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**SENATE BILL 5404**

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**State of Washington**

**69th Legislature**

**2025 Regular Session**

**By** Senators Trudeau, Lovick, Frame, Schoesler, Chapman, Goehner, Hasegawa, Lovelett, Muzzall, Nobles, Saldaña, Salomon, Shewmake, Valdez, Warnick, and J. Wilson

Read first time 01/21/25. Referred to Committee on Law & Justice.

1 AN ACT Relating to public defense services; amending RCW  
2 10.101.050, 10.101.060, and 10.101.070; adding a new section to  
3 chapter 10.101 RCW; and adding a new section to chapter 2.56 RCW.

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

5 **Sec. 1.** RCW 10.101.050 and 2005 c 157 s 3 are each amended to  
6 read as follows:

7 (1) Beginning in fiscal year 2026, funding responsibility for  
8 public defense services shall be shared by the state, counties, and  
9 cities.

10 (a) Beginning in fiscal year 2026, the state shall be responsible  
11 for 50 percent of the cost of public defense services based on an  
12 average of the actual expenditures for public defense services  
13 reported, and paid for, by eligible counties for the previous five  
14 years looking back from fiscal year 2024. Beginning in fiscal year  
15 2026, eligible counties shall not be responsible for public defense  
16 services costs that exceed this five-year average.

17 (b) In fiscal year 2026 and thereafter, the state shall be  
18 responsible for all public defense services costs that exceed the  
19 five-year average set forth in this section.

20 The Washington state office of public defense shall disburse  
21 appropriated funds to eligible counties (~~and cities~~) for the

1 ~~((purpose of improving the quality of public defense services))~~ costs  
2 that exceed the five-year average set forth in this section  
3 consistent with RCW 10.101.060(2) (a) through (d).

4 (c) Any county funds supplanted by the funding distributions  
5 described in this section that were previously spent on public  
6 defense services may only be used for the following activities:

7 (i) Pretrial or precharge diversion programs;  
8 (ii) Alternatives to incarceration;  
9 (iii) Reentry services for those exiting incarceration;  
10 (iv) Administrative expenditures related to the provision of  
11 public defense services including, but not limited to:

12 (A) Information technology;  
13 (B) Human resources;  
14 (C) Office space;  
15 (D) Other indirect costs;  
16 (v) Behavioral health facilities and services;  
17 (vi) Costs of developing affordable and supportive housing,  
18 consistent with eligible activities outlined in RCW 82.14.540;  
19 (vii) Other activities as approved by the Washington state office  
20 of public defense. ((Counties))

21 (2) Eligible counties may apply for up to their pro rata share as  
22 set forth in RCW 10.101.060 provided that counties conform to  
23 application procedures established by the office of public defense  
24 and improve the quality of services for both juveniles and adults.  
25 ~~((Cities may apply for moneys pursuant to the grant program set forth~~  
26 ~~in RCW 10.101.080.))~~

27 (3) In order to receive funds, each ((applying)) county ((or  
28 city)) must ((require that attorneys providing public defense  
29 services attend training approved by the office of public defense at  
30 least once per calendar year. Each applying county or city shall  
31 report)):

32 (a) Report the expenditure for all public defense services in the  
33 previous calendar year, as well as case statistics for that year,  
34 including per attorney caseloads, and shall provide a copy of each  
35 current public defense contract to the office of public defense  
36 ~~((with its application. Each individual or organization that~~  
37 ~~contracts to perform public defense services for a county or city~~  
38 ~~shall report to the county or city));~~

39 (b) Require public defense lawyers to keep and report hours  
40 worked on each public defense case. The county shall collect data of

1 assigned and resolved cases and annually report to the office of  
2 public defense and the Washington state bar association the (i)  
3 number of assigned and resolved cases of each case type consistent  
4 with appendix B of the Washington state bar association indigent  
5 defense standards, and (ii) average number of billable attorney hours  
6 spent on resolved cases of each type. The office of public defense  
7 shall create forms consistent with the collection of necessary data  
8 and regularly use the billable hour data to review and reconsider the  
9 categorization of each case type included in appendix B of the  
10 Washington state bar association indigent defense standards;

11 (c) Designate a public defense coordinator who shall serve as the  
12 primary contact between the county and the office of public defense.  
13 The public defense coordinator shall be a lawyer with public defense  
14 experience. Cities and counties are encouraged to work together and  
15 with the office of public defense to create public defense districts,  
16 if needed, consistent with RCW 36.26.020.

17 (4) Cities may apply for moneys pursuant to the grant program set  
18 forth in RCW 10.101.080. In order to receive funds, each applying  
19 city must require that attorneys providing public defense services  
20 attend training approved by the office of public defense at least  
21 once per calendar year. Each applying city shall report the  
22 expenditure for all public defense services in the previous calendar  
23 year, as well as case statistics for that year, including per  
24 attorney caseloads, and shall provide a copy of each current public  
25 defense contract to the office of public defense with its  
26 application. Each individual or organization that contracts to  
27 perform public defense services for a city shall report to the city  
28 hours billed for nonpublic defense legal services in the previous  
29 calendar year, including number and types of private cases.

30 **Sec. 2.** RCW 10.101.060 and 2005 c 157 s 4 are each amended to  
31 read as follows:

32 ~~(1) ((a) Subject to the availability of funds appropriated for~~  
33 ~~this purpose, the))~~ The office of public defense shall disburse to  
34 ~~((applying))~~ all counties that meet the requirements of RCW  
35 10.101.050 designated funds under this chapter on a pro rata basis  
36 pursuant to the formula set forth in RCW 10.101.070 and shall  
37 disburse to eligible cities, funds pursuant to RCW 10.101.080.

38 (2) Any county with a population density of less than 50 persons  
39 per square mile may request that the office of public defense assume

1 responsibility for providing all or a designated portion of the  
2 public defense services for defendants appearing in a court under the  
3 county's jurisdiction. If the office of public defense determines  
4 that it has the capacity to provide these services on behalf of the  
5 county:

6 (a) The office of public defense must notify the county of its  
7 decision to accept the request within 180 days.

8 (b) The county's pro rata share of funding described in RCW  
9 10.101.070 shall be retained by the office of public defense for the  
10 purposes of delivering public defense services within the county. The  
11 office of public defense may designate employees of the department or  
12 contract with external legal counsel to deliver public defense  
13 services within the county.

14 (c) The office of public defense, at its discretion and  
15 consistent with standards for the provision of indigent defense  
16 services as endorsed by the Washington state bar association, may  
17 establish service delivery standards, support staffing, and  
18 administrative functions to facilitate the effective delivery of  
19 public defense services within the county.

20 (d) The county shall contribute funds in an amount equal to its  
21 responsibility for public defense services within its jurisdiction as  
22 described in RCW 10.101.050 toward the delivery of public defense  
23 services by the office of public defense within its jurisdiction.

24 (3) Each fiscal year for which it receives state funds under this  
25 chapter, a county or city must annually document to the office of  
26 public defense that it is meeting the standards for provision of  
27 indigent defense services as endorsed by the Washington state bar  
28 association or that the funds received under this chapter have been  
29 used to make appreciable demonstrable improvements in the delivery of  
30 public defense services (~~, including the following:~~

31 ~~(i) Adoption by ordinance of a legal representation plan that~~  
32 ~~addresses the factors in RCW 10.101.030. The plan must apply to any~~  
33 ~~contract or agency providing indigent defense services for the county~~  
34 ~~or city;~~

35 ~~(ii) Requiring attorneys who provide public defense services to~~  
36 ~~attend training under RCW 10.101.050;~~

37 ~~(iii) Requiring attorneys who handle the most serious cases to~~  
38 ~~meet specified qualifications as set forth in the Washington state~~  
39 ~~bar association endorsed standards for public defense services or~~  
40 ~~participate in at least one case consultation per case with office of~~

1 public defense resource attorneys who are so qualified. The most  
2 serious cases include all cases of murder in the first or second  
3 degree, persistent offender cases, and class A felonies. This  
4 subsection (1)(a)(iii) does not apply to cities receiving funds under  
5 RCW 10.101.050 through 10.101.080;

6 (iv) Requiring contracts to address the subject of compensation  
7 for extraordinary cases;

8 (v) Identifying funding specifically for the purpose of paying  
9 experts (A) for which public defense attorneys may file ex parte  
10 motions, or (B) which should be specifically designated within a  
11 public defender agency budget;

12 (vi) Identifying funding specifically for the purpose of paying  
13 investigators (A) for which public defense attorneys may file ex  
14 parte motions, and (B) which should be specifically designated within  
15 a public defender agency budget.

16 (b) The cost of providing counsel in cases where there is a  
17 conflict of interest shall not be borne by the attorney or agency who  
18 has the conflict)). The office of public defense may create standards  
19 to determine the eligibility of counties and cities requesting funds.

20 ((+2)) (4) The office of public defense shall monitor trial  
21 level public defense services to determine eligibility of counties  
22 and cities to receive state funds under this chapter. ((If a  
23 determination is made that a county or city receiving state funds  
24 under this chapter did not substantially comply with this section,  
25 the office of public defense shall notify the county or city of the  
26 failure to comply and unless the county or city contacts the office  
27 of public defense and substantially corrects the deficiencies within  
28 ninety days after the date of notice, or some other mutually agreed  
29 period of time, the county's or city's eligibility to continue  
30 receiving funds under this chapter is terminated. If an applying  
31 county or city disagrees with the determination of the office of  
32 public defense as to the county's or city's eligibility, the county  
33 or city may file an appeal with the advisory committee of the office  
34 of public defense within thirty days of the eligibility  
35 determination. The decision of the advisory committee is final)) The  
36 office of public defense shall create data collection criteria and  
37 reporting forms to ensure consistent statewide data and application.

38 (5) The moneys under RCW 10.101.050 shall be distributed to each  
39 county and city determined to be eligible under this section by the  
40 office of public defense.

1       **Sec. 3.** RCW 10.101.070 and 2005 c 157 s 5 are each amended to  
2 read as follows:

3       The moneys shall be distributed to each county determined to be  
4 eligible to receive moneys by the office of public defense as  
5 determined under this section. ~~((Ninety percent of the funding~~  
6 ~~appropriated)) Beginning in fiscal year 2026 and in each year  
7 thereafter, the state shall appropriate to the office of public  
8 defense funds necessary to comply with RCW 10.101.050. These funds  
9 shall be designated as "county moneys" and shall be distributed as  
10 follows:~~

11       (1) ~~((Six percent of the county moneys appropriated shall be~~  
12 ~~distributed as a base allocation among the eligible counties. A~~  
13 ~~county's base allocation shall be equal to this six percent divided~~  
14 ~~by the total number of eligible counties.~~

15       ~~(2) Ninety-four percent of the)~~ The county moneys appropriated  
16 shall be distributed among the eligible counties as follows:

17       (a) Fifty percent of this amount shall be distributed on a pro  
18 rata basis to each eligible county based upon the population of the  
19 county as a percentage of the total population of all eligible  
20 counties; and

21       (b) Fifty percent of this amount shall be distributed on a pro  
22 rata basis to each eligible county based upon the annual number of  
23 criminal cases filed in the county superior court as a percentage of  
24 the total annual number of criminal cases filed in the superior  
25 courts of all eligible counties.

26       (2) Beginning in fiscal year 2027 and each year thereafter, the  
27 county moneys appropriated shall be distributed among the eligible  
28 counties on a pro rata basis based upon the annual number of cases  
29 filed in courts under the county's jurisdiction for which a public  
30 defender was assigned.

31       (3) Under this section:

32       (a) The population of the county is the most recent number  
33 determined by the office of financial management;

34       (b) The annual number of criminal cases filed in the county  
35 superior court is determined by the most recent annual report of the  
36 courts of Washington, as published by the office of the administrator  
37 for the courts;

38       ~~((Distributions and eligibility for distributions in the~~  
39 ~~2005-2007 biennium shall be based on 2004 figures for the annual~~  
40 ~~number of criminal cases that are filed as described under (b) of~~

1 ~~this subsection. Future distributions shall be based on the most~~  
2 ~~recent figures for the annual number of criminal cases that are filed~~  
3 ~~as described under (b) of this subsection))~~ The annual number of  
4 cases filed in courts under the county's jurisdiction for which a  
5 public defender was assigned is determined by the most recent annual  
6 report of the courts of Washington, as published by the office of the  
7 administrator for the courts.

8 NEW SECTION. Sec. 4. A new section is added to chapter 10.101  
9 RCW to read as follows:

10 The office of public defense shall:

11 (1) Examine and make recommendations to reduce trial level public  
12 defense caseloads and backlogs;

13 (2) Require counties to report to the office of public defense  
14 the number of accused who are unrepresented because of a shortage of  
15 qualified lawyers;

16 (3) Make recommendations to increase retention of experienced  
17 public defenders in high-need counties; and

18 (4) Report findings and recommendations to the appropriate fiscal  
19 and policy committees of the legislature not later than December 1,  
20 2026.

21 NEW SECTION. Sec. 5. A new section is added to chapter 2.56 RCW  
22 to read as follows:

23 The office of the administrator for the courts shall collect data  
24 in a manner consistent with the responsibilities outlined in chapter  
25 2.68 RCW detailing the number of cases assigned a public defender and  
26 shall include in its annual report of the courts of Washington the  
27 total number of such cases in each county and city.

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