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**HOUSE BILL 2012**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Representatives Koster and Volz

AN ACT Relating to state funding for indigent criminal defense services provided at the county and city level; amending RCW 82.14.310 and 82.14.320; creating a new section; repealing RCW 82.14.495 and 82.14.500; providing an effective date; and declaring an emergency.

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

NEW SECTION. **Sec.**  INTENT. The legislature finds that additional state funding is necessary to assist counties and cities in providing legal representation to indigent criminal defendants. To provide additional funding, the legislature intends to eliminate the streamlined sales tax mitigation program and redistribute an equivalent amount of funding through the county and municipal criminal justice assistance accounts for indigent criminal defense services.

**Sec.**  RCW 82.14.310 and 2013 2nd sp.s. c 4 s 1004 are each amended to read as follows:

COUNTY CRIMINAL JUSTICE ASSISTANCE ACCOUNT.

(1) The county criminal justice assistance account is created in the state treasury. Beginning in fiscal year 2000, the state treasurer must transfer into the county criminal justice assistance account from the general fund the sum of twenty-three million two hundred thousand dollars divided into four equal deposits occurring on July 1, October 1, January 1, and April 1. For each fiscal year thereafter, the state treasurer must increase the total transfer by the fiscal growth factor, as defined in RCW 43.135.025, forecast for that fiscal year by the office of financial management in November of the preceding year.

(2) The moneys deposited in the county criminal justice assistance account for distribution under subsection (1) of this section, less any moneys appropriated for purposes under subsection (4) of this section, must be distributed ((~~at such times as distributions are made under RCW 82.44.150~~)) during the same month the transfer occurs pursuant to subsection (1) of this section and on the relative basis of each county's funding factor as determined under this subsection.

(a) A county's funding factor is the sum of:

(i) The population of the county, divided by one thousand, and multiplied by two-tenths;

(ii) The crime rate of the county, multiplied by three-tenths; and

(iii) The annual number of criminal cases filed in the county superior court, for each one thousand in population, multiplied by five-tenths.

(b) Under this section and RCW 82.14.320 and 82.14.330:

(i) The population of the county or city is as last determined by the office of financial management;

(ii) The crime rate of the county or city is the annual occurrence of specified criminal offenses, as calculated in the most recent annual report on crime in Washington state as published by the Washington association of sheriffs and police chiefs, for each one thousand in population;

(iii) The annual number of criminal cases filed in the county superior court must be determined by the most recent annual report of the courts of Washington, as published by the administrative office of the courts;

(iv) Distributions and eligibility for distributions in the 1989-1991 biennium must be based on 1988 figures for both the crime rate as described under (b)(ii) of this subsection and the annual number of criminal cases that are filed as described under (b)(iii) of this subsection. Future distributions must be based on the most recent figures for both the crime rate as described under (b)(ii) of this subsection and the annual number of criminal cases that are filed as described under (b)(iii) of this subsection.

(3) Moneys distributed under subsection (1) of this section must be expended exclusively for criminal justice purposes and may not be used to replace or supplant existing funding. Criminal justice purposes are defined as activities that substantially assist the criminal justice system, which may include circumstances where ancillary benefit to the civil or juvenile justice system occurs, and which includes (a) domestic violence services such as those provided by domestic violence programs, community advocates, and legal advocates, as defined in RCW 70.123.020, and (b) during the 2001-2003 fiscal biennium, juvenile dispositional hearings relating to petitions for at-risk youth, truancy, and children in need of services. Existing funding for purposes of this subsection is defined as calendar year 1989 actual operating expenditures for criminal justice purposes. Calendar year 1989 actual operating expenditures for criminal justice purposes exclude the following: Expenditures for extraordinary events not likely to reoccur, changes in contract provisions for criminal justice services, beyond the control of the local jurisdiction receiving the services, and major nonrecurring capital expenditures.

(4) Not more than five percent of the funds deposited to the county criminal justice assistance account under subsection (1) of this section may be available for appropriations for enhancements to the state patrol crime laboratory system and the continuing costs related to these enhancements. Funds appropriated from this account for such enhancements may not supplant existing funds from the state general fund.

(5) ((~~During the 2011-2013 fiscal biennium, the amount that would otherwise be transferred into the county criminal justice assistance account from the general fund under subsection (1) of this section must be reduced by 3.4 percent.~~

~~(6) During the 2013-2015 fiscal biennium, for the purposes of substance abuse and other programs for offenders, the legislature may appropriate from the county criminal justice assistance account such amounts as are in excess of the amounts necessary to fully meet the state's obligations to the counties and to the Washington state patrol. Excess amounts in this account are not the result of subsection (5) of this section~~)) In addition to funding distributed pursuant to subsection (1) of this section, the state must allocate additional funding through the county criminal justice assistance account for purposes of county indigent criminal defense as provided in this subsection (5).

(a) Beginning in fiscal year 2018, the state treasurer must transfer into the county criminal justice assistance account from the general fund the sum of twenty million seven hundred thousand dollars divided into four equal deposits occurring on July 1st, October 1st, January 1st, and April 1st. For each fiscal year thereafter, the state treasurer must increase the total transfer by the fiscal growth factor, as defined in RCW 43.135.025, forecast for that fiscal year by the office of financial management in November of the preceding year.

(b) The treasurer must distribute this funding during the same month the transfer occurs pursuant to subsection (1) of this section to counties on the basis of each county's funding factor as determined under subsection (2) of this section.

(c) Counties may use funding distributed under this subsection (5) only for indigent criminal defense as "indigent" is defined in chapter 10.101 RCW.

(d) Funding provided under this subsection (5) must supplement, and may not supplant, existing state funding for county-level public defense, including but not limited to amounts appropriated to the office of public defense for distribution under chapter 10.101 RCW and funding allocated under subsection (1) of this section.

**Sec.**  RCW 82.14.320 and 2011 1st sp.s. c 50 s 971 are each amended to read as follows:

MUNICIPAL CRIMINAL JUSTICE ASSISTANCE ACCOUNT.

(1) The municipal criminal justice assistance account is created in the state treasury. Beginning in fiscal year 2000, the state treasurer must transfer into the municipal criminal justice assistance account for distribution under this ((~~section~~)) subsection (1) from the general fund the sum of four million six hundred thousand dollars divided into four equal deposits occurring on July 1, October 1, January 1, and April 1. For each fiscal year thereafter, the state treasurer must increase the total transfer by the fiscal growth factor, as defined in RCW 43.135.025, forecast for that fiscal year by the office of financial management in November of the preceding year.

(2) No city may receive a distribution under subsection (1) of this section from the municipal criminal justice assistance account unless:

(a) The city has a crime rate in excess of one hundred twenty-five percent of the statewide average as calculated in the most recent annual report on crime in Washington state as published by the Washington association of sheriffs and police chiefs;

(b) The city has levied the tax authorized in RCW 82.14.030(2) at the maximum rate or the tax authorized in RCW 82.46.010(3) at the maximum rate; and

(c) The city has a per capita yield from the tax imposed under RCW 82.14.030(1) at the maximum rate of less than one hundred fifty percent of the statewide average per capita yield for all cities from such local sales and use tax.

(3) The moneys deposited in the municipal criminal justice assistance account for distribution under subsection (1) of this section, less any moneys appropriated for purposes under subsection (7) of this section, must be distributed ((~~at such times as distributions are made under RCW 82.44.150~~)) during the same month the transfer occurs pursuant to subsection (1) of this section. The distributions under subsection (1) of this section must be made as follows:

(a) Unless reduced by this subsection, thirty percent of the moneys must be distributed ratably based on population as last determined by the office of financial management to those cities eligible under subsection (2) of this section that have a crime rate determined under subsection (2)(a) of this section which is greater than one hundred seventy-five percent of the statewide average crime rate. No city may receive more than fifty percent of any moneys distributed under this subsection (a) but, if a city distribution is reduced as a result of exceeding the fifty percent limitation, the amount not distributed must be distributed under (b) of this subsection.

(b) The remainder of the moneys, including any moneys not distributed in subsection (2)(a) of this section, must be distributed to all cities eligible under subsection (2) of this section ratably based on population as last determined by the office of financial management.

(4) No city may receive more than thirty percent of all moneys distributed under ((~~subsection~~)) subsections (1) through (3) of this section.

(5) Notwithstanding other provisions of this section, the distributions to any city that substantially decriminalizes or repeals its criminal code after July 1, 1990, and that does not reimburse the county for costs associated with criminal cases under RCW 3.50.800 or 3.50.805(2), must be made to the county in which the city is located.

(6) Moneys distributed under subsections (1) through (3) of this section must be expended exclusively for criminal justice purposes and may not be used to replace or supplant existing funding. Criminal justice purposes are defined as activities that substantially assist the criminal justice system, which may include circumstances where ancillary benefit to the civil justice system occurs, and which includes domestic violence services such as those provided by domestic violence programs, community advocates, and legal advocates, as defined in RCW 70.123.020, and publications and public educational efforts designed to provide information and assistance to parents in dealing with runaway or at-risk youth. Existing funding for purposes of this subsection is defined as calendar year 1989 actual operating expenditures for criminal justice purposes. Calendar year 1989 actual operating expenditures for criminal justice purposes exclude the following: Expenditures for extraordinary events not likely to reoccur, changes in contract provisions for criminal justice services, beyond the control of the local jurisdiction receiving the services, and major nonrecurring capital expenditures.

(7) Not more than five percent of the funds deposited to the municipal criminal justice assistance account may be available for appropriations for enhancements to the state patrol crime laboratory system and the continuing costs related to these enhancements. Funds appropriated from this account for such enhancements may not supplant existing funds from the state general fund.

(8) ((~~During the 2011-2013 fiscal biennium, the amount that would otherwise be transferred into the municipal criminal justice assistance account from the general fund under subsection (1) of this section must be reduced by 3.4 percent~~)) In addition to funding distributed pursuant to subsection (1) of this section and RCW 82.14.330, the state must allocate additional funding through the municipal criminal justice assistance account for purposes of municipal indigent criminal defense as provided in this subsection (8).

(a) Beginning in fiscal year 2018, the state treasurer must transfer into the municipal criminal justice assistance account from the general fund the sum of two million three hundred thousand dollars divided into four equal deposits occurring on July 1st, October 1st, January 1st, and April 1st. For each fiscal year thereafter, the state treasurer must increase the total transfer by the fiscal growth factor, as defined in RCW 43.135.025, forecast for that fiscal year by the office of financial management in November of the preceding year.

(b) The treasurer must distribute this funding quarterly to cities on the basis of the formula in subsection (3) of this section and subject to the conditions in subsections (2), (4), and (5) of this section.

(c) Cities may use funding distributed under this subsection (8) only for indigent criminal defense as "indigent" is defined in chapter 10.101 RCW.

(d) Funding provided under this subsection (8) must supplement, and may not supplant, existing state funding for city-level public defense, including but not limited to amounts appropriated to the office of public defense for distribution under chapter 10.101 RCW and funding allocated under subsection (1) of this section and RCW 82.14.330.

NEW SECTION. **Sec.**  STREAMLINED SALES TAX MITIGATION DISTRIBUTIONS REPEALED. The following acts or parts of acts are each repealed:

(1)RCW 82.14.495 (Streamlined sales and use tax mitigation account—Creation) and 2010 1st sp.s. c 37 s 952, 2009 c 4 s 907, & 2007 c 6 s 902; and

(2)RCW 82.14.500 (Streamlined sales and use tax mitigation account—Funding—Determination of losses) and 2011 1st sp.s. c 50 s 974 & 2007 c 6 s 903.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2017.

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