

# HOUSE BILL REPORT

## HB 2687

---

**As Reported by House Committee On:**  
Judiciary

**Title:** An act relating to public defense services.

**Brief Description:** Increasing appropriated funding for public defense services.

**Sponsors:** Representatives Frame, Condotta, Kilduff, Volz, Gregerson, Appleton, Fitzgibbon, Valdez, Muri, Wylie, Jinkins, Goodman, Doglio, Macri, McBride, Ortiz-Self, Sells, Stanford, Kagi and Pollet.

**Brief History:**

**Committee Activity:**

Judiciary: 1/24/18, 2/1/18 [DP].

**Brief Summary of Bill**

- Phases in state reimbursement of county and city public defense costs by 2028.
- Requires the Office of Public Defense (OPD) to disburse appropriated funds, establish policies for the distribution of funds, and monitor trial-level public defense services to determine eligibility for reimbursement.
- Repeals the county formulas for the OPD public defense services grant program.

---

### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass. Signed by 10 members: Representatives Jinkins, Chair; Graves, Assistant Ranking Minority Member; Goodman, Haler, Hansen, Kirby, Klippert, Muri, Orwall and Valdez.

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

**Staff:** Ingrid Lewis (786-7289).

**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.*

### Indigent Defense Services.

In Washington, individuals are guaranteed the right to be represented by an attorney when they are threatened with loss of liberty or when their children may be taken from them. When a defendant is indigent, he or she is eligible for a court appointed defense attorney at government expense.

Trial-level public defense services are administered and generally funded by county and city governments. Local jurisdictions are required to adopt standards for the provision of public defense services guided by standards endorsed by the Washington State Bar Association.

### Office of Public Defense.

Created in 1996 as an independent agency within the judicial branch, the Office of Public Defense (OPD) was established to implement the constitutional and statutory guarantees to counsel for indigent persons and to ensure effective and efficient delivery of state-funded public defense services.

The OPD administers four specialty programs:

- Trial Defense Services (Public Defense Improvement Grants) – Provides grants and consultation to counties and cities to improve trial-level public defense services;
- Parents Representation Program – Contracts with attorneys to represent indigent parents in dependency and termination cases;
- Chapter 71.09 RCW Civil Commitment Defense – Contracts with attorneys to represent indigent clients alleged or found to be sexually violent predators; and
- Appellate Services – Contracts with attorneys for state-funded appellate public defense.

The OPD manages and distributes approximately \$6.8 million in appropriated funds for Public Defense Improvement Grants. Local jurisdictions apply for grant funds on an annual basis. Statute specifies eligibility criteria, identifies categories of programs and actions for which the funds can be spent, and establishes a formula for disbursing the funds.

Local jurisdictions receiving state grants must submit annual reports to the OPD documenting completion of annual training requirements; reporting the expenditure for all public defense services in the previous year, as well as annual case statistics; and providing information pertaining to contract attorneys' nonpublic defense work.

---

### **Summary of Bill:**

Beginning in fiscal year 2019, the state is directed to appropriate funds for not less than 10 percent of county and city public defense costs, with state appropriations increasing by 10 percent per year, ending in fiscal year 2028 with state appropriation of 100 percent of the cost of public defense services.

The Office of Public Defense (OPD) is required to reimburse all eligible counties and cities for public defense expenditures in the previous year. In order to meet eligibility for reimbursement, local jurisdictions must meet current training and reporting requirements

with the addition of documentation that attorneys providing public defense services are in compliance with the Washington Supreme Court indigent defense standards.

The OPD is required to:

- annually determine the cost of public defense services based on actual expenditures reported by local jurisdictions for the prior two years;
- establish policies for distribution of state funds to eligible jurisdictions; and
- monitor trial-level criminal public defense services to determine eligibility of jurisdictions to receive funds.

The current funding formula for the trial-level public defense services grant is repealed.

---

**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) The right to counsel is a constitutional right. The Supreme Court has said that it is the state's responsibility to provide attorneys in criminal proceedings for criminal defendants. Washington ranks fiftieth in the nation for providing state funding for public defense. Public defense services are largely administered by counties and cities; counties contribute approximately 96 percent of the cost. County costs have increased 56 percent since 2007 for public defense and have increased 13 percent since last year. This is a cost driver that outpaces revenue growth. Counties are under a tremendous amount of pressure with the annexation of cities and smaller tax bases. The limit on county resources has become a public safety issue; for example, some counties have significant backlogs in felony cases due to insufficient resources.

As populations continue to expand, and revenue sources are not allowed to grow with this expansion, the demand on county funds becomes more significant. Seventy-five percent of county budgets are dedicated to public safety, and counties have to prioritize funding for constitutional mandates like public defense. Therefore, funding for sheriffs, police, and prosecutors are negatively impacted. This bill proposes incremental state contributions to help the counties and is a great approach to help ensure the constitutionally guaranteed right to counsel. Local jurisdictions are supportive of any mechanism that helps meet the costs of indigent defense as case law requirements and standards continue to rise. It is essential to build in strong and transparent ways to address how defense services are being provided within the scope of these existing standards. As an equal access to justice issue, the state needs to ensure that there is a uniform system of justice with consistent standards statewide. Best practices implicated through this increased funding should consider best practices for other justice system partners. The funding should be linked to the reasonable and actual

costs of providing the service. Finally, it is essential that the Office of Public Defense has sufficient resources to take on this expanded scope of work.

(Opposed) None.

**Persons Testifying:** Representative Frame, prime sponsor; Representative Condotta; Chelsea Hager, Cities of Mountlake Terrace, Spokane Valley, Pasco, and Chelan; Hillary Berhman, Washington Defender Association and Washington Association of Criminal Defense Lawyers; Eric Johnson, Washington State Association of Counties; Derek Young, Pierce County Council; Logan Bahr, Association of Washington Cities; Jon Tunheim, Washington Association of Prosecuting Attorneys; and Joanne Moore, Washington State Office of Public Defense.

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