office of public defense shall administer a grant program  
23 to select the cities eligible to receive city moneys. Incorporated  
24 cities may apply for grants. Applying cities must conform to the  
25 requirements of sections 3 and 4 of this act.

26 (2) City moneys shall be divided among a maximum of five applying  
27 cities and shall be distributed in a timely manner to accomplish the  
28 goals of the grants.

29 (3) Criteria for award of grants shall be established by the office  
30 of public defense after soliciting input from the association of  
31 Washington cities. Award of the grants shall be determined by the  
32 office of public defense.

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