

HOUSE BILL REPORT

HB 2764

As Passed House:
February 16, 2016

Title: An act relating to public defense fund distributions.

Brief Description: Clarifying public defense fund distributions.

Sponsors: Representatives Jinkins, Chandler, Gregerson, Johnson, Appleton and Senn.

Brief History:

Committee Activity:

Appropriations: 1/27/16, 1/28/16 [DP].

Floor Activity:

Passed House: 2/16/16, 90-8.

Brief Summary of Bill

- Clarifies that \$900,000 of the revenue generated per fiscal year by the 2015 Supreme Court order to increase the base traffic infraction fines is for the Office of Public Defense.
- Modifies the fund distribution for the \$900,000, pursuant to appropriation, to 50 percent for counties and 50 percent for cities. The funds must be used to improve the quality of trial court indigent public defense services.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass. Signed by 31 members: Representatives Dunshee, Chair; Ormsby, Vice Chair; Chandler, Ranking Minority Member; Parker, Assistant Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Buys, Cody, Condotta, Dent, Fitzgibbon, Haler, Hansen, Hudgins, S. Hunt, Jinkins, Kagi, Lytton, MacEwen, Magendanz, Pettigrew, Robinson, Sawyer, Schmick, Senn, Springer, Stokesbary, Sullivan, Tharinger, Van Werven, Walkinshaw and G. Hunt.

Minority Report: Do not pass. Signed by 1 member: Representative Taylor.

Staff: Meghan Morris (786-7119).

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.

Background:

Public Defense Improvement Program.

Both federal and state constitutions guarantee the right to legal representation for an accused person in a criminal prosecution. Court decisions at both federal and state levels have construed these provisions to require public funding of indigent legal representation in criminal prosecutions.

The Office of Public Defense (OPD) manages and distributes state funds to county and city defense systems for the improvement of trial court criminal indigent defense. Local jurisdictions may apply for funding if they meet certain requirements, including requiring public defenders to get annual training approved by the OPD. Applicants must also report financial and caseload information on public defense services for the previous year. Individuals and entities that contract with local jurisdictions to provide public defense services must report the hours billed for private legal defense services to the local jurisdiction. Local jurisdictions receiving state funding must document that they are meeting the standards for the provision of indigent defense services as endorsed by the Washington State Bar Association, or that the funding is making "appreciable demonstrable improvements" in the delivery of public defense services. These improvements may include:

- requiring cities and counties to adopt service delivery standards, using the Washington State Bar Association standards as a guideline;
- requiring training for public defense attorneys;
- with respect to counties only, requiring specified enhanced training and experience for attorneys handling Murder in the first or second degree, persistent offenders, or any class A felony;
- requiring contracts to address compensation for extraordinary cases; and
- funding for the costs of expert witnesses and investigators.

If the OPD determines that local jurisdictions receiving funds have not substantially complied with these requirements, the OPD may terminate funding. A determination to terminate funding may be appealed to the OPD advisory board, whose decision is final.

Distribution of total appropriated funds by the OPD is as follows:

- 90 percent of the total goes to eligible counties:
 - 6 percent of which is divided equally among eligible counties;
 - 94 percent of which is distributed as follows:
 - 50 percent pro rata, based on county population; and
 - 50 percent pro rata, based on county criminal filings; and
- 10 percent of the total goes to eligible cities as determined by the OPD based on grant applications.

Supreme Court Revenue.

In 2015 the Washington State Supreme Court ordered a \$6 increase in the base penalty schedule for traffic infractions. Revenue from this fee increase is split between three accounts: the Local General Fund, the State General Fund, and the Judicial Information Systems Account. After the fee increase, an additional \$900,000 per fiscal year from the State General Fund was appropriated in the 2015-2017 Operating Budget to the OPD for the purpose of improving the quality of trial court public defense services.

Summary of Bill:

Of the revenue generated by the Supreme Court order to increase the base traffic infraction fines, \$900,000 per year is designated for the OPD. The fund distribution for the base funding distributed to county and city defense systems for the improvement of trial court criminal indigent defense is retained. However, the \$900,000 in additional state funding per fiscal year shall be distributed by the OPD as follows:

- 50 percent of the funds appropriated shall be distributed to counties; and
- 50 percent of the funds appropriated shall be distributed to cities.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) This is a technical, housekeeping bill agreed upon by cities and counties in 2015. When the \$900,000 was appropriated in the 2015-17 Operating Budget, all stakeholders agreed the funds would be split evenly between cities and counties, but that language never made it into the budget. This bill does not impact the underlying appropriation in the current biennium or appropriations made in prior biennia. This bill primarily accounts for workload changes after the court's recently imposed caseload standards. We have a significant problem with how we underfund public defense in our local jurisdictions. This bill starts to move us in the right direction, but certainly not very far. Cities feel the pressure of the increasing cost of providing public defense services under the new caseload standards. Some cities may have fewer cases, but the cost of providing indigent services is increasing. The increase will likely continue as public defenders hire additional attorneys to meet caseloads. This cost increase is causing some locals to increase utility taxes to cover legal expenses related to the standards. The OPD grants help reduce the financial pressure of providing public defense services. However, limited funding makes the grant programs even more competitive. The OPD conducted a public defense study in 2014, which was the first time in a while the state has comprehensively focused on the cost of misdemeanor public defense. The study estimated that in 2013, cities spent about \$28 million for misdemeanor public defense, with state funding through the OPD covering about 2 percent of those costs. The additional funding from the split is a small amount, but it will tremendously help cities. House Bill 2764 will also give the OPD clarification and explicit authority to split these funds how both cities and counties prefer, without creating any difficulties for the State Auditor.

(Opposed) None.

Persons Testifying: Representative Jinkins, prime sponsor; Steve Taylor, City of Kelso; Candace Bock, Association of Washington Cities; Brian Enslow, Association of Washington; and Sophia Byrd McSherry, Office of Public Defense.

Persons Signed In To Testify But Not Testifying: None.