

SENATE BILL REPORT

SB 5781

As of January 11, 2024

Title: An act relating to establishing a law student rural public defense program.

Brief Description: Establishing a law student rural public defense program.

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

Brief History:

Committee Activity: Law & Justice: 1/11/24.

Brief Summary of Bill

- Requires the Office of Public Defense to administer a law student rural defense program placing law students or recent law school graduates, or both, as interns with experienced public defenders in underserved areas and rural areas of the state.

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.

Standards for Indigent Defense. Since 2012 the Washington Supreme Court has promulgated Standards for Indigent Defense which require public defense attorneys to maintain a caseload which allows each lawyer to give each client the time and effort necessary to ensure effective representation. The standards limit a public defender to no

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more than 150 felonies per year, or 300 misdemeanor cases per year, or 250 juvenile offender cases or civil commitment cases, or an appropriately weighted mix of these cases. Cases must be evenly distributed throughout the year, and caseload standards should be adjusted downward if the individual public defender's caseload is weighted towards more complex cases. The standards require a public defender to file a signed certification of compliance quarterly in each court where the attorney has been appointed as counsel stating the public defender has the requisite experience and resources needed for the cases which they are assigned and is abiding by caseload standards.

How Public Defenders Are Assigned. Appointment of counsel for trial-level public defense is handled by local jurisdictions. The cost of these appointments is borne by local jurisdictions, which also bear the cost of related criminal justice expenses for police, prosecution, courts, and jail services, with limited assistance provided from statewide funding sources. Local jurisdictions rely on a variety of service models to provide public defense services, including county defense agencies, in which public defenders are employed by local government, and contract systems in which the local government contracts with a non-profit agency, private law firm, or individual attorneys to perform appointed counsel services. Public defense services handled by locally-appointed attorneys include: felony and misdemeanor charges for youth and adults; civil commitment cases; therapeutic court cases; youth cases related to truancy, contempt, and at-risk youth; extraditions; revocations of special sentencing alternatives, and appeals from courts of limited jurisdiction.

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 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.

Asserted Shortages of Public Defense Attorneys. In late 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: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): Subject to appropriations, OPD must administer a law student rural defense program. This program must coordinate with one or more law schools to place law students who are eligible to practice as legal interns or recent law school graduates, or both, with experienced public defense attorneys located in underserved areas and rural areas of the state.

The program must allow interns to gain real-world public defense experience under the mentorship of an experienced public defense attorney, with the purpose of encouraging the intern to consider employment opportunities in public defense in underserved areas and rural areas. Placements may be in government or non-profit public defense agencies or private firms that contract to provide public defense services.

Interns must receive monthly compensation and housing stipends. The program may include partial reimbursement for the supervising attorney.

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 On Proposed Substitute: PRO: We are working to include prosecuting attorneys in this bill because they are seeing shortages as well. We need to encourage people to work in public defense, especially in rural areas. People must be adequately represented. The public defender shortage affects nearly every county in some degree. Relying on local pools of attorneys is no longer feasible; we must use creative tactics. This will build a stronger pipeline into public defense and criminal practice. Without strong representation on both sides, the justice system doesn't work as designed. Students are not going into law school or public service at the same rates. Loan forgiveness is an important issue in enabling lawyers to choose public service. Housing shortages hurt recruiting lawyers to work in rural communities. County costs for criminal justice increase year over year with counties bearing 97 percent of costs. This is one building block for cultivating and growing public defender services. Counties have already implemented pay raises and hiring and retention bonuses.

Persons Testifying: PRO: Senator Nikki Torres, Prime Sponsor; Katrin Johnson, Washington State Office of Public Defense; Juliana Roe, Washington State Association of Counties; LaDon Linde, Yakima County Board of Commissioners; Paul Kelley, Yakima County Director of Assigned Counsel; Russell Brown, Washington Association of

Prosecuting Attorneys.

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