

Multiple Agency Fiscal Note Summary

Bill Number: 5020 SB	Title: Indigent defense
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Estimated Cash Receipts

NONE

Estimated Expenditures

NONE

Local Gov. Courts *									
Local Gov. Other **	Non-zero but indeterminate cost. Please see discussion.								
Local Gov. Total									

Estimated Capital Budget Impact

NONE

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* See Office of the Administrator for the Courts judicial fiscal note

** See local government fiscal note

Judicial Impact Fiscal Note

Bill Number: 5020 SB	Title: Indigent defense	Agency: 055-Admin Office of the Courts
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Part I: Estimates



No Fiscal Impact

The revenue and expenditure estimates on this page represent the most likely fiscal impact. Responsibility for expenditures may be subject to the provisions of RCW 43.135.060.

Check applicable boxes and follow corresponding instructions:

- ☐ If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- ☐ If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- ☐ Capital budget impact, complete Part IV.

Legislative Contact: Jessica Stevenson	Phone: 786-7465	Date: 01/15/2013
Agency Preparation: David Elliott	Phone: 360-705-5226	Date: 01/18/2013
Agency Approval: Dirk Marler	Phone: 360-705-5211	Date: 01/18/2013
OFM Review: David Dula	Phone: (360) 902-0547	Date: 01/18/2013

Request # defense-1

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact on the Courts

This bill would modify elements involved in determining eligibility for indigent defense.

Sections with potential court impact:

Section 1 would amend RCW 10.101.010 (3) to modify the definition of "indigent" by moving the language of (3) (d) into the definition and specifying circumstances in (3) (a, b, and c) as factors the court may consider when determining whether a person is indigent or indigent and able to contribute.

Section 2 would amend RCW 10.101.020 to modify the existing court determination of indigency to clarify the choice of "indigent" or "indigent and able to contribute" to their defense costs.

Section 2 (5) adds a requirement that a person that is indigent but able to contribute shall be required to contribute all of their available funds for the retention of counsel and specifies that the promissory note executed under existing statute will be "for that amount".

II. B - Cash Receipts Impact

There are no court cash receipts expected. Any reduction in defense costs or additional sums recovered may be reflected in the local government fiscal note.

II. C - Expenditures

Based on court input and analysis there may be some expenditure impacts resulting from the bill, depending on each court's process for determining indigency. The information required to make a determination of indigency is already collected under current law. The proposed changes remove the "bright line" indigency standard and provide factors judges may consider in determining each defendant's ability to pay some portion of their defense costs. This consideration may take some court time in some jurisdictions depending on local processes and procedures. Many courts have existing processes for evaluating indigency and making a recommendation to the court. Some courts may review a person's ability to pay as part of the initial proceedings in criminal cases. In these courts there may be additional judicial time required. Because of the varying processes throughout the state we cannot accurately estimate the judicial time impact.

Part III: Expenditure Detail

Part IV: Capital Budget Impact

SOURCES:

Judicial Input

Office of Public Defense

Individual State Agency Fiscal Note

Bill Number: 5020 SB	Title: Indigent defense	Agency: 056-Office of Public Defense
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Part I: Estimates

☒ No Fiscal Impact

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- ☐ If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- ☐ If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- ☐ Capital budget impact, complete Part IV.
- ☐ Requires new rule making, complete Part V.

Legislative Contact: Jessica Stevenson	Phone: 786-7465	Date: 01/15/2013
Agency Preparation: Joanne Moore	Phone: 360 956-2107	Date: 01/22/2013
Agency Approval: Sophia Byrd McSherry	Phone: 360-586-3164	Date: 01/22/2013
OFM Review: David Dula	Phone: (360) 902-0547	Date: 01/22/2013

Request # -1

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Briefly describe by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

There is no fiscal impact to the Washington State Office of Public Defense because all screening to determine if a person is eligible for a public defender occurs in the local trial court or local agency designated by the trial court.

II. B - Cash receipts Impact

Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

II. C - Expenditures

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.

Part III: Expenditure Detail

Part IV: Capital Budget Impact

NONE

Part V: New Rule Making Required

Identify provisions of the measure that require the agency to adopt new administrative rules or repeal/revise existing rules.

LOCAL GOVERNMENT FISCAL NOTE

Department of Community, Trade and Economic Development

Bill Number: 5020 SB	Title: Indigent defense
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Part I: Jurisdiction-Location, type or status of political subdivision defines range of fiscal impacts.

Legislation Impacts:

- ☒ Cities: Indeterminate expenditure decrease in court-appointed defense attorneys; indeterminate increase in expenditures for screeners to determine indigency
- ☒ Counties: Same as above
- ☐ Special Districts:
- ☐ Specific jurisdictions only:
- ☐ Variance occurs due to:

Part II: Estimates

- ☐ No fiscal impacts.
- ☐ Expenditures represent one-time costs:
- ☐ Legislation provides local option:
- ☒ Key variables cannot be estimated with certainty at this time: Processes city and county courts would adopt to screen defendants for indigency

Estimated revenue impacts to:

None

Estimated expenditure impacts to:

Indeterminate Impact

Part III: Preparation and Approval

Fiscal Note Analyst: Alice Zillah	Phone: 360-725-5035	Date: 01/29/2013
Leg. Committee Contact: Jessica Stevenson	Phone: 786-7465	Date: 01/15/2013
Agency Approval: Steve Salmi	Phone: (360) 725 5034	Date: 01/29/2013
OFM Review: David Dula	Phone: (360) 902-0547	Date: 01/30/2013

Part IV: Analysis

A. SUMMARY OF BILL

Provide a clear, succinct description of the bill with an emphasis on how it impacts local government.

Section 1 amends RCW 10.101.010 to modify the definition of indigent. Indigent is defined as being unable to pay the anticipated cost of counsel for the matter before the court because a person's available funds are insufficient to pay any amount for the retention of counsel. In determining whether a person is indigent or indigent and able to contribute, the court may consider whether the person is receiving public assistance, involuntarily committed to a mental health facility, or receiving an annual income of 125 percent or less of the current poverty level.

Section 2 amends RCW 10.101.020 in regards to a determination of "indigent and able to contribute." The court shall determine whether a person requesting counsel is indigent or indigent and able to contribute, and, if it's the latter, the person shall be required to contribute all of their available funds for the retention of counsel and execute a promissory note for that amount at the time counsel is appointed. Available funds means liquid assets (cash, savings accounts, equity in real estate, equity in vehicles, etc.) and disposable net monthly income.

B. SUMMARY OF EXPENDITURE IMPACTS

Briefly describe and quantify the expenditure impacts of the legislation on local governments, identifying the expenditure provisions by section number, and when appropriate, the detail of expenditures. Delineate between city, county and special district impacts.

The legislation would result in both reductions and increases in expenditures for cities and counties. The net impacts are indeterminate.

The bill would change the definition of indigent. If it is determined that a person is indigent and able to contribute, the person must contribute all of their available funds for the retention of counsel and execute a promissory note for the amount they are able to pay. The Local Government Fiscal Note Program (LGFN) assumes that the definition change would result in fewer people qualifying for the definition of indigent, although it is not possible to estimate the reduction. Cities and counties pay the majority of costs for court-appointed defense attorneys, whose budgets are also supplemented by grants from the Office of Public Defense (OPD).

The bill would likely result in cities and counties adopting a variety of means to determine whether a defendant's available funds are insufficient to pay any amount for the retention of counsel. Thirteen counties (Clark, Cowlitz, King, Kitsap, Klickitat, Mason, Pierce, San Juan, Skagit, Snohomish, Spokane, Walla Walla and Whatcom) handle the preliminary application process through court employees known as screeners. Most of these screeners have other duties as well; according to the OPD, they are jail staff, probation staff, or pretrial services staff, for example. In King County, screeners are employed by the King County Office of Public Defense, and in Skagit County, they are employees of the Office of Assigned Counsel. In Spokane, screeners work for Spokane County Pretrial Services. In 24 counties (Adams, Asotin, Benton, Chelan, Clallam, Columbia, Douglas, Garfield, Grant, Ferry, Franklin, Grays Harbor, Jefferson, Kittitas, Lincoln, Okanogan, Pacific, Pend Oreille, Skamania, Stevens, Thurston, Wahkiakum, Whitman and Yakima) the indigency determination process is handled directly by the courts.

LGFN assumes that some cities and counties may need to hire additional screeners to do the financial determinations required by the bill, which would be more complex and take longer than current practices. King County reported that the average annual salary and benefits of a screener ranged from \$62,000 to \$68,000. Skagit County reported the annual salary at \$33,000 without benefits. Because current practices are varied and it is not known how cities and counties would implement the requirements of the bill, the expenditure increases are indeterminate.

BACKGROUND

A 2007 report from the Office of Public Defense, "Update on Criteria and Standards for Determining and Verifying Indigency," found that indigency standards were being followed in counties across the state, and that the indigency statute, RCW 10.101 has largely been successful in establishing consistent standards and guidelines for courts. Washington's indigency rate for purposes of court-appointed counsel is consistent with national indigency rates. However, the report found that verification processes vary by court. Some counties hire employees to carry out verification inquiries regarding defendants' indigency applications; in many counties, verification inquiries are restricted to follow-up questions by the court. The study further found that Washington social services programs are governed by clear and detailed rules regarding eligibility and that these rules are being followed in the various programs administered by the Department of Social and Health Services and other state agencies.

On June 15, 2012, the Washington State Supreme Court adopted new Standards for Indigent Defense. Most notably, the new standards limit the number of cases public defenders should handle each year. The standards also address guidelines for administrative costs, limitations on private practice, qualifications of attorneys, appellate representation, and the use of legal interns. The caseload limits take effect on September 1, 2013, while the rest of the standards take effect on October 1, 2012.

C. SUMMARY OF REVENUE IMPACTS

Briefly describe and quantify the revenue impacts of the legislation on local governments, identifying the revenue provisions by section number, and when appropriate, the detail of revenue sources. Delineate between city, county and special district impacts.

The legislation would have no revenue impact for local government.

SOURCES:

Administrative Office of the Courts

Office of Public Defense

Skagit County

King County Office of Public Defense

Washington State Association of Counties