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**HOUSE BILL 2420**

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**State of Washington                      66th Legislature                      2020 Regular Session**

**By** Representatives Irwin, Chapman, Thai, Goehner, Pollet, and Goodman

Read first time 01/14/20. Referred to Committee on Appropriations.

1            AN ACT Relating to assumption by the office of public defense of  
2 duties for the provision of trial court indigent defense services  
3 that have been provided by counties and cities; amending RCW  
4 2.70.030, 39.34.180, and 43.330.190; adding a new section to chapter  
5 10.101 RCW; adding a new section to chapter 2.70 RCW; creating a new  
6 section; repealing RCW 10.101.030, 10.101.050, 10.101.060,  
7 10.101.070, 10.101.080, 36.26.010, 36.26.020, 36.26.030, 36.26.040,  
8 36.26.050, 36.26.060, 36.26.070, 36.26.080, 36.26.090, and 36.26.900;  
9 and providing an effective date.

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

11            NEW SECTION.    **Sec. 1.**    FINDINGS AND INTENT.    (1) The legislature  
12 finds that:

13            The right to effective assistance of counsel, as guaranteed by  
14 the Sixth amendment to the United States Constitution and Article I,  
15 section 22 of the Washington state Constitution, protects the  
16 fundamental human rights of life and liberty in criminal proceedings.  
17 Recognizing that the right to counsel is critically important in  
18 ensuring meaningful access to justice and should not depend on the  
19 financial resources of the accused, the United States supreme court  
20 in *Gideon v. Wainwright* established a categorical federal  
21 constitutional right to court-appointed counsel for indigent

1 defendants in criminal prosecutions and made that right obligatory  
2 upon the states. Under *Gideon v. Wainwright*, an indigent criminal  
3 defendant's right to counsel is a positive right imposing an  
4 affirmative obligation on the state to provide counsel for criminal  
5 defendants who cannot afford such services themselves.

6 The state currently delegates the majority of indigent defense  
7 functions to counties and cities. However, the state has not provided  
8 dependable and regular state funding sources sufficient to enable  
9 counties and cities across the state to provide constitutionally  
10 adequate and equitable trial court indigent defense services in  
11 addition to the other critical services they must provide for their  
12 residents. The limited discretionary grant funds and delegated taxing  
13 authority currently available to counties and cities are insufficient  
14 to cover the rising costs of trial court indigent defense. Moreover,  
15 due to state limits on county taxing authority, counties are unable  
16 to raise additional revenue sufficient to cover these costs.

17 The state's system of delegating trial court indigent defense  
18 functions to counties and cities without providing adequate funding  
19 from dependable and regular state sources denies indigent defendants  
20 equal access to justice. The resources available for trial court  
21 indigent defense functions like representation and investigation vary  
22 across county and city lines due to disparities in counties' and  
23 cities' ability to raise funds through taxation and differences  
24 between counties and cities in the prioritization and use of such  
25 funds when raised. As a result, outcomes may differ based solely on  
26 where indigent defendants are charged. Thus, the current system  
27 perpetuates inequities in the provision and funding of indigent  
28 defense services across the state.

29 The state's ultimate responsibility for providing a  
30 constitutionally adequate and uniform system of indigent defense  
31 cannot be shifted to local governments. It is time the state  
32 fulfilled its commitment to equal access to justice as required under  
33 the United States Constitution and the Washington state Constitution.

34 (2) Therefore, to ensure that the state meets its affirmative and  
35 nondelegable obligation, this act would require the state office of  
36 public defense to assume all powers, duties, and functions pertaining  
37 to indigent defense that resided with the counties and cities prior  
38 to the effective date of this section.

1        NEW SECTION.    **Sec. 2.**    A new section is added to chapter 10.101  
2    RCW to read as follows:

3        The office of public defense is responsible for the provision of  
4    all indigent defense arising under this chapter.

5        NEW SECTION.    **Sec. 3.**    A new section is added to chapter 2.70 RCW  
6    to read as follows:

7        (1) The office of public defense shall assume all powers, duties,  
8    and functions pertaining to indigent defense that prior to the  
9    effective date of this section resided with or were performed by  
10   counties or cities.

11       (2) The office of public defense may request any written  
12   materials in the possession of counties or cities pertaining to the  
13   powers, functions, and duties assumed, which shall be delivered to  
14   the custody of the office of public defense. Materials may be  
15   transferred either electronically or in hard copy, or both, as agreed  
16   by the office of public defense and each county or city.

17       (3) Employees of counties and cities engaged in performing the  
18   powers, functions, and duties assumed shall become employees of the  
19   office of public defense with the consent of any such employee. The  
20   office of public defense shall adopt procedures to facilitate the  
21   orderly transition of such employees, including providing for the  
22   transition of retirement and other benefits.

23       (4) All rules and all pending business before the courts of this  
24   state pertaining to the powers, functions, and duties assumed shall  
25   be continued and acted upon by the office of public defense. All  
26   existing county and city contracts with third parties pertaining to  
27   the powers, functions, and duties assumed, including but not limited  
28   to existing contracts with nonprofit or other indigent defense  
29   organizations and collective bargaining agreements, shall be assigned  
30   to the office of public defense to the extent assignable. The office  
31   of public defense shall thereafter contract directly with third  
32   parties to the extent necessary to comply with this act.

33       (5) If implementation of office of public defense contracts would  
34   result in the substitution of counsel within one hundred eighty days  
35   of a scheduled trial date, the director of the office of public  
36   defense may continue defense services with existing counsel to  
37   facilitate continuity of effective representation and avoid further  
38   continuance of a trial. When existing counsel is maintained, payment  
39   to complete the trial shall be prorated based on standard contract

1 fees established by the office of public defense under RCW 2.70.025  
2 and, at the director's discretion, may include extraordinary  
3 compensation based on attorney documentation.

4 (6) Nothing contained in this section may be construed to alter  
5 any existing collective bargaining unit or the provisions of any  
6 existing collective bargaining agreement until the agreement has  
7 expired or until the bargaining unit has been modified by action of  
8 the personnel board as provided by law.

9 **Sec. 4.** RCW 2.70.030 and 2008 c 313 s 5 are each amended to read  
10 as follows:

11 (1) There is created an advisory committee consisting of the  
12 following members:

13 (a) Three persons appointed by the chief justice of the supreme  
14 court, who shall also appoint the chair of the committee;

15 (b) Two nonattorneys appointed by the governor;

16 (c) Two senators, one from each of the two largest caucuses,  
17 appointed by the president of the senate; and two members of the  
18 house of representatives, one from each of the two largest caucuses,  
19 appointed by the speaker of the house of representatives;

20 (d) One person appointed by the court of appeals executive  
21 committee;

22 (e) One person appointed by the Washington state bar association;

23 (f) One person appointed by the Washington state association of  
24 counties; and

25 (g) One person appointed by the association of Washington cities.

26 (2) During the term of his or her appointment, no appointee may:

27 (a) Provide indigent defense services funded by (~~a city, a county,~~  
28 ~~or~~) the state, except on a pro bono basis; (b) serve as a judge  
29 except on a pro tem basis or as a court employee; or (c) serve as a  
30 prosecutor or prosecutor employee.

31 (3) Members of the advisory committee shall receive no  
32 compensation for their services as members of the committee, but may  
33 be reimbursed for travel and other expenses in accordance with state  
34 law.

35 (4) The advisory committee shall:

36 (a) Meet at least quarterly;

37 (b) Review at least biennially the performance of the director,  
38 and submit each review to the chief justice of the supreme court;

39 (c) Receive reports from the director;

- 1 (d) Make policy recommendations, as appropriate, to the  
2 legislature and the supreme court;
- 3 (e) Approve the office's budget requests;
- 4 (f) Advise the director regarding administration and oversight of  
5 the office's program areas; and
- 6 (g) Carry out other duties as authorized or required by law.

7 **Sec. 5.** RCW 39.34.180 and 2001 c 68 s 4 are each amended to read  
8 as follows:

9 (1) The state is responsible for providing a constitutionally  
10 adequate and uniform system of indigent defense for misdemeanor and  
11 gross misdemeanor offenses committed by adults in the state, whether  
12 referred by a state, county, city, or town law enforcement agency and  
13 whether filed under state law or city ordinance.

14 (2) Each county, city, and town is responsible for the  
15 prosecution, adjudication, sentencing, and incarceration of  
16 misdemeanor and gross misdemeanor offenses committed by adults in  
17 their respective jurisdictions, and referred from their respective  
18 law enforcement agencies, whether filed under state law or city  
19 ordinance, and must carry out these responsibilities through the use  
20 of their own courts, staff, and facilities, or by entering into  
21 contracts or interlocal agreements under this chapter to provide  
22 these services. Nothing in this section is intended to alter the  
23 statutory responsibilities of each county for the prosecution,  
24 adjudication, sentencing, and incarceration for not more than one  
25 year of felony offenders, nor shall this section apply to any offense  
26 initially filed by the prosecuting attorney as a felony offense or an  
27 attempt to commit a felony offense.

28 ~~((2))~~ (3) The following principles must be followed in  
29 negotiating interlocal agreements or contracts: Cities and counties  
30 must consider (a) anticipated costs of services; and (b) anticipated  
31 and potential revenues to fund the services, including fines and  
32 fees, criminal justice funding, and state-authorized sales tax  
33 funding levied for criminal justice purposes.

34 ~~((3))~~ (4) If an agreement as to the levels of compensation  
35 within an interlocal agreement or contract for gross misdemeanor and  
36 misdemeanor services cannot be reached between a city and county,  
37 then either party may invoke binding arbitration on the compensation  
38 issued by notice to the other party. In the case of establishing  
39 initial compensation, the notice shall request arbitration within

1 thirty days. In the case of nonrenewal of an existing contract or  
2 interlocal agreement, the notice must be given one hundred twenty  
3 days prior to the expiration of the existing contract or agreement  
4 and the existing contract or agreement remains in effect until a new  
5 agreement is reached or until an arbitration award on the matter of  
6 fees is made. The city and county each select one arbitrator, and the  
7 initial two arbitrators pick a third arbitrator.

8 ~~((4))~~ (5) A city or county that wishes to terminate an  
9 agreement for the provision of court services must provide written  
10 notice of the intent to terminate the agreement in accordance with  
11 RCW 3.50.810 and 35.20.010.

12 ~~((5))~~ (6) For cities or towns that have not adopted, in whole  
13 or in part, criminal code or ordinance provisions related to  
14 misdemeanor and gross misdemeanor crimes as defined by state law,  
15 this section shall have no application until July 1, 1998.

16 **Sec. 6.** RCW 43.330.190 and 1999 c 303 s 1 are each amended to  
17 read as follows:

18 Counties may submit a petition for relief to the office of public  
19 defense for reimbursement of extraordinary criminal justice costs.  
20 Extraordinary criminal justice costs are defined as those associated  
21 with investigation, prosecution, ~~((indigent—defense,))~~ jury  
22 impanelment, expert witnesses, interpreters, incarceration, and other  
23 adjudication costs of aggravated murder cases.

24 (1) The office of public defense, in consultation with the  
25 Washington association of prosecuting attorneys and the Washington  
26 association of sheriffs and police chiefs, shall develop procedures  
27 for processing the petitions, for auditing the veracity of the  
28 petitions, and for prioritizing the petitions. Prioritization of the  
29 petitions shall be based on, but not limited to, such factors as  
30 disproportionate fiscal impact relative to the county budget,  
31 efficient use of resources, and whether the costs are extraordinary  
32 and could not be reasonably accommodated and anticipated in the  
33 normal budget process.

34 (2) Before January 1st of each year, the office of public  
35 defense, in consultation with the Washington association of  
36 prosecuting attorneys and the Washington association of sheriffs and  
37 police chiefs, shall develop and submit to the appropriate fiscal  
38 committees of the senate and house of representatives a prioritized

1 list of submitted petitions that are recommended for funding by the  
2 legislature.

3 NEW SECTION. **Sec. 7.** The following acts or parts of acts are  
4 each repealed:

5 (1) RCW 10.101.030 (Standards) and 2005 c 157 s 2 & 1989 c 409 s  
6 4;

7 (2) RCW 10.101.050 (Appropriated funds—Application, reports) and  
8 2005 c 157 s 3;

9 (3) RCW 10.101.060 (Appropriated funds—Use requirements) and 2005  
10 c 157 s 4;

11 (4) RCW 10.101.070 (County moneys) and 2005 c 157 s 5;

12 (5) RCW 10.101.080 (City moneys) and 2007 c 59 s 1 & 2005 c 157 s  
13 6;

14 (6) RCW 36.26.010 (Definitions) and 1969 c 94 s 1;

15 (7) RCW 36.26.020 (Public defender district—Creation—Office of  
16 public defender) and 1969 c 94 s 2;

17 (8) RCW 36.26.030 (Selection committee) and 1969 c 94 s 3;

18 (9) RCW 36.26.040 (Public defender—Qualifications—Term) and 1969  
19 c 94 s 4;

20 (10) RCW 36.26.050 (Reports—Records—Costs and expenses) and 2009  
21 c 549 s 4041 & 1969 c 94 s 5;

22 (11) RCW 36.26.060 (Compensation—Office—Assistants, clerks,  
23 investigators, etc) and 2009 c 549 s 4042 & 1969 c 94 s 6;

24 (12) RCW 36.26.070 (Duty to represent indigent defendants) and  
25 2009 c 549 s 4043, 1984 c 76 s 18, & 1969 c 94 s 7;

26 (13) RCW 36.26.080 (Duty to counsel, defend, and prosecute  
27 appeals) and 2009 c 549 s 4044 & 1969 c 94 s 8;

28 (14) RCW 36.26.090 (Appointment of attorney other than public  
29 defender) and 1984 c 76 s 19, 1983 c 3 s 76, & 1969 c 94 s 9; and

30 (15) RCW 36.26.900 (Chapter cumulative and nonexclusive) and 1969  
31 c 94 s 10.

32 NEW SECTION. **Sec. 8.** This act takes effect July 1, 2021.

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