

HOUSE BILL REPORT

HB 2497

As Reported by House Committee On: Judiciary

Title: An act relating to establishing new authority for courts to assess cost recovery fees for costs associated with new indigent defense standards.

Brief Description: Establishing new authority for courts to assess cost recovery fees for costs associated with new indigent defense standards.

Sponsors: Representatives S. Hunt, Zeiger, Goodman, Wylie, Rodne, Ross, Pike, Moeller, Roberts, Tharinger and Haigh.

Brief History:

Committee Activity:

Judiciary: 1/31/14, 2/5/14 [DPS].

Brief Summary of Substitute Bill

- Authorizes increases in certain fees and assessments associated with criminal offenses, and requires funds collected attributable to the increases to be used to support local court operations and criminal justice functions that have a clear connection to indigent defense cases.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Jinkins, Chair; Rodne, Ranking Minority Member; Nealey, Assistant Ranking Minority Member; Goodman, Haler, Kirby, Muri, Orwall, Roberts and Shea.

Minority Report: Do not pass. Signed by 3 members: Representatives Hansen, Vice Chair; Klippert and Walkinshaw.

Staff: Omeara Harrington (786-7136).

Background:

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.

Caseload Limits.

Under statute, cities and counties must adopt standards for the delivery of public defense services, and must use the standards endorsed by the Washington State Bar Association (WSBA) as guidelines for the provision of public defense services. These standards include specific attorney experience requirements and caseload limits that vary based upon what kinds of cases the attorney is handling.

The Washington Supreme Court (WSC) has adopted amendments to court rules, requiring that, in order to be appointed to represent an indigent person, counsel must certify compliance with specific numerical caseload standards for indigent defense services based upon those recommended by the WSBA. Since 2013, public defenders assigned a felony caseload have been required to certify that their caseload assignment does not exceed 150 cases per year, and those assigned a juvenile caseload have been required to certify that their caseload assignment does not exceed 250 per year. The WSC delayed implementation of the misdemeanor caseload limit until January 1, 2015. When the rule becomes effective, public defenders representing misdemeanor defendants must certify to the court that they are in compliance with a limit of 400 cases annually, or 300 cases annually if the court uses a weighted system described in the rule.

Legal Financial Obligations.

When a person is convicted of a crime, they are obligated to pay various fees and fines, as well as victim restitution. An offender's payments made toward legal financial obligations (LFOs) are applied first to restitution and then proportionally to other monetary obligations after restitution has been satisfied. Among the various fees and assessments courts may collect are: a fee of \$43 from a defendant upon conviction in a court of limited jurisdiction; up to \$100 in expenses incurred in preparing and serving a warrant for failure to appear; and a monthly assessment of up to \$100 for services provided for evaluation or supervision by the misdemeanor probation department.

Summary of Substitute Bill:

Legislative intent and findings are stated. The Legislature finds that caseload standards for public defenders will have a fiscal impact on the criminal justice and court operations of local jurisdictions. The Legislature intends to provide local courts and courts of limited jurisdiction with additional fee authority to offset growing expenditures associated with indigent defense and public defender caseload standards.

The limits are raised with respect to three categories of costs and fees a court may collect:

- The fee a court of limited jurisdiction may collect upon a defendant's conviction is raised from \$43 to \$55.
- The limit on expenses a court may recover for costs incurred in preparing and serving a warrant for failure to appear is raised from \$100 to \$175.
- The allowed monthly assessment a court may impose for services provided for misdemeanor probation evaluation and supervision is raised from \$100 to \$150.

Revenue collected that is attributable to these increases must be used to support local court operations and criminal justice functions that have a clear connection to indigent defense cases.

Substitute Bill Compared to Original Bill:

The authorized use of revenue collected pursuant to the increases in fees and assessments is changed. Rather than requiring that revenue is used to support local court operations, prosecutorial functions, and other criminal justice matters connected with indigent defense, the revenue must be used to support local court operations and criminal justice functions that have a clear connection to indigent defense cases.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) The Supreme Court has instituted mandatory caseload limits for public defenders, which will increase costs significantly. Cities are very concerned about this and are looking for ways to offset the new costs. This bill will not cover the cost entirely, but it strikes a balance, and the language of the proposed substitute bill is an improvement. Some of the fees increased in this bill have not been increased for a long time. The warrant fee has not changed for the last 19 years.

(In support with amendment(s)) The concerns raised by the bill's opponents are valid; however, the courts can carefully weigh an indigent person's ability to pay and could waive the fees in appropriate cases.

(Other) Public defense is expensive and difficult to fund, and local jurisdictions receive very little state money for this purpose. The use of LFOs to recover cost gives pause, as LFOs have a low collection rate.

(Opposed) Indigent defendants should not be required to bear the cost of compliance with caseload standards. There is over an 80 percent indigency rate with misdemeanors. The LFO system in this state is broken, and cities and counties will not actually receive this money. The average LFO only takes in a little over \$100 per year. People can be imprisoned over unpaid LFOs, and courts do not consider the resources of defendants before imposing LFOs. Measures should be taken to reduce overall caseloads instead.

The bill needs to specify that the revenue is used for defense functions only, and should not identify prosecutorial functions or court functions as a permissible use. There is no impact to the cost of prosecution with these standards.

Persons Testifying: (In support) Representative Hunt, prime sponsor; Pat Fitzpatrick; Doug Levy, Cities of Everett, Fife, Issaquah, Kent, Lake Stevens, Puyallup, Renton, and Redmond; Candice Bock, Association of Washington Cities; and Jim Justin, Cities of Vancouver and Yakima.

(In support with amendment(s)) Sophia Byrd McSherry, Washington State Office of Public Defense.

(Other) Brian Enslow, Washington State Association of Counties; and James McMahan, Washington Association of County Officials.

(Opposed) Chris Kaasa, America Civil Liberties Union of Washington; and C. Wesley Richards, Washington Defenders Association, Washington Association of Civil Defense Lawyers.

Persons Signed In To Testify But Not Testifying: None.