Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Civil Rights & Judiciary Committee

HB 1592

Brief Description: Concerning public defense services.

Sponsors: Representatives Peterson, Low, Goodman, Nance, Parshley, Taylor, Ortiz-Self, Rude, Duerr, Richards, Steele, Barnard, Farivar, Simmons, Zahn, Timmons, Doglio, Pollet and Reed.

Brief Summary of Bill

- Reallocates funding responsibility for public defense services between the state and local governments based on a five-year average of the actual expenditures paid for by eligible counties.
- Provides that the state is responsible for 50 percent of the five-year average and for all public defense services costs that exceed the five-year average.
- Specifies permitted uses for any county funds supplanted by the reallocation of funding responsibility.
- Permits certain counties to request that the Office of Public Defense provides all or a portion of the public defense services in the county.

Hearing Date: 2/4/25

Staff: Yelena Baker (786-7301).

Background:

The Office of Public Defense and Public Defense Services Generally.
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

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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.

Counties and cities are responsible for administering all other trial level representation of indigent people, including in felony and misdemeanor cases. 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 nonprofit agencies or with individual law firms or attorneys or assign counsel on a case-by-case basis from lists of available attorneys. Some jurisdictions may use combinations of these delivery systems.

Funding Responsibility for Public Defense Services.
In Washington, trial-level indigent defense services are funded almost entirely by local jurisdictions.

Subject to the availability of appropriated funds, the OPD disburses to counties and cities funds and grants for the purpose of improving the quality of public defense services. Ten percent of the appropriated funds is designated as "city moneys" and distributed by the OPD through a grant program to eligible cities. The remaining 90 percent of the appropriated funds is designated as "county moneys" and distributed to eligible counties.

Pro Rata Formula for Distribution of County Moneys.
The county moneys are distributed among the eligible counties, with six percent distributed as base allocation among all eligible counties and 94 percent distributed as follows:

- 50 percent on a pro rata basis based on each eligible county's population; and
- 50 percent on a pro rata basis based on the annual number of criminal cases filed in an eligible county's superior court.

Eligibility Criteria for Counties and Cities.
In order to receive funds, each applying county or city must:

- require its public defense attorneys to attend OPD-approved training at least once per calendar year;
- report to the OPD all public defense expenditures in the previous calendar year, as well as case statistics for that year; and
- provide to the OPD a copy of each current public defense contract with the city's application.

In addition, each individual or organization that contracts to perform public defense services for a county or city must report to the county or city hours billed for nonpublic defense legal services in the previous calendar year, including number and types of private cases.

Requirement to Meet Certain Standards when Receiving State Funds.
If a county or city receives state funds from the OPD, the county or city must document that is it meeting the Washington State Bar Association standards for the provision of indigent defense services or that it is making appreciable, demonstrable improvements in the delivery of public defense services, including:

- adopting by ordinance a legal representation plan that addresses statutorily specified factors;
- requiring public defense attorneys to attend training;
- requiring attorneys who handle the most serious cases to meet specified qualifications;
- requiring contracts to address compensation for extraordinary cases; and
- identifying funding for the costs of expert witnesses and investigators.

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

Other States' Approaches to Overseeing and Funding Indigent Public Defense Services.
A 2017 report from the Sixth Amendment Center found that there is a wide range of approaches to state oversight and funding of public defense services. With regard to oversight, in 21 states public defender services are regulated by commissions at the state level, 13 states regulate only certain aspects of public defender service, and 16 states provide no direct oversight. With regard to funding, 27 states fully fund public defense services, 11 states provide some of the cost of funding public defense services, and 12 states provide minimal or no funding.

Summary of Bill:

Reallocation of Funding Responsibility for Public Defense Services.
Beginning in fiscal year (FY) 2026, funding responsibility for public defense services is reallocated between the state and local governments in the following manner:

- the state is responsible for 50 percent of the cost of public defense services based on an average of the actual expenditures for public defense services paid for by eligible counties for the five years looking back from FY 2024 ("five-year average"); and
- the state is responsible for all public defense services costs that exceed the five-year average.

Beginning in FY 2026, instead of disbursing through the OPD state funds appropriated for the purpose of improving the quality of public defense services, the state must appropriate to the OPD the funds necessary to comply with the reallocation.

The proportion in which the appropriated funds are divided between eligible counties and cities is unchanged, with 10 percent going to cities and 90 percent to counties.

Pro Rata Formula for Distribution of County Moneys.
The 6 percent base allocation to eligible counties is removed, and instead all county moneys are

distributed among the eligible counties on the statutory pro rata basis, with 50 percent of the amount based on a county's population and 50 percent based on the annual number of criminal cases filed in a county's superior court.

Beginning in FY 2027, this distribution formula is modified so that the county moneys are distributed on a pro rata basis based on the annual number of cases for which a public defender was assigned and which are filed in courts under the eligible county's jurisdiction.

Eligibility Criteria for Counties.
Statutory eligibility criteria for counties are modified. In order to receive funds, each county must:

- report to the OPD all public defense expenditures in the previous calendar year;
- provide a copy of each current public defense contract to the OPD;
- require public defense lawyers to keep and report hours worked on each public defense case; and
- designate a public defense coordinator to serve as the primary contact between the county and the OPD.

In addition, the county must collect data of assigned and resolved cases and annually report the data to the OPD and the Washington State Bar Association (WSBA), together with the average number of billable attorney hours spent on resolved case of each type.

The OPD may create standards to determine the eligibility of counties and cities requesting funds.

Requirement to Meet Certain Standards when Receiving State Funds.
The requirement to meet WSBA standards or to make improvements in the delivery of public defense services is retained; the specific list of possible improvements is removed.

A clarification is added that a local government's documentation regarding meeting the standards or making improvements must be provided to the OPD annually.

Provisions related to possible termination of state funding are removed. The appropriated funds must be distributed to each county and city determined to be eligible by the OPD.

The OPD must monitor trial level public defense services to determine eligibility of counties and cities to request state funds and create data collection criteria and report forms to ensure consistent statewide data and application.

Permitted Uses for County Funds Supplanted by the Reallocation of Funding Responsibility.
Any county funds previously spent on public defense costs and supplanted by the reallocation of funding responsibility may be used only for the following activities:

- pretrial and precharge diversion programs;
- alternatives to incarceration;

- reentry services;
- administrative expenditures related to the provision of public defense services, such as office space and information technology;
- behavioral health facilities and services;
- costs of developing affordable and supportive housing; and
- other activities as approved by the OPD.

Option to Request that the Office of Public Defense Provide Services.
Any county with a population density of less than 50 persons per square mile may request the OPD to assume responsibility for providing all or a portion of the public defense services for defendants in a court under the county's jurisdiction.

If the OPD accepts a county's request, the county's pro rata share of state funding is retained by the OPD for the purposes of delivering public defense services in the county. The county must contribute funds in an amount equal to its responsibility for public defense services toward the delivery of the services by the OPD within the county's jurisdiction.

Reporting Requirement for the Office of Public Defense.
The OPD must examine and make recommendations to:
- reduce trial level public defense caseloads and backlogs, and
- increase retention of experienced public defenders in high-need counties.

Additionally, the OPD must require counties to report to the OPD the number of accused who are unrepresented because of a shortage of qualified lawyers.

The OPD must report its findings and recommendations to the appropriate fiscal and policy committees of the Legislature by December 1, 2026.

Appropriation: None.

Fiscal Note: Requested on January 31, 2025.

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