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SENATE BILL 5773

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State of Washington

68th Legislature

2023 1st Special Session

By Senator Torres

1 AN ACT Relating to public defense services; amending RCW  
2 10.101.050 and 10.101.060; adding new sections to chapter 10.101 RCW;  
3 and repealing RCW 10.101.070 and 10.101.080.

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

5 **Sec. 1.** RCW 10.101.050 and 2005 c 157 s 3 are each amended to  
6 read as follows:

7 (1) The Washington state office of public defense shall disburse  
8 appropriated funds to counties and cities for the purpose of  
9 improving the quality of public defense services. ~~((Counties may  
10 apply for up to their pro rata share as set forth in RCW 10.101.060  
11 provided that counties conform to application procedures established  
12 by the office of public defense and improve the quality of services  
13 for both juveniles and adults. Cities may apply for moneys pursuant  
14 to the grant program set forth in RCW 10.101.080.))~~

15 (2) In order to receive appropriated funds under RCW 10.101.060,  
16 each ~~((applying))~~ county or city must ~~((require))~~;

17 (a) Require that attorneys providing public defense services  
18 attend training approved by the office of public defense at least  
19 once per calendar year ~~((. Each applying county or city shall  
20 report))~~;

1        (b) Report the expenditure for all public defense services in the  
2 previous calendar year, as well as case statistics for that year,  
3 including per attorney caseloads, and shall provide a copy of each  
4 current public defense contract to the office of public defense  
5 (~~with its application. Each individual or organization that~~  
6 ~~contracts to perform public defense services for a county or city~~  
7 ~~shall report to the county or city~~);

8        (c) Provide documentation that attorneys providing public defense  
9 services are in compliance with the Washington supreme court  
10 standards for indigent defense; and

11        (d) Collect hours billed for nonpublic defense legal services in  
12 the previous calendar year, including number and types of private  
13 cases, from each individual or organization that contracts to perform  
14 public defense services.

15        NEW SECTION.    **Sec. 2.** A new section is added to chapter 10.101  
16 RCW to read as follows:

17        (1) All funds appropriated for the cost of public defense  
18 services in cities and counties as specified in RCW 10.101.050 must  
19 be appropriated in the following manner:

20        (a) Beginning in fiscal year 2024, the state shall appropriate  
21 funds for not less than 10 percent of the cost of public defense  
22 services;

23        (b) In fiscal year 2025, the state shall appropriate funds for  
24 not less than 20 percent of the cost of public defense services;

25        (c) In fiscal year 2026, the state shall appropriate funds for  
26 not less than 30 percent of the cost of public defense services;

27        (d) In fiscal year 2027, the state shall appropriate funds for  
28 not less than 40 percent of the cost of public defense services;

29        (e) In fiscal year 2028 and thereafter, the state shall  
30 appropriate funds for not less than 50 percent of the cost of public  
31 defense services.

32        (2)(a) The office of public defense shall determine the cost of  
33 public defense services annually, based on an average of the actual  
34 expenditures for public defense services reported by counties and  
35 cities for the previous two years.

36        (b) Counties and cities shall annually provide information on the  
37 actual expenditures for public defense services to the office of  
38 public defense.

1       **Sec. 3.** RCW 10.101.060 and 2005 c 157 s 4 are each amended to  
2 read as follows:

3       (1) ~~((a))~~ Subject to the availability of funds appropriated for  
4 this purpose, the office of public defense shall disburse to  
5 ~~((applying))~~ all counties and cities that meet the requirements of  
6 ~~((RCW 10.101.050))~~ this chapter designated funds under this chapter  
7 on a pro rata basis pursuant to the formula set forth in ~~((RCW~~  
8 ~~10.101.070 and shall disburse to eligible cities, funds pursuant to~~  
9 ~~RCW 10.101.080))~~ subsection (3) of this section. Each fiscal year for  
10 which it receives state ~~((funds))~~ reimbursement under this chapter, a  
11 county or city must document to the office of public defense that it  
12 is meeting the standards for provision of indigent defense services  
13 as endorsed by the Washington state bar association ~~((or that the~~  
14 ~~funds received under this chapter have been used to make appreciable~~  
15 ~~demonstrable improvements in the delivery of public defense services,~~  
16 ~~including the following:~~

17       ~~(i) Adoption by ordinance of a legal representation plan that~~  
18 ~~addresses the factors in RCW 10.101.030. The plan must apply to any~~  
19 ~~contract or agency providing indigent defense services for the county~~  
20 ~~or city;~~

21       ~~(ii) Requiring attorneys who provide public defense services to~~  
22 ~~attend training under RCW 10.101.050;~~

23       ~~(iii) Requiring attorneys who handle the most serious cases to~~  
24 ~~meet specified qualifications as set forth in the Washington state~~  
25 ~~bar association endorsed standards for public defense services or~~  
26 ~~participate in at least one case consultation per case with office of~~  
27 ~~public defense resource attorneys who are so qualified. The most~~  
28 ~~serious cases include all cases of murder in the first or second~~  
29 ~~degree, persistent offender cases, and class A felonies. This~~  
30 ~~subsection (1)(a)(iii) does not apply to cities receiving funds under~~  
31 ~~RCW 10.101.050 through 10.101.080;~~

32       ~~(iv) Requiring contracts to address the subject of compensation~~  
33 ~~for extraordinary cases;~~

34       ~~(v) Identifying funding specifically for the purpose of paying~~  
35 ~~experts (A) for which public defense attorneys may file ex parte~~  
36 ~~motions, or (B) which should be specifically designated within a~~  
37 ~~public defender agency budget;~~

38       ~~(vi) Identifying funding specifically for the purpose of paying~~  
39 ~~investigators (A) for which public defense attorneys may file ex~~

1 ~~parte motions, and (B) which should be specifically designated within~~  
2 ~~a public defender agency budget.~~

3 ~~(b) The cost of providing counsel in cases where there is a~~  
4 ~~conflict of interest shall not be borne by the attorney or agency who~~  
5 ~~has the conflict)).~~

6 (2) The office of public defense shall monitor trial level  
7 criminal public defense services to determine eligibility of counties  
8 and cities to receive state funds under this chapter. If a  
9 determination is made that a county or city receiving state funds  
10 under this chapter did not substantially comply with this section,  
11 the office of public defense shall notify the county or city of the  
12 failure to comply and unless the county or city contacts the office  
13 of public defense and substantially corrects the deficiencies within  
14 ~~((ninety))~~ 90 days after the date of notice, or some other mutually  
15 agreed period of time, the county's or city's eligibility to continue  
16 receiving funds under this chapter is terminated. If an applying  
17 county or city disagrees with the determination of the office of  
18 public defense as to the county's or city's eligibility, the county  
19 or city may file an appeal with the advisory committee of the office  
20 of public defense within ~~((thirty))~~ 30 days of the eligibility  
21 determination. The decision of the advisory committee is final.

22 (3) (a) The moneys under RCW 10.101.050 shall be distributed to  
23 each county and city determined to be eligible under this section by  
24 the office of public defense.

25 (b) The office of public defense shall establish policies for the  
26 distribution of appropriated funds to eligible counties and cities.  
27 Such policies shall prioritize counties with the largest trial level  
28 criminal public defense services backlogs and most vacancies of  
29 public defenders.

30 NEW SECTION. Sec. 4. A new section is added to chapter 10.101  
31 RCW to read as follows:

32 The office of public defense shall:

33 (1) Examine and make recommendations to reduce trial level  
34 criminal public defense services caseloads and backlogs;

35 (2) Make recommendations to increase retention of experienced  
36 public defenders in high-need counties and cities; and

37 (3) Report findings and recommendations to the appropriate fiscal  
38 and policy committees of the legislature not later than December 1,  
39 2023.

1        NEW SECTION.    **Sec. 5.**    The following acts or parts of acts are  
2 each repealed:

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

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

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