

HOUSE BILL REPORT

HB 1086

As Reported by House Committee On:
Civil Rights & Judiciary

Title: An act relating to public defense services.

Brief Description: Increasing appropriated funding for public defense services.

Sponsors: Representatives Chapman, Harris, Goodman, Gregerson, Appleton, Vick, Frame, Kilduff, Walsh, Blake, Jinkins, Valdez, Ryu, Tharinger, Doglio, Senn and Leavitt.

Brief History:

Committee Activity:

Civil Rights & Judiciary: 1/16/19, 1/25/19 [DP].

Brief Summary of Bill

- Phases in state reimbursement of county and city public defense costs by 2029.
- 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 CIVIL RIGHTS & JUDICIARY

Majority Report: Do pass. Signed by 13 members: Representatives Jinkins, Chair; Thai, Vice Chair; Irwin, Ranking Minority Member; Dufault, Assistant Ranking Minority Member; Goodman, Graham, Kilduff, Kirby, Orwall, Shea, Valdez, Walen and Ybarra.

Minority Report: Without recommendation. Signed by 1 member: Representative Klippert.

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 defenses 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 2020, the State of Washington 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 2029 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) Providing public defense services is a federal constitution mandate required by all states. Washington has passed this down to local jurisdictions. Counties must prioritize this obligation over other important obligations that are not constitutionally mandated, making this a significant public safety issue. From a practical level, when commissioners are put in the position of allocating resources between prosecution, law enforcement, courts, and public defense, public defense always rises to the top because it is a constitutional mandate. Obtaining more funding has been a priority for counties. Currently the state pays only 4 percent of the cost, which is about \$6 million a year, leaving counties with the remaining 96 percent, which as of 2017 was \$155 million a year, up from \$136 million the previous year. Public defense costs are increasing faster than county revenue. County property taxes are their major revenue source, and it has been capped at 1 percent. This is a major problem for counties, as approximately 75 percent of county budgets are dedicated to public safety, which includes public defense.

Counties continue to struggle with trying to figure out new ways to manage resources to keep communities safe. The vast majority of criminal justice costs are shouldered by local government. That is what was anticipated when our founders were creating our system. Public defense was not. Why was it assumed that this was a local government obligation? This has become a bigger issue in the last several years because the Washington Supreme Court has passed case load standards for lawyers engaged in public defense services. While this has increased and improved public defense services, it has changed the way that local jurisdictions have managed their public defense systems.

This is not only a civil rights issue, but also a justice by geography issue. The adequacy and effectiveness of a person's defense should not be determined based on where they live in the state; some counties are more affluent than others.

While the counties have the largest costs, cities also bear an amount of that cost and support any mechanism that will help offset the costs. Cities spent \$40 million in defense costs last year.

The Office of Public Defense stands ready to implement the provisions of the bill and welcomes the opportunity to work with stakeholders to develop any amendments to help move this out of the committee.

(Opposed) None.

(Other) Increased funding for local governments is supported, but before adopting the model suggested, a legislative taskforce should be established to study these issues. It has been over 15 years since the costs of public defense has been reviewed. Currently, no county is meeting all of the standards. The standards anticipate that a jurisdiction is fully funded for administrative staff and investigative services. A two-year look back shows a perpetuation of underfunding. Finally, public defense is responsive to other funding in the criminal justice system. Every time a new police officer or prosecutor is hired, that means that public defenders have to respond. Best practices occurring throughout the criminal justice continuum should be assured.

Persons Testifying: (In support) Representative Chapman, prime sponsor; Juliana Roe, Washington State Association of Counties; Jon Tunheim, Thurston County Prosecuting Attorney' Office; Sharon Swanson, Association of Washington Cities; and Derek Young, Pierce County Council.

(Other) Christie Hedman, Washington Defenders Association and Washington Association of Criminal Defense Lawyers; and Sophia Byrd McSherry, Washington State Office of Public Defense.

Persons Signed In To Testify But Not Testifying: None.