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ENGROSSED SUBSTITUTE SENATE BILL 6442

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State of Washington

60th Legislature

2008 Regular Session

By Senate Judiciary (originally sponsored by Senators Regala, Stevens, Kline, Zarelli, Tom, Parlette, Hargrove, Swecker, Fraser, Pridemore, McDermott, and Kohl-Welles)

READ FIRST TIME 01/25/08.

1 AN ACT Relating to the office of public defense; amending RCW  
2 2.70.005, 2.70.010, 2.70.020, and 2.70.030; creating a new section; and  
3 repealing RCW 43.131.389 and 43.131.390.

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

5 NEW SECTION. **Sec. 1.** (1) The legislature finds that the office of  
6 public defense:

7 (a) Operates in an efficient and economical manner, with adequate  
8 cost controls in place;

9 (b) Meets established goals and targets; and

10 (c) Does not substantially duplicate services offered by other  
11 agencies or the private sector.

12 (2) Termination of the office of public defense would have  
13 substantial and wide-reaching ramifications on the court system in  
14 Washington state. The right to counsel is a constitutional right, and  
15 provision of counsel for indigent defendants is a government  
16 responsibility.

17 **Sec. 2.** RCW 2.70.005 and 1996 c 221 s 1 are each amended to read  
18 as follows:

1 In order to implement the constitutional and statutory guarantees  
2 of counsel and to ensure ((the)) effective and efficient delivery of  
3 ((the)) indigent ((appellate)) defense services funded by the state of  
4 Washington, an office of public defense is established as an  
5 independent agency of the judicial branch.

6 **Sec. 3.** RCW 2.70.010 and 1996 c 221 s 2 are each amended to read  
7 as follows:

8 The supreme court shall appoint the director of the office of  
9 public defense from a list of three names submitted by the advisory  
10 committee created under RCW 2.70.030. Qualifications shall include  
11 admission to the practice of law in this state for at least five years,  
12 experience in ((the representation of persons accused of a crime))  
13 providing indigent defense services, and proven managerial or  
14 supervisory experience. The director shall serve at the pleasure of  
15 the supreme court and receive a salary to be fixed by the advisory  
16 committee.

17 **Sec. 4.** RCW 2.70.020 and 1996 c 221 s 3 are each amended to read  
18 as follows:

19 The director((, under the supervision and direction of the advisory  
20 committee,)) shall:

21 (1) Administer all ((criminal appellate indigent defense)) state-  
22 funded services in the following program areas:

23 (a) Trial court criminal indigent defense, as provided in chapter  
24 10.101 RCW;

25 (b) Appellate indigent defense, as provided in this chapter;

26 (c) Representation of indigent parents qualified for appointed  
27 counsel in dependency and termination cases, as provided in RCW  
28 13.34.090 and 13.34.092;

29 (d) Extraordinary criminal justice cost petitions, as provided in  
30 RCW 43.330.190;

31 (e) Compilation of copies of DNA test requests by persons convicted  
32 of felonies, as provided in RCW 10.73.170;

33 (2) Submit a biennial budget for all costs related to ((state  
34 appellate indigent defense)) the office's program areas;

35 (3) Establish administrative procedures, standards, and guidelines

1 for the office's program areas, including ((a)) cost-efficient systems  
2 that provide((s)) for authorized recovery of costs;

3 (4) Provide oversight and technical assistance to ensure the  
4 effective and efficient delivery of services in the office's program  
5 areas;

6 (5) Recommend criteria and standards for determining and verifying  
7 indigency. In recommending criteria for determining indigency, the  
8 director shall compile and review the indigency standards used by other  
9 state agencies and shall periodically submit the compilation and report  
10 to the legislature on the appropriateness and consistency of such  
11 standards;

12 ((+5)) (6) Collect information regarding ((indigency cases))  
13 indigent defense services funded by the state and report annually to  
14 the advisory committee, the legislature, and the supreme court;

15 ((+6)) (7) Coordinate with the supreme court and the judges of  
16 each division of the court of appeals to determine how appellate  
17 attorney services should be provided.

18 The office of public defense shall not provide direct  
19 representation of clients.

20 **Sec. 5.** RCW 2.70.030 and 2005 c 111 s 1 are each amended to read  
21 as follows:

22 (1) There is created an advisory committee consisting of the  
23 following members:

24 (a) Three persons appointed by the chief justice of the supreme  
25 court, ((including the chair of the appellate indigent defense  
26 commission identified in subsection (3) of this section)) who shall  
27 also appoint the chair of the committee;

28 (b) Two nonattorneys appointed by the governor;

29 (c) Two senators, one from each of the two largest caucuses,  
30 appointed by the president of the senate; and two members of the house  
31 of representatives, one from each of the two largest caucuses,  
32 appointed by the speaker of the house of representatives;

33 (d) One person appointed by the court of appeals executive  
34 committee;

35 (e) One person appointed by the Washington state bar association;

36 (f) One person appointed by the Washington state association of  
37 counties;

1 (g) One person appointed by the association of Washington cities;

2 (h) One person appointed by the Washington association of  
3 prosecuting attorneys with significant prosecution experience,  
4 including assigning criminal caseloads and supervising deputy  
5 prosecuting attorneys; and

6 (i) One person appointed jointly by the Washington defender  
7 association and the Washington association of criminal defense lawyers  
8 with significant public defense experience.

9 (2) During the term of his or her appointment, no appointee may:

10 (a) Provide indigent defense services funded by a city, a county, or  
11 the state, except on a pro bono basis; (b) serve as ~~((an appellate))~~ a  
12 judge except on a pro tem basis or as ~~((an appellate))~~ a court  
13 employee; or (c) serve as a prosecutor or prosecutor employee.

14 (3) ~~((The initial advisory committee shall be comprised of the~~  
15 ~~current members of the appellate indigent defense commission, as~~  
16 ~~established by Supreme Court Order No. 25700 B, dated March 9, 1995,~~  
17 ~~plus two additional legislator members appointed under subsection~~  
18 ~~(1)(c) of this section. Members shall serve until the termination of~~  
19 ~~their current terms, and may be reappointed. The two additional~~  
20 ~~legislator members, who are not on the appellate indigent defense~~  
21 ~~commission, shall each serve three year terms.))~~ Members of the  
22 advisory committee shall receive no compensation for their services as  
23 members of the ~~((commission))~~ committee, but may be reimbursed for  
24 travel and other expenses in accordance with ~~((rules adopted by the~~  
25 ~~office of financial management))~~ state law.

26 (4) The advisory committee shall:

27 (a) Meet at least quarterly;

28 (b) Review at least biennially the performance of the director, and  
29 submit each review to the chief justice of the supreme court;

30 (c) Receive reports from the director;

31 (d) Make policy recommendations, as appropriate, to the legislature  
32 and the supreme court;

33 (e) Approve the office's budget requests;

34 (f) Advise the director regarding administration and oversight of  
35 the office's program areas; and

36 (g) Carry out other duties as authorized or required by law.

1        NEW SECTION.   **Sec. 6.**   The following acts or parts of acts are each  
2   repealed:

3        (1) RCW 43.131.389 (Office of public defense--Termination) and 1998  
4   c 108 s 2 & 1996 c 221 s 7; and

5        (2) RCW 43.131.390 (Office of public defense--Repeal) and 1998 c  
6   108 s 3 & 1996 c 221 s 8.

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