

HOUSE BILL REPORT

HB 1911

As Reported by House Committee On:
Civil Rights & Judiciary

Title: An act relating to activities in which the office of public defense may engage without violating the prohibition on providing direct representation of clients.

Brief Description: Concerning activities in which the office of public defense may engage without violating the prohibition on providing direct representation of clients.

Sponsors: Representatives Taylor, Cheney, Ortiz-Self, Reed, Simmons, Ormsby, Reeves, Fosse and Davis; by request of Office of Public Defense.

Brief History:

Committee Activity:

Civil Rights & Judiciary: 1/10/24, 1/19/24 [DPS].

Brief Summary of Substitute Bill

- Specifies three activities in which the Office of Public Defense may engage without violating the prohibition on direct representation of clients.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Taylor, Chair; Farivar, Vice Chair; Walsh, Ranking Minority Member; Graham, Assistant Ranking Minority Member; Cheney, Entenman, Goodman, Peterson, Thai and Walen.

Staff: Carter Gale (786-7290) and Yelena Baker (786-7301).

Background:

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.

The Office of Public Defense (OPD) is a judicial branch agency established to implement the constitutional and statutory guarantees of counsel and to deliver indigent defense services funded by the state. The OPD is prohibited from providing direct representation of clients and instead administers state-funded services. The OPD contracts with attorneys, local governments, and law firms to provide representation of indigent client appeals, indigent parents in dependency cases, persons committed as sexually violent predators, and initial consultations for youth who are stopped or arrested by law enforcement.

Summary of Substitute Bill:

The OPD is permitted to engage in the following activities without violating the prohibition on direct representation of clients:

- Managing and supervising OPD attorneys who meet applicable qualifications may provide limited, short-term coverage for initial telephonic or video consultation services when OPD contracted counsel is unavailable.
- The OPD may facilitate and supervise placement of clerks, externs, and interns with OPD contracted counsel.
- The OPD employees may provide pro bono legal services in a manner consistent with the rules of professional conduct and applicable OPD policies. The OPD policies must include a requirement that OPD employees providing pro bono legal services obtain a signed, written statement by any pro bono client acknowledging that the services are provided by the employee in the employee's personal capacity and that the State of Washington may not be held liable for claims arising from the provided services. The OPD must retain the written statements in a manner consistent with records relating to potential conflicts of interest.

Substitute Bill Compared to Original Bill:

The substitute bill allows the OPD to facilitate the placement of law clerks, externs, and interns with the OPD contract counsel without coordinating with law schools. The substitute bill also adds the requirement that the OPD employees providing pro bono legal services obtain a signed, written statement from any pro bono client acknowledging that the services are provided by the employee in the employee's personal capacity and that the State of Washington may not be held liable for claims arising from the provided services. The OPD must retain these written statements in a manner consistent with records relating to potential conflicts of interest.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) There are significant complications with providing constitutionally mandated public defense services in Washington. The recent Blake decision will also increase demand for public defense services. The OPD identified the activities in House Bill 1911 to address these concerns. This is not about the OPD taking on the duties of contracted attorneys or local public defense services, but it will lead to a higher standard of representation. Allowing the OPD attorneys to step in for emergency situations and when contracted attorneys are unavailable would increase the reliability of the consultation services the office provides. This bill will also improve retention and morale within the OPD. Many attorneys start their journey in direct service, and as they move to the OPD many want to continue being able to do that type of work. It also improves the knowledge of OPD employees, who would now be able to work closer with indigent clients and see the challenges that contracting attorneys may have.

Allowing the OPD to facilitate placing clerks, externs, and interns with public defense attorneys would provide needed infrastructure to marshal human resources and provide high quality and consistent training. Rural communities particularly have difficulty meeting the demand for public defense due to a lack of resources and attracting young attorneys and law students. Allowing the OPD to facilitate placement would create opportunities for standardized trainings across the state, and to direct more people to communities with higher need.

(Opposed) None.

Persons Testifying: Representative Jamila Taylor, prime sponsor; Larry Jefferson, Washington State Office of Public Defense; and Rachel Cortez, Washington Defenders Association.

Persons Signed In To Testify But Not Testifying: None.