

SENATE BILL REPORT

SB 5780

As of January 16, 2024

Title: An act relating to expanding training opportunities for public defense.

Brief Description: Expanding training opportunities for public defense.

Sponsors: Senators Torres, Dhingra, Padden, Boehnke, Wilson, L., Braun, Frame, Hasegawa, Kuderer, Lovick, Mullet, Nguyen, Warnick and Wilson, J..

Brief History:

Committee Activity: Law & Justice: 1/16/24.

Brief Summary of Bill

- Requires the Office of Public Defense (OPD) to expand the capacity of its Criminal Defense Training Academy (Academy) program to train practitioners who are new to public defense.
- Requires OPD to expand the Academy to include advanced training by June 30, 2026.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Kevin Black (786-7747)

Background: The Right to Public Defense. The Washington State Constitution guarantees a person accused in a criminal prosecution the right to counsel. Subsequent court decisions at the state and federal level have clarified this includes the right to have counsel appointed if the defendant cannot afford a lawyer, and the right includes effective assistance of counsel.

The Office of Public Defense. The Washington State Office of Public Defense (OPD) was established in law in 1996, initially with a limited remit, to develop standards for and handle

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appointment of counsel in criminal appeals for indigent appellants. OPD was originally intended to be terminated in 2000, the date for which was extended in 1998, and then the office was made permanent in 2008. The responsibilities of OPD have grown over time, and now include oversight of appointment of counsel for parents in dependency cases; persons civilly committed as sexually violent predators; persons with criminal appeals and personal restraint petitions originating from superior court; persons committed for treatment after a finding of not guilty by reason of insanity; and other programs, including coordination of the statewide response to *State v. Blake*. OPD effectuates appointment of counsel by contracting with local agencies, firms, and individual attorneys, and is prohibited by law from providing direct representation to clients. The cost of counsel appointed by OPD is borne by state budget sources and not charged to local jurisdictions.

Criminal Defense Training Academy. The Criminal Defense Training Academy is a five-day training program offered once a year by OPD for up to 36 participants a year. OPD states that priority is given to public defense practitioners from rural areas and those practicing in agencies or firms which lack established training programs. Access is also extended to attorneys new to public defense and with limited trial experience. The curriculum is modeled after prestigious national public defense training programs like the National Criminal Defense College and Gideon's Promise, but relies largely on volunteer faculty. Without dedicated funding, resources are limited to what can be raised by registration fees. Attendees cover their own travel and lodging costs.

Shortage of Public Defense Attorneys. In November 2023 the director of OPD submitted a memorandum to the Washington Supreme Court requesting the court to order a 90-day moratorium and other restrictions on the assignment of new cases to public defenders, asserting the criminal public defense system in Washington is facing a grave crisis and on the verge of collapse based on a shortage of public defenders and heavy public defense caseloads. Local shortages of public defenders were reported in 2023 in newspaper accounts by outlets including the *Tri-City Herald*, *Bellingham Herald*, and *Seattle Times*.

Summary of Bill: Subject to appropriations, OPD must expand the capacity of its Criminal Defense Training Academy program to train practitioners who are new to public defense. The program must prioritize training for practitioners in underserved areas and rural areas of the state. The program may incorporate in-person, remote, and recorded resources, must offer intensive trial skill development, and offer networking opportunities.

By June 30, 2026, OPD must expand Criminal Defense Training Academy offerings to include training for public defense practitioners seeking to achieve advanced qualifications.

Appropriation: The bill contains a section or sections to limit implementation to the availability of amounts appropriated for that specific purpose.

Fiscal Note: Requested on January 9, 2024.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This is one of the bills I have sponsored to help with the public defense shortage and prosecutor shortage. At a round table this summer we heard some attorneys are willing to help, but don't have criminal defense training for certain cases. Yakima County has a severe shortage of public defenders and prosecutors, creating a bottleneck in the court system. My dream is for every public defender to go to a statewide training program before touching a case. This will help public defenders qualify for felony cases. The Criminal Defense Training Academy is the only multi-day training public defender training program in the state, but it is insufficient in its current form. We can only serve 35 attorneys a year, which we would like push to 160, or all the way to universal training for all. The program is intended to reach small jurisdictions which don't have the ability to train lawyers. We are always turning people away for lack of room. Prosecutors face the same need and struggles to put on effective trainings. This is an important tool for recruitment and retention.

Persons Testifying: PRO: Senator Nikki Torres, Prime Sponsor; Larry Jefferson, Travis Stearns, Washington State Office of Public Defense; LaDon Linde, Yakima County; Russell Brown, Washington Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying: No one.