

SENATE BILL REPORT

2SHB 1542

As Reported By Senate Committee On:
Judiciary, March 29, 2005
Ways & Means, April 4, 2005

Title: An act relating to indigent defense services.

Brief Description: Providing indigent defense services.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Lantz, Hinkle, Appleton, Rodne, Lovick, Newhouse, Buri, Darneille, Williams, McDermott, Clibborn, Schual-Berke, O'Brien, McIntire, Kagi, Hasegawa, Dickerson, Green, Kenney and Kilmer).

Brief History: Passed House: 3/11/05, 95-0.

Committee Activity: Judiciary: 3/24/05, 3/29/05 [DP-WM].

Ways & Means: 3/31/05, 4/4/05 [DP].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators Kline, Chair; Weinstein, Vice Chair; Johnson, Ranking Minority Member; Esser, Rasmussen and Thibaudeau.

Staff: Lidia Mori (786-7755)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

Signed by Senators Prentice, Chair; Doumit, Vice Chair; Fraser, Vice Chair; Zarelli, Ranking Minority Member; Brandland, Kohl-Welles, Parlette, Pflug, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler and Thibaudeau.

Staff: Chelsea Buchanan (786-7446)

Background: Both the federal and state constitutions contain guarantees of the right to legal representation for an accused person in a criminal prosecution. Court decisions at both the federal and state levels have construed these provisions to require public funding of indigent legal representation in criminal prosecutions in which the accused's liberty is at stake. Statutes and court decisions have also extended the right to publicly funded counsel to other cases, such as involuntary commitments, dependencies, and juvenile cases. The right also attaches to criminal appeals, and special rules apply in capital punishment cases.

Generally, the funding of trial-level indigent defense costs are a local responsibility. Counties and cities are required to adopt standards for the delivery of public defense services. The

standards endorsed by the state Bar Association may serve as guidelines for the counties and cities.

A variety of delivery methods are used for public defense services. Some local jurisdictions provide indigent defense services through their own public defense agencies. Other jurisdictions contract with private non-profit agencies or with individual law firms or attorneys. Still others assign counsel on a case-by-case basis from lists of available attorneys.

State funding for public defense occurs at the appellate level and in certain extraordinary cases. The Office of Public Defense (OPD) was created in 1996 to administer state-funded indigent defense services for criminal appeals. The OPD also processes requests from counties to the Legislature for reimbursement for "extraordinary criminal justice costs," including indigent defense costs associated with aggravated murder cases.

In 2003, the Board of Governors of the state Bar Association appointed a Blue Ribbon Panel on Criminal Defense. The panel was created in response to concerns about the delivery of indigent defense services. The panel was directed to develop recommendations for the Board of Governors regarding various aspects of indigent defense services.

Summary of Bill: A mechanism is established for providing state funding of local indigent defense services.

The OPD is to disburse appropriated funds to eligible cities and counties for public defense services. Local jurisdictions may apply for funds if they meet certain requirements, including requiring public defenders to get annual training approved by the OPD. Applicants must also report financial and caseload information on public defense services for the previous year. Individuals and entities that contract with local jurisdictions to provide public defense services must report to the local jurisdiction hours they have billed for nonpublic defense legal services.

If a local jurisdiction receives funds from the OPD, it must document that it is meeting the standards of the Bar Association or making "appreciable demonstrable improvements" in services, including:

- 1) the service delivery standards which cities and counties are required to adopt, and for which the Bar Association standards should serve as a guideline;
- 2) requiring training for public defense attorneys;
- 3) with respect to counties only, requiring specified enhanced training and experience for attorneys handling first or second degree murder cases, persistent offender cases, or any class A felony;
- 4) requiring contracts to address compensation for extraordinary cases; and
- 5) funding for the costs of expert witnesses and investigators.

If the OPD determines that a local jurisdiction receiving funds has not substantially complied with these requirements, the OPD may terminate funding. A determination to terminate funding is appealable to the OPD Advisory Board, whose decision is final.

Distribution from total available appropriated funds by the OPD is to be as follows:

- 1) 90 percent of the total goes to eligible counties;
 - a) 6 percent of which is divided equally among the eligible counties;
 - b) 94 percent of which is distributed as follows:

- i) 50 percent pro rata, based on county population; and
 - ii) 50 percent pro rata, based on county criminal filings.
- 2) 10 percent of the total goes to no more than five eligible cities as determined by the OPD based on grant applications.

If specific funding for the purposes of the bill are not provided by June 30, 2005 in the omnibus appropriations act, the entire bill is null and void.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Testimony For (Judiciary): The current state of indigent criminal services is a blot on our conscience. The Washington State Bar Association shares the dismay at the lack of provision of criminal defense services. This bill will make sure that basic criminal defense standards are followed by counties. They will go to great lengths to comply with the standards if they know they will be reimbursed with state money. This bill will go a long way towards improving indigent defense services and it sets up an efficient oversight mechanism.

Testimony Against (Judiciary): None.

Who Testified (Judiciary) PRO: Representative Pat Lantz; Joanne Moore, Office of Public Defense; Sally Harrison, Washington Defender Association; Washington Association of Criminal Defense Lawyers.

Testimony For (Ways & Means): The headlines show that the state has failed in its constitutional duty to provide effective legal counsel for indigent persons. This bill provides an incentive to counties to use standards for effective public defense. There is no funding specifically attached to this bill yet. Please keep the bill moving so that new funding for better public defense can be part of the final budget negotiations. The cost for the Office of Public Defense would be low to administer the funding to counties. A related policy item in the Senate budget for a pilot is also important, but is a different issue than this bill, which looks at statewide needs and standards. The counties are in full support of this bill.

Testimony Against (Ways & Means): None.

Who Testified (Ways & Means) PRO: Representative Pat Lantz, prime sponsor; Gail Stone, Washington State Bar Association; Joanne Moore, Office of Public Defense; Sophia Byrd and Tammy Fellin, Association of Counties.