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**HOUSE BILL 2420**

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**State of Washington 66th Legislature 2020 Regular Session**

**By** Representatives Irwin, Chapman, Thai, Goehner, Pollet, and Goodman

AN ACT Relating to assumption by the office of public defense of duties for the provision of trial court indigent defense services that have been provided by counties and cities; amending RCW 2.70.030, 39.34.180, and 43.330.190; adding a new section to chapter 10.101 RCW; adding a new section to chapter 2.70 RCW; creating a new section; repealing RCW 10.101.030, 10.101.050, 10.101.060, 10.101.070, 10.101.080, 36.26.010, 36.26.020, 36.26.030, 36.26.040, 36.26.050, 36.26.060, 36.26.070, 36.26.080, 36.26.090, and 36.26.900; and providing an effective date.

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

NEW SECTION. **Sec.**  FINDINGS AND INTENT. (1) The legislature finds that:

The right to effective assistance of counsel, as guaranteed by the Sixth amendment to the United States Constitution and Article I, section 22 of the Washington state Constitution, protects the fundamental human rights of life and liberty in criminal proceedings. Recognizing that the right to counsel is critically important in ensuring meaningful access to justice and should not depend on the financial resources of the accused, the United States supreme court in *Gideon v. Wainwright* established a categorical federal constitutional right to court-appointed counsel for indigent defendants in criminal prosecutions and made that right obligatory upon the states. Under *Gideon v. Wainwright*, an indigent criminal defendant's right to counsel is a positive right imposing an affirmative obligation on the state to provide counsel for criminal defendants who cannot afford such services themselves.

The state currently delegates the majority of indigent defense functions to counties and cities. However, the state has not provided dependable and regular state funding sources sufficient to enable counties and cities across the state to provide constitutionally adequate and equitable trial court indigent defense services in addition to the other critical services they must provide for their residents. The limited discretionary grant funds and delegated taxing authority currently available to counties and cities are insufficient to cover the rising costs of trial court indigent defense. Moreover, due to state limits on county taxing authority, counties are unable to raise additional revenue sufficient to cover these costs.

The state's system of delegating trial court indigent defense functions to counties and cities without providing adequate funding from dependable and regular state sources denies indigent defendants equal access to justice. The resources available for trial court indigent defense functions like representation and investigation vary across county and city lines due to disparities in counties' and cities' ability to raise funds through taxation and differences between counties and cities in the prioritization and use of such funds when raised. As a result, outcomes may differ based solely on where indigent defendants are charged. Thus, the current system perpetuates inequities in the provision and funding of indigent defense services across the state.

The state's ultimate responsibility for providing a constitutionally adequate and uniform system of indigent defense cannot be shifted to local governments. It is time the state fulfilled its commitment to equal access to justice as required under the United States Constitution and the Washington state Constitution.

(2) Therefore, to ensure that the state meets its affirmative and nondelegable obligation, this act would require the state office of public defense to assume all powers, duties, and functions pertaining to indigent defense that resided with the counties and cities prior to the effective date of this section.

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

The office of public defense is responsible for the provision of all indigent defense arising under this chapter.

NEW SECTION. **Sec.**  A new section is added to chapter 2.70 RCW to read as follows:

(1) The office of public defense shall assume all powers, duties, and functions pertaining to indigent defense that prior to the effective date of this section resided with or were performed by counties or cities.

(2) The office of public defense may request any written materials in the possession of counties or cities pertaining to the powers, functions, and duties assumed, which shall be delivered to the custody of the office of public defense. Materials may be transferred either electronically or in hard copy, or both, as agreed by the office of public defense and each county or city.

(3) Employees of counties and cities engaged in performing the powers, functions, and duties assumed shall become employees of the office of public defense with the consent of any such employee. The office of public defense shall adopt procedures to facilitate the orderly transition of such employees, including providing for the transition of retirement and other benefits.

(4) All rules and all pending business before the courts of this state pertaining to the powers, functions, and duties assumed shall be continued and acted upon by the office of public defense. All existing county and city contracts with third parties pertaining to the powers, functions, and duties assumed, including but not limited to existing contracts with nonprofit or other indigent defense organizations and collective bargaining agreements, shall be assigned to the office of public defense to the extent assignable. The office of public defense shall thereafter contract directly with third parties to the extent necessary to comply with this act.

(5) If implementation of office of public defense contracts would result in the substitution of counsel within one hundred eighty days of a scheduled trial date, the director of the office of public defense may continue defense services with existing counsel to facilitate continuity of effective representation and avoid further continuance of a trial. When existing counsel is maintained, payment to complete the trial shall be prorated based on standard contract fees established by the office of public defense under RCW 2.70.025 and, at the director's discretion, may include extraordinary compensation based on attorney documentation.

(6) Nothing contained in this section may be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement until the agreement has expired or until the bargaining unit has been modified by action of the personnel board as provided by law.

**Sec.**  RCW 2.70.030 and 2008 c 313 s 5 are each amended to read as follows:

(1) There is created an advisory committee consisting of the following members:

(a) Three persons appointed by the chief justice of the supreme court, who shall also appoint the chair of the committee;

(b) Two nonattorneys appointed by the governor;

(c) Two senators, one from each of the two largest caucuses, appointed by the president of the senate; and two members of the house of representatives, one from each of the two largest caucuses, appointed by the speaker of the house of representatives;

(d) One person appointed by the court of appeals executive committee;

(e) One person appointed by the Washington state bar association;

(f) One person appointed by the Washington state association of counties; and

(g) One person appointed by the association of Washington cities.

(2) During the term of his or her appointment, no appointee may: (a) Provide indigent defense services funded by ((~~a city, a county, or~~)) the state, except on a pro bono basis; (b) serve as a judge except on a pro tem basis or as a court employee; or (c) serve as a prosecutor or prosecutor employee.

(3) Members of the advisory committee shall receive no compensation for their services as members of the committee, but may be reimbursed for travel and other expenses in accordance with state law.

(4) The advisory committee shall:

(a) Meet at least quarterly;

(b) Review at least biennially the performance of the director, and submit each review to the chief justice of the supreme court;

(c) Receive reports from the director;

(d) Make policy recommendations, as appropriate, to the legislature and the supreme court;

(e) Approve the office's budget requests;

(f) Advise the director regarding administration and oversight of the office's program areas; and

(g) Carry out other duties as authorized or required by law.

**Sec.**  RCW 39.34.180 and 2001 c 68 s 4 are each amended to read as follows:

(1) The state is responsible for providing a constitutionally adequate and uniform system of indigent defense for misdemeanor and gross misdemeanor offenses committed by adults in the state, whether referred by a state, county, city, or town law enforcement agency and whether filed under state law or city ordinance.

(2) Each county, city, and town is responsible for the prosecution, adjudication, sentencing, and incarceration of misdemeanor and gross misdemeanor offenses committed by adults in their respective jurisdictions, and referred from their respective law enforcement agencies, whether filed under state law or city ordinance, and must carry out these responsibilities through the use of their own courts, staff, and facilities, or by entering into contracts or interlocal agreements under this chapter to provide these services. Nothing in this section is intended to alter the statutory responsibilities of each county for the prosecution, adjudication, sentencing, and incarceration for not more than one year of felony offenders, nor shall this section apply to any offense initially filed by the prosecuting attorney as a felony offense or an attempt to commit a felony offense.

((~~(2)~~)) (3) The following principles must be followed in negotiating interlocal agreements or contracts: Cities and counties must consider (a) anticipated costs of services; and (b) anticipated and potential revenues to fund the services, including fines and fees, criminal justice funding, and state-authorized sales tax funding levied for criminal justice purposes.

((~~(3)~~)) (4) If an agreement as to the levels of compensation within an interlocal agreement or contract for gross misdemeanor and misdemeanor services cannot be reached between a city and county, then either party may invoke binding arbitration on the compensation issued by notice to the other party. In the case of establishing initial compensation, the notice shall request arbitration within thirty days. In the case of nonrenewal of an existing contract or interlocal agreement, the notice must be given one hundred twenty days prior to the expiration of the existing contract or agreement and the existing contract or agreement remains in effect until a new agreement is reached or until an arbitration award on the matter of fees is made. The city and county each select one arbitrator, and the initial two arbitrators pick a third arbitrator.

((~~(4)~~)) (5) A city or county that wishes to terminate an agreement for the provision of court services must provide written notice of the intent to terminate the agreement in accordance with RCW 3.50.810 and 35.20.010.

((~~(5)~~)) (6) For cities or towns that have not adopted, in whole or in part, criminal code or ordinance provisions related to misdemeanor and gross misdemeanor crimes as defined by state law, this section shall have no application until July 1, 1998.

**Sec.**  RCW 43.330.190 and 1999 c 303 s 1 are each amended to read as follows:

Counties may submit a petition for relief to the office of public defense for reimbursement of extraordinary criminal justice costs. Extraordinary criminal justice costs are defined as those associated with investigation, prosecution, ((~~indigent defense,~~)) jury impanelment, expert witnesses, interpreters, incarceration, and other adjudication costs of aggravated murder cases.

(1) The office of public defense, in consultation with the Washington association of prosecuting attorneys and the Washington association of sheriffs and police chiefs, shall develop procedures for processing the petitions, for auditing the veracity of the petitions, and for prioritizing the petitions. Prioritization of the petitions shall be based on, but not limited to, such factors as disproportionate fiscal impact relative to the county budget, efficient use of resources, and whether the costs are extraordinary and could not be reasonably accommodated and anticipated in the normal budget process.

(2) Before January 1st of each year, the office of public defense, in consultation with the Washington association of prosecuting attorneys and the Washington association of sheriffs and police chiefs, shall develop and submit to the appropriate fiscal committees of the senate and house of representatives a prioritized list of submitted petitions that are recommended for funding by the legislature.

NEW SECTION. **Sec.**  The following acts or parts of acts are each repealed:

(1)RCW 10.101.030 (Standards) and 2005 c 157 s 2 & 1989 c 409 s 4;

(2)RCW 10.101.050 (Appropriated funds—Application, reports) and 2005 c 157 s 3;

(3)RCW 10.101.060 (Appropriated funds—Use requirements) and 2005 c 157 s 4;

(4)RCW 10.101.070 (County moneys) and 2005 c 157 s 5;

(5)RCW 10.101.080 (City moneys) and 2007 c 59 s 1 & 2005 c 157 s 6;

(6)RCW 36.26.010 (Definitions) and 1969 c 94 s 1;

(7)RCW 36.26.020 (Public defender district—Creation—Office of public defender) and 1969 c 94 s 2;

(8)RCW 36.26.030 (Selection committee) and 1969 c 94 s 3;

(9)RCW 36.26.040 (Public defender—Qualifications—Term) and 1969 c 94 s 4;

(10)RCW 36.26.050 (Reports—Records—Costs and expenses) and 2009 c 549 s 4041 & 1969 c 94 s 5;

(11)RCW 36.26.060 (Compensation—Office—Assistants, clerks, investigators, etc) and 2009 c 549 s 4042 & 1969 c 94 s 6;

(12)RCW 36.26.070 (Duty to represent indigent defendants) and 2009 c 549 s 4043, 1984 c 76 s 18, & 1969 c 94 s 7;

(13)RCW 36.26.080 (Duty to counsel, defend, and prosecute appeals) and 2009 c 549 s 4044 & 1969 c 94 s 8;

(14)RCW 36.26.090 (Appointment of attorney other than public defender) and 1984 c 76 s 19, 1983 c 3 s 76, & 1969 c 94 s 9; and

(15)RCW 36.26.900 (Chapter cumulative and nonexclusive) and 1969 c 94 s 10.

NEW SECTION. **Sec.**  This act takes effect July 1, 2021.

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