

SENATE BILL REPORT

SB 5780

As Reported by Senate Committee On:
Law & Justice, January 18, 2024

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

Brief Description: Expanding training opportunities for public defense. [**Revised for 1st Substitute:** Encouraging participation in public defense and prosecution professions.]

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, 1/18/24 [DPS-WM].

Brief Summary of First Substitute Bill

- Requires the Office of Public Defense (OPD) to administer a law student rural defense program and the Criminal Justice Training Commission (CJTC) to administer a law student rural prosecution program, placing law students or recent law school graduates as interns with experienced public defenders or prosecutors in underserved areas and rural areas of the state.
- Requires OPD to expand the capacity of its Criminal Defense Training Academy program to train practitioners who are new to public defense, and CJTC to provide trial skills training for practitioners who are new to prosecution.
- Establishes a Law School Repayment Program for public defenders and prosecutors.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5780 be substituted therefor, and the

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Padden, Ranking Member; Kuderer, Pedersen, Salomon, Torres, Valdez, Wagoner and Wilson, L..

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 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.

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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.

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*.

Shortages of Prosecuting Attorneys. The Washington Association of Prosecuting Attorneys (WAPA), a service organization which trains, supports, and advocates for prosecuting attorneys, reports a large increase in the number of unfilled positions in prosecutor's office positions since COVID, with one half of all offices posting open positions on the Association's employment website. The Legislature typically funds prosecutor training through the Criminal Justice Training Commission (CJTC), which is a state entity established in 1974 to establish standards and provide education and training to criminal justice professionals, emphasizing training and education for peace officers and corrections officers.

Summary of Bill (First Substitute): Provisions for Public Defenders. Subject to appropriations, OPD must administer a law student rural public 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 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.

Subject to appropriations, OPD must expand the capacity of its Criminal Defense Training Academy (Academy) program to train practitioners who are new to public defense. The Academy must prioritize training for practitioners in underserved areas and rural areas of the state. The Academy 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 Academy offerings to include training for public defense practitioners seeking to achieve advanced qualifications.

Provisions for Prosecutors. Subject to appropriations, CJTC must administer or contract with WAPA to administer a law student rural prosecution 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 with experienced prosecutors located in underserved areas and rural areas of the state. The program must allow interns to gain real-world prosecution experience under the mentorship of an experienced prosecutor, with the purpose of encouraging the intern to consider employment opportunities in prosecution 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.

Subject to appropriations, CJC must provide or contract with WAPA to provide trial skills training to train practitioners who are new to prosecution. The training must prioritize training for prosecutors in underserved areas and rural areas of the state. The training may incorporate in-person, remote, and recorded resources, must offer intensive trial skill development, provide training related to the ethical duties of prosecutors, and offer networking opportunities. By June 30, 2026, CJTC must expand the trial skills program to include training for prosecutors seeking to achieve advanced qualifications.

Law School Loan Repayment Program for Public Defenders and Prosecutors. The Department of Commerce (Commerce) must administer a law school loan repayment program for public defenders and prosecutors, which may be modeled on the John R. Justice Program except as specified in this legislation. Applicants must be attorneys licensed in Washington practicing full-time, meaning at least 30 hours a week, in public defense or as a prosecutor in Washington. Participants must make a commitment to maintain employment for at least three years in one or more public defense or prosecuting attorney positions, and fulfill that commitment within five years of entry into the program, unless the five-year period is extended for good cause by Commerce or the three-year

commitment is waived by Commerce based on family or medical circumstances which prevent the person's full-time employment as a public defender or prosecutor. A participant may receive up to \$20,000 per year in loan repayment assistance up to a lifetime cap of \$120,000. If the person fails to keep the three-year commitment, the person may be required to repay 75 percent, 50 percent, or 25 percent of the loan repayment assistance received, depending on the person's length of service in qualifying employment as a public defender or prosecutor in Washington.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute):

OPD must administer a law student rural public defense program. CJTC must administer or contract with WAPA to administer a law student rural public defense program and to provide trial skills training. A law school loan repayment program for public defenders and prosecutors is established at Commerce.

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 Original Bill: *The committee recommended a different version of the bill than what was heard.* 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.