
Judiciary Committee

HB 1542

Title: An act relating to indigent defense services.

Brief Description: Providing indigent defense services.

Sponsors: Representatives Lantz, Hinkle, Appleton, Rodne, Lovick, Newhouse, Buri, Darneille, Williams, McDermott, Clibborn, Schual-Berke, O'Brien, McIntire, Kagi, Hasegawa, Dickerson, Green, Kenney and Kilmer.

Brief Summary of Bill

- Authorizes the Office of Public Defense to disburse appropriated funds to counties and cities for public defense services;
- Provides that 90 percent of those funds will go to eligible counties on a formula basis, and 10 percent will go to no more than five eligible cities on a grant basis; and
- Establishes standards for the delivery of public defense services.

Hearing Date: 2/9/05

Staff: Bill Perry (786-7123).

Background:

Both the federal and state constitutions contain guarantees of the right to legal representation for an accused person in a criminal prosecution. Court decisions at both the federal and state levels have construed these provisions to require public funding of indigent legal representation in criminal prosecutions in which the accused's liberty is at stake. Statutes and court decisions have also extended the right to publicly funded counsel to other cases, such as involuntary commitments, dependencies, and juvenile cases. The right also attaches to criminal appeals, and special rules apply in capital punishment cases.

The Washington statute on indigent defense declares that:

"...effective legal representation should be provided for indigent persons and persons who are indigent and able to contribute, consistent with the constitutional requirements of fairness, equal protection, and due process in all cases where the right to counsel attaches."

A determination of indigence is to be made for any person requesting the appointment of counsel in a criminal, juvenile, involuntary commitment, dependency, or other case in which the right to counsel attaches. The indigent defense services law defines an indigent person as one who:

- Receives public assistance in one of several enumerated forms; or
- Has been involuntarily committed to a public mental health facility; or
- Has an income of 125 percent or less of the federal poverty level; or
- Has insufficient available funds to retain counsel.

Most criminal defendants are found to be indigent within this definition and therefore eligible for legal representation at public expense. The court may determine that a person is indigent under this definition, but nevertheless able to contribute to the cost of his or her legal counsel. In such cases, the court is to require the person to make payments toward the cost of his or her legal representation.

Generally, the funding of trial-level indigent defense costs are a local responsibility.

Counties and cities are required to adopt standards for the delivery of public defense services. The local service delivery standards are to cover:

- Compensation, duties, training, qualifications, supervision, monitoring, and evaluation of counsel;
- Caseload limits;
- Expert witness fees and other costs;
- Administrative costs and support services;
- Limitations on private practice;
- Substitution of attorneys or assignment of contracts;
- Client complaints;
- Cause for termination of contracts or removal of attorneys; and
- Nondiscrimination.

The standards endorsed by the state bar association may serve as guidelines for the counties and cities.

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 non-profit agencies or with individual law firms or attorneys. Still others assign counsel on a case-by-case basis from lists of available attorneys. Some jurisdictions may use combinations of these delivery systems.

The Office of Public Defense (OPD) was created in 1996 to administer state-funded indigent defense services for criminal appeals. The OPD also processes requests from counties to the legislature for reimbursement for "extraordinary criminal justice costs," including indigent defense costs, associated with aggravated murder cases. The director of the OPD is appointed by the state supreme court. The director is supervised by an 11-member advisory with a chair and two other members appointed by the supreme court, one member appointed by the court of appeals, two by the governor, four by the legislature, and one by the bar association. The OPD is scheduled to sunset in 2009.

In 2003, the board of governors of the state bar association appointed a Blue Ribbon Panel on Criminal Defense. The panel was created in response to concerns about the delivery of indigent

defense services. The panel was directed to develop recommendations for the board of governors regarding various aspects of indigent defense services.

Summary of Bill:

A mechanism is established for providing state funding of local indigent defense services.

The OPD is to disburse appropriated funds to eligible cities and counties for public defense services. Local jurisdictions may apply for funds if they meet certain requirements, including requiring public defenders to get annual training approved by the OPD. Applicants must also report financial and caseload information on public defense services for the previous year. Individuals and entities that contract with local jurisdictions to provide public defense services must report to the local jurisdiction hours they have billed for nonpublic defense legal services.

If a local jurisdiction receives funds from the OPD, it must document that it is meeting or making "appreciable demonstrable improvements" toward meeting the standards of the bar association, including:

- The service delivery standards which cities and counties are required to adopt, and for which the bar association standards should serve as a guideline;
- Requiring training for public defense attorneys;
- With respect to counties only, requiring specified enhanced training and experience for attorneys handling first or second degree murder cases, persistent offender cases, or any class A felony;
- Requiring contracts to address compensation for extraordinary cases; and
- Funding for the costs of expert witnesses and investigators;

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

Distribution from total available appropriated funds by the OPD is to be as follows:

- 90 percent of the total goes to eligible counties:
 - 6 percent of which is divided equally among the eligible counties;
 - 94 percent of which is distributed as follows:
 - 50 percent pro rata, based on county population; and
 - 50 percent pro rata, based on county criminal filings; and
- 10 percent of the total goes to no more than five eligible cities as determined by the OPD based on grant applications.

Appropriation: None.

Fiscal Note: Requested on February 3, 2005.

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