

# HOUSE BILL REPORT

## ESSB 6442

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### As Passed House - Amended:

March 5, 2008

**Title:** An act relating to the office of public defense.

**Brief Description:** Modifying provisions relating to the office of public defense.

**Sponsors:** By Senate Committee on Judiciary (originally sponsored by Senators Regala, Stevens, Kline, Zarelli, Tom, Parlette, Hargrove, Swecker, Fraser, Pridemore, McDermott and Kohl-Welles).

### Brief History:

#### Committee Activity:

Judiciary: 2/20/08 [DPA];

Appropriations: 2/26/08, 2/27/08 [DPA(JUDI)].

#### Floor Activity:

Passed House - Amended: 3/5/08, 96-0.

### Brief Summary of Engrossed Substitute Bill (As Amended by House)

- Repeals the sunset and termination clauses for the Office of Public Defense (OPD) and amends provisions relating to the OPD's administration, advisory committee, and other areas.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass as amended. Signed by 10 members: Representatives Lantz, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Warnick, Assistant Ranking Minority Member; Ahern, Flannigan, Moeller, Pedersen, Ross and Williams.

**Staff:** Trudes Tango (786-7384).

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### HOUSE COMMITTEE ON APPROPRIATIONS

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Majority Report:** Do pass as amended by Committee on Judiciary. Signed by 32 members: Representatives Sommers, Chair; Dunshee, Vice Chair; Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Haler, Assistant Ranking Minority Member; Anderson, Chandler, Cody, Conway, Darneille, Ericks, Fromhold, Grant, Green, Haigh, Hinkle, Hunter, Kagi, Kenney, Kessler, Kretz, Linville, McIntire, Morrell, Pettigrew, Priest, Ross, Schmick, Schual-Berke, Seaquist, Sullivan and Walsh.

**Staff:** Alex MacBain (786-7288).

**Background:**

The Legislature established the Office of Public Defense (OPD) in 1996 as an independent agency within the judiciary. The OPD does not provide direct representation of clients. The OPD was originally charged with administering state-funded appellate defense to indigent criminal defendants.

Over the years, the Legislature has expanded the OPD's duties to include:

- operating a grant program to assist counties and cities with their indigent criminal defense needs at the trial level;
- providing training and education for public defenders at the trial level;
- operating a program that contracts for representation of indigent parents in dependency and termination proceedings; and
- processing requests from counties to the Legislature for reimbursement for "extraordinary criminal justice costs," including indigent defense costs associated with aggravated murder cases.

The Director of the OPD (Director) is appointed by the Washington State Supreme Court (Supreme Court). The Director is charged with administering all criminal appellate indigent defense services, submitting a biennial budget, establishing administrative procedures and standards for the program, and other duties.

An 11-member advisory committee provides supervision and direction to the Director. The committee consists of three members appointed by the Supreme Court, one member appointed by the Court of Appeals, two by the Governor, four by the Legislature, and one by the Bar Association. Except for the requirement to supervise the Director, there are no other duties explicitly listed in statute for the advisory committee.

The OPD is scheduled to terminate on June 30, 2008, under the Washington Sunset Act. The Sunset Act requires the Joint Legislative Audit and Review Committee (JLARC) to conduct a sunset review to assist the Legislature in deciding whether the OPD should be continued, modified, or terminated. The JLARC recommended that the Legislature should repeal the sunset and termination clauses and allow the OPD to continue without substantive modification.

**Summary of Amended Bill:**

The sunset and termination clauses for the OPD are repealed. Programs and services currently administered by the OPD are explicitly listed in statute. Those are: (1) trial court criminal indigent defense; (2) appellate indigent defense; (3) dependency and termination cases for indigent parents qualified for appointed counsel; (4) extraordinary criminal justice cost petitions; and (5) compilation of copies of DNA test requests by persons convicted of felonies.

Membership of the 11-member advisory committee is expanded to include:

- one person appointed by the Washington State Association of Counties; and
- one person appointed by the Association of Washington Cities.

The Chief Justice of the Supreme Court must appoint the chair of the committee.

Duties of the advisory committee are explicitly listed. The advisory committee must: (1) meet at least quarterly; (2) review at least biennially the performance of the Director and submit its review to the Chief Justice of the Supreme Court; (3) receive reports from the Director; (4) make policy recommendations to the Legislature and Supreme Court; (5) approve the OPD's budget requests; (6) advise the Director on administration and oversight of the OPD's program areas; and (7) carry out other duties authorized or required by law.

Other nonsubstantive changes to the statutes are made.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** (Judiciary)

(In support) The OPD is operating efficiently, does not duplicate services of any other agency, and is implementing the constitutional rights of defendants to have legal representation. It is important to remove the sunset clause to allow the OPD to continue working and improving public defense services.

(In support with concerns) Having a representative of the prosecutors on the OPD advisory committee creates an inherent conflict. The OPD is charged with administering public defense services and it should not be subject to the needs of the prosecutors.

(Opposed) None.

**Staff Summary of Public Testimony:** (Appropriations)

(In support) This bill passed unanimously off the Senate floor and in the House Judiciary Committee, and its companion bill passed unanimously out of this committee previously. According to the Joint Legislative Audit and Review Committee, OPD is operating efficiently and is implementing the constitutional rights of defendants to have legal representation.

(Opposed) None.

**Persons Testifying:** (Judiciary) (In support) Joanne Moore, Office of Public Defense.

(In support with concerns) Kim Gordon, Washington Association of Criminal Defense Lawyers and Washington Defender Association.

**Persons Testifying:** (Appropriations) Sophia Byrd McSherry, Washington State Office of Public Defense.

**Persons Signed In To Testify But Not Testifying:** (Judiciary) None.

**Persons Signed In To Testify But Not Testifying:** (Appropriations) None.