

# Multiple Agency Fiscal Note Summary

<b>Bill Number:</b> 2687 HB	<b>Title:</b> Public defense funding
-----------------------------	--------------------------------------

## Estimated Cash Receipts

NONE

Local Gov. Courts *					
Loc School dist-SPI					
Local Gov. Other **		20,942,948		104,714,742	188,486,535
Local Gov. Total		20,942,948		104,714,742	188,486,535

## Estimated Expenditures

Agency Name	2017-19			2019-21			2021-23		
	FTEs	GF-State	Total	FTEs	GF-State	Total	FTEs	GF-State	Total
Office of Public Defense	5.0	22,655,109	22,655,109	10.0	107,972,400	107,972,400	10.0	191,744,193	191,744,193
<b>Total</b>	<b>5.0</b>	<b>\$22,655,109</b>	<b>\$22,655,109</b>	<b>10.0</b>	<b>\$107,972,400</b>	<b>\$107,972,400</b>	<b>10.0</b>	<b>\$191,744,193</b>	<b>\$191,744,193</b>

Local Gov. Courts *									
Loc School dist-SPI									
Local Gov. Other **			20,942,948			104,714,742			188,486,535
Local Gov. Total			20,942,948			104,714,742			188,486,535

## Estimated Capital Budget Impact

NONE

<b>Prepared by:</b> Ramona Nabors, OFM	<b>Phone:</b> (360) 902-0547	<b>Date Published:</b> Final 1/27/2018
--	---------------------------------	---

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

\*\* See local government fiscal note

ENPID: 50334

FNS029 Multi Agency rollout

# Individual State Agency Fiscal Note

<b>Bill Number:</b> 2687 HB	<b>Title:</b> Public defense funding	<b>Agency:</b> 056-Office of Public Defense
-----------------------------	--------------------------------------	---

## Part I: Estimates

☐ No Fiscal Impact

### Estimated Cash Receipts to:

NONE

### Estimated Expenditures from:

	FY 2018	FY 2019	2017-19	2019-21	2021-23
FTE Staff Years	0.0	10.0	5.0	10.0	10.0
<b>Account</b>					
General Fund-State 001-1	0	22,655,109	22,655,109	107,972,400	191,744,193
<b>Total \$</b>	0	22,655,109	22,655,109	107,972,400	191,744,193

### Estimated Capital Budget Impact:

NONE

*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: Ingrid Lewis	Phone: 360-786-7289	Date: 01/18/2018
Agency Preparation: Sophia Byrd McSherry	Phone: 360-586-3164	Date: 01/23/2018
Agency Approval: Joanne Moore	Phone: 360 956-2107	Date: 01/23/2018
OFM Review: Ramona Nabors	Phone: (360) 902-0547	Date: 01/23/2018

## 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.*

HB 2687 would amend Chapter 10.101 RCW to provide for state reimbursement of public defense costs to counties and cities for the purpose of improving the quality of public defense services

Section 1 amends RCW 10.101.050 to direct the state Office of Public Defense (OPD) to disburse appropriated funds to counties and cities to improve the quality of public defense services. In order to receive state funding, counties and cities must require public defense attorneys to attend OPD-approved training, report to OPD the local expenditures and case statistics, provide documentation to OPD that local public defense attorneys are in compliance with Supreme Court Standards for Indigent Defense, and collect and submit to OPD information about contract attorneys' non-public defense work.

Section 2 is a new section establishing a payment schedule that phases in state reimbursement of public defense costs to counties and cities over 10 years. Beginning in Fiscal Year 2019, the state shall appropriate funds for not less than 10 percent of public defense costs, with state appropriations increasing by 10 percent per year and culminating in Fiscal Year 2028 with state appropriation for not less than 100 percent of the cost of public defense services.

Section 3 amends RCW 10.101.060 to require OPD to disburse appropriated funds to reimburse counties and cities that meet the requirements of Chapter 10.101 RCW. Each year for which it receives state reimbursement, a county or city must document compliance with indigent defense standards endorsed by the Washington State Bar Association. OPD shall monitor trial level criminal public defense services to determine eligibility of counties and cities to receive state funds. Counties and cities can appeal eligibility determinations to the OPD Advisory Committee. OPD shall establish policies for distribution of appropriated funds.

Section 4 repeals formulas for an existing grant program.

### 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.*

#### 1. Assumptions regarding county and city annual public defense expenditures

OPD currently distributes approximately \$6.8 million in state funding to counties and cities under the existing grant programs authorized in RCW 10.101.050 - 080. Each jurisdiction's grant application reports public defense expenditures for the previous budget year. (County and city budgets are based on a calendar year, not the state fiscal year.) The most current expenditure data is from 2016.

Counties: To derive an estimate of county expenditures that would qualify for reimbursement under HB 2687, OPD relied on information reported by 38 counties in their 2017 applications for grant funding, less any amounts counties were reimbursed by cities to provide public defense for city misdemeanor cases. OPD received

information on Douglas County expenditures from the Washington State Association of Counties.  
Estimated public defense expenditures of 39 counties in 2016: \$153,494,567

Cities: To derive an estimate of city public defense expenditures that would qualify for reimbursement under HB 2687, OPD relied on information reported by 32 cities in their most recent applications for grant funding, as well as expenditures reported by an additional 69 cities via the State Auditor's Local Government Financial Reporting System BARS codes. These 101 cities account for 74% of all municipal misdemeanors filed statewide. Combined, their reported public defense cost for 2016 was \$28,069,931.

No financial information was reported for the cities that comprise the remaining 26% of municipal misdemeanors filed. However, assuming that they maintained a similar cost ratio between cases filed and public defense expenses, it can be projected that this group of cities spent \$10,093,147 on public defense in 2016. Estimated public defense expenditures of cities statewide in 2016: \$38,163,078

TOTAL ESTIMATED COUNTY & CITY PUBLIC DEFENSE EXPENDITURES IN 2016: \$191,657,645  
TOTAL PROJECTED COUNTY & CITY PUBLIC DEFENSE EXPENDITURES IN 2019: \$209,429,483  
(based on a 3% increase per year between 2016 and 2019, as discussed below)

## 2. Expectation of increasing local costs for public defense from 2016-2019

In 2012 the Washington Supreme Court adopted the Standards for Public Defense Services, which include per-attorney caseload limits and practice qualifications. In 2013 the U.S. District Court of the Western District of Washington found two cities liable for failing to properly manage and fund public defense services (*Wilbur v. City of Mount Vernon, et al.*). Consequently, many cities and counties have significantly stepped up spending in order to comply with the Standards and address shortcomings identified by the *Wilbur* decision.

Since 2012, according to grant applications submitted to OPD, county public defense costs have increased an average of 6% per year. It is expected that city and county public defense costs will continue to rise but at a somewhat slower rate, as jurisdictions continue to implement improvements. For the purposes of this fiscal note, OPD is assuming an ongoing average increase of 3 percent each year since 2016, with county and city public defense costs projected to be \$209,429,483 in 2019. For the purposes of this fiscal note OPD has not attempted to project increased local costs after 2019.

## 3. State reimbursement phased in over 10 years

Section 2 of the bill provides that in Fiscal Year 2019 counties and cities will receive state reimbursement of not less than 10 percent of their public defense costs, and the state reimbursement will increase 10 percent per year until 2028 when the state will reimburse 100 percent of county and city public defense costs. Based on OPD's projected 2019 local public defense costs, the 2019 state reimbursement is estimated to total \$20,942,948.

Assuming that local public defense costs will not decrease after 2019, subsequent reimbursements are projected to be at least \$41,885,897 in FY20, \$62,828,845 in FY21, \$83,771,793 in FY22, \$104,714,742 in FY23, \$125,657,690 in FY24, \$146,600,638 in FY25, \$167,543,586 in FY26, \$188,486,535 in FY27, and \$209,429,483 in FY28. If local public defense costs increase after 2019, the state reimbursements will be greater than projected here.

## 4. Assumptions regarding costs of OPD administration of reimbursement program

Under the existing grant program authorized in Chapter 10.101 RCW, OPD annually receives and reviews approximately 60-70 county and city applications for state grants. In 2017 OPD awarded grants to 38 counties and 31 cities. OPD managing attorneys currently provide technical assistance and visit grant recipients periodically or as requested. Under the reimbursement program of HB 2687, OPD's workload would increase significantly with evaluating local reports as well as monitoring actual performance to determine funding eligibility for as many as 236 counties and cities each year.

Under the existing grant program, OPD reviews each grant application and supporting material, tracks data on public defense services, prepares individual grant agreements, provides technical assistance as requested, and conducts periodic site visits. OPD assumes that the proposed reimbursement program of HB 2687 would involve similar activities for as many as 236 jurisdictions as well as verifying each jurisdiction's reported costs. In addition, HB 2687 specifically requires OPD to "monitor trial level criminal public defense services," which OPD interprets to require more frequent and intense state oversight than is currently authorized or provided.

To accommodate the increased workload and oversight associated with HB 2687, OPD estimates that the agency would need to hire eight program analyst/managing attorneys and two support staff beginning in fiscal year 2019. Although the reimbursement amounts are phased in over 10 years, OPD's increased duties would be immediate and ongoing. In addition to salary and benefits for the new hires, the agency would need to expand its office space and acquire furniture, equipment, and training for the new staff. OPD expects travel expenditures would go up as the new and existing managing attorneys would be engaged in additional and potentially longer site visits. To fully respond to the enhanced monitoring requirement, OPD anticipates that each year some monitoring duties would be contracted out to professionals whom OPD deems qualified to evaluate public defense services based on a variety of criteria and industry standards. OPD also would need to purchase technology upgrades and ongoing maintenance to efficiently process the increased workload associated with reviewing and processing reports from significantly more local jurisdictions.

### Part III: Expenditure Detail

#### III. A - Expenditures by Object Or Purpose

	FY 2018	FY 2019	2017-19	2019-21	2021-23
FTE Staff Years		10.0	5.0	10.0	10.0
A-Salaries and Wages		932,000	932,000	1,864,000	1,864,000
B-Employee Benefits		233,000	233,000	466,000	466,000
C-Professional Service Contracts		200,000	200,000	400,000	400,000
E-Goods and Other Services		263,831	263,831	360,998	360,998
G-Travel		83,330	83,330	166,660	166,660
J-Capital Outlays					
M-Inter Agency/Fund Transfers					
N-Grants, Benefits & Client Services					
P-Debt Service					
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements					
9-Reimbursement of County/City Exper		20,942,948	20,942,948	104,714,742	188,486,535
<b>Total:</b>	\$0	\$22,655,109	\$22,655,109	\$107,972,400	\$191,744,193

#### III. B - Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part I and Part IIIA*

Job Classification	Salary	FY 2018	FY 2019	2017-19	2019-21	2021-23
Administrative assistant	50,000		2.0	1.0	2.0	2.0
Program analyst/managing attorney	104,000		8.0	4.0	8.0	8.0
<b>Total FTEs</b>			10.0	5.0	10.0	10.0

**Part IV: Capital Budget Impact**

**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 Commerce

<b>Bill Number:</b> 2687 HB	<b>Title:</b> Public defense funding
-----------------------------	--------------------------------------

## Part I: Jurisdiction-Location, type or status of political subdivision defines range of fiscal impacts.

### Legislation Impacts:

- ☒ Cities: Revenue and expenditures for indigent defense
- ☒ 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:

### Estimated revenue impacts to:

Jurisdiction	FY 2018	FY 2019	2017-19	2019-21	2021-23
City		4,167,647	4,167,647	20,838,234	37,508,821
County		16,775,301	16,775,301	83,876,508	150,977,714
<b>TOTAL \$</b>		20,942,948	20,942,948	104,714,742	188,486,535
<b>GRAND TOTAL \$</b>					314,144,225

### Estimated expenditure impacts to:

Jurisdiction	FY 2018	FY 2019	2017-19	2019-21	2021-23
City		4,167,647	4,167,647	20,838,234	37,508,821
County		16,775,301	16,775,301	83,876,508	150,977,714
<b>TOTAL \$</b>		20,942,948	20,942,948	104,714,742	188,486,535
<b>GRAND TOTAL \$</b>					314,144,225

## Part III: Preparation and Approval

Fiscal Note Analyst: Alice Zillah	Phone: 360-725-5035	Date: 01/25/2018
Leg. Committee Contact: Ingrid Lewis	Phone: 360-786-7289	Date: 01/18/2018
Agency Approval: Steve Salmi	Phone: (360) 725 5034	Date: 01/25/2018
OFM Review: Ramona Nabors	Phone: (360) 902-0547	Date: 01/27/2018

## 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 10.101.050. In order to receive appropriated funds under RCW 10.101.060, each city and county must provide documentation that attorneys providing public defense services are in compliance with the Washington Supreme Court standards for indigent defense.

Section 2 adds a new section to RCW 10.101. All funds appropriated for the cost of public defense services in cities and counties as specified must be appropriated in the following manner: (a) beginning in fiscal year 2019, the state shall appropriate 10 percent of the cost; (b) in fiscal year 2020, the state shall appropriate 20 percent of the cost; (c) in fiscal year 2021, the state shall appropriate funds for not less than 30 percent of the cost; (d) in fiscal year 2022, the state shall appropriate 40 percent of the cost; (e) in fiscal year 2023, the state shall appropriate 50 percent of the cost; (f) in fiscal year 2024, the state shall appropriate 60 percent of the cost; (g) in fiscal year 2025, the state shall appropriate 70 percent of the cost; (h) in fiscal year 2026, the state shall appropriate 80 percent of the cost; (i) in fiscal year 2027, the state shall appropriate 90 percent of the cost; (j) in fiscal year 2028 and thereafter, the state shall appropriate 100 percent of the cost.

The Office of Public Defense (OPD) shall determine "the cost of public defense services" annually, based on an average of the actual expenditures for public defense services reported by counties and cities for the previous two years. Counties and cities shall annually provide information on the actual expenditures for public defense services to OPD.

### 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 OPD reports that the estimated public defense expenditures of 39 counties in 2016 was \$153,494,567 and the estimated expenditures for cities was \$38,163,078. Cities therefore account for 19.9 percent of the total costs for public defense. The OPD further estimates that the projected expenditures for cities and counties will total \$209,429,483 in 2019, based upon a 3 percent increase per year between 2016 and 2019.

Cities and counties are obligated to spend these funds on public defense costs:

Fiscal year 2019 - 10 percent - \$20,942,948  
Fiscal year 2020 - 20 percent - \$41,885,897  
Fiscal year 2021 - 30 percent - \$62,828,845  
Fiscal year 2022 - 40 percent - \$83,771,793  
Fiscal year 2023 - 50 percent - \$104,714,742

The amounts in the expenditure grid reflect the dispersal of 19.9 percent of the costs for cities, and 80.1 percent for counties.

### 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 OPD reports that reimbursements to cities and counties reflect the following:

Fiscal year 2019 - 10 percent - \$20,942,948  
Fiscal year 2020 - 20 percent - \$41,885,897  
Fiscal year 2021 - 30 percent - \$62,828,845  
Fiscal year 2022 - 40 percent - \$83,771,793  
Fiscal year 2023 - 50 percent - \$104,714,742

The amounts in the revenue grid reflect the dispersal of 19.9 percent of the revenue for cities, and 80.1 percent for counties.

#### SOURCES:

Office of Public Defense