

# HOUSE BILL REPORT

## HB 1592

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**As Reported by House Committee On:**  
Civil Rights & Judiciary

**Title:** An act relating to public defense services.

**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 History:**

**Committee Activity:**

Civil Rights & Judiciary: 2/4/25, 2/19/25 [DPS].

**Brief Summary of Substitute Bill**

- Reallocates funding responsibility for public defense services between the state and local governments.
- Provides that the state is responsible for: (1) 50 percent of the five-year average of public defense expenditures paid for by eligible cities and counties; and (2) all public defense services costs of eligible cities and counties in excess of the five-year average.
- Specifies permitted uses for any county funds supplanted by the reallocation of funding responsibility.
- Replaces the grants-based distribution of city moneys with a pro rata distribution formula.
- Permits certain counties to request that the Office of Public Defense provides all or a portion of the public defense services in the county.

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**HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY**

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*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.*

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Taylor, Chair; Farivar, Vice Chair; Entenman, Goodman, Peterson, Salahuddin, Thai and Walen.

**Minority Report:** Do not pass. Signed by 5 members: Representatives Walsh, Ranking Minority Member; Abell, Assistant Ranking Minority Member; Burnett, Graham and Jacobsen.

**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 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 are designated as "city moneys" and distributed by the OPD through a grant program to eligible cities. The remaining 90 percent of the appropriated funds are designated as "county moneys" and distributed to eligible counties.

*Grant Program for Distribution of County Moneys.*

The OPD administers a grant program to select the cities eligible to receive city moneys. Applying cities must conform to statutory eligibility criteria and meet certain standards when receiving state funds. The OPD determines the award of the grants based on the criteria established by the OPD after soliciting input from the Association of Washington

Cities.

*Pro Rata Formula for Distribution of County Moneys.*

The county moneys are distributed among the eligible counties, with 6 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 it is 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.

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### **Summary of Substitute 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 based on an average of the actual expenditures for public defense services paid for by eligible cities and counties for the five years looking back from FY 2024 (five-year average).

The state is responsible for:

- 50 percent of the five-year average of public defense costs paid for by eligible cities and counties; and
- all public defense services costs of eligible cities and counties in excess of 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.

#### *Pro Rata Formula for Distribution of City Moneys.*

The grant program for distribution of city moneys is eliminated. Instead, the OPD must distribute the city moneys to eligible cities on a pro rata basis based on the annual number of misdemeanor cases for which a public defender was assigned and which were filed in courts under a city's jurisdiction or in courts for which a city is financially responsible.

#### *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 cases 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 that the OPD 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.

**Substitute Bill Compared to Original Bill:**

The substitute bill requires the state to fund certain public defense costs of eligible cities in the same manner as the original bill requires the state to fund the public defense costs of eligible counties. Specifically, the state is responsible for 50 percent of the five-year average of public defense costs paid for by eligible cities and for all public defense costs of eligible cities in excess of the five-year average. The grants-based distribution of city moneys is replaced with a pro rata distribution based on the annual number of misdemeanor cases for which a public defender was assigned and which were filed in courts under a city's jurisdiction or in courts for which a city is financially responsible.

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**Appropriation:** None.

**Fiscal Note:** Preliminary 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) Washington currently ranks in the bottom 10 percent among all states in terms of how much state funding goes to support indigent public defense services. This is unconscionable from a policy perspective. For decades, the issue of funding public defense has united stakeholders across all dividing lines, and given its current course, this problem will crush local governments.

Public defense for indigent individuals is a core public service that is statutorily mandated

and delegated to counties across Washington. But the Legislature has neither provided the necessary funding nor granted counties the authority to generate revenue to meet this mission. Unlike cities and the state, counties have very limited revenue options, and the options the state grants to counties do not keep up with inflation and the growing cost of delivery of core public services.

This bill is the result of many months of collaboration and discussion and provides a possible roadmap for addressing the county and city public defense crisis. In addition to creating a funding mechanism, the bill adds requirements for data reporting and collection so that there is a better understanding of the work happening at the county and city level and the workload impact on the defense attorneys. The bill also requires each jurisdiction to have a public defense coordinator, which is an important role that many counties and cities lack.

Counties anticipate a big change in the caseload standards that would necessitate a significant increase in the number of public defenders that a county would need to hire and fund. This is a tremendous struggle even for medium-sized counties with relatively prosperous and rigorous local economies, so less advantaged communities will be completely crushed by this problem.

The delivery of public defense works differently in each county, and in some small counties there is just one contractor and a few on-call attorneys. The amount that small counties spend on public defense has doubled over the last couple of years. Combined with the problem of finding attorneys, especially in rural areas, some counties are in danger of not being able to provide these essential services adequately. This bill is a common sense solution that supports all 39 counties and provides even greater relief for smaller rural counties.

Indigent public defense involves working with people who are living in poverty, and often the crime is committed because of poverty. It will help in the long run to spend supplanted county funds to alleviate poverty and help people better reenter into society after jail. In addition to public defense attorneys, many counties need prosecutors, so counties would like more flexibility with regard to the permitted uses for the supplanted county funds.

The Legislature should consider adding cities to this proposal. Currently, the state provides only about a million dollars for cities in grants, and that funds about 30 jurisdictions a year. However, cities are responsible for 65 percent of the misdemeanor cases and 54 percent of criminal cases overall; half or more of these cases require public defenders.

(Opposed) None.

(Other) The cost to cities for providing public defense services is extraordinary and continues to grow, particularly as crimes are shifted from felony to misdemeanor. Cities support this legislation on the condition that cities benefit from it in the same manner as

counties do.

**Persons Testifying:** (In support) Representative Strom Peterson, prime sponsor; Candice Bock, Association of Washington Cities; Larry Jefferson, Director, Washington State Office of Public Defense; LaDon Linde, Yakima County Commissioner; Adam Fyall, Benton County; Derek Young, Washington State Association of Counties; Rob Coffman, Lincoln County; and Ryan Mello, Pierce County.

(Other) Pat Fitzpatrick, City of Kent, City Administrator.

**Persons Signed In To Testify But Not Testifying:** Molly Gilbert, KCDPD; Austin Field, King County DPD; Mark Ozias, Clallam County; Kevin Overbay, Chelan County; Megan Dunn, Snohomish County; Jorge Baron, King County; Ramona Brandes, Washington Defender Association and Washington Association of Criminal Defense Lawyers; and Bianca Siegl, City of Bellevue.