



WSBA COUNCIL ON PUBLIC DEFENSE MEETING AGENDA

January 26, 2018 | 12:00pm to 2:30pm

WSBA Office, 1326 Fourth Avenue, Suite #600, Seattle, WA 98101

Call: 1-866-577-9294; Access: 52874#

The Council on Public Defense was established to implement the recommendations of the WSBA Blue Ribbon Panel on Criminal Defense, which was appointed by the Board of Governors in spring 2003 as a first step in addressing concerns about the quality of indigent defense services in Washington.

3 min	Welcome and Roll Call	Eileen Farley	Discussion	
2 min	November Meeting Minutes	Eileen Farley	Action	pp 2-3
10 min	OPD Report	Joanne Moore and Sophia Byrd McSherry	Report	
20 min	Legislative Session <ul style="list-style-type: none">• SB 5465 pp 7-15• HB 2687 pp 16-20• HB 2301 pp 21-30• SB 6420 pp 31-58	Eileen Farley Representatives from the cities and county associations have been invited to speak about the public defense funding bills.	Discussion	pp 4-58
5 min	OPD Invitation re: Race Equity and Justice Initiative Acknowledgements and Commitments	Diana Singleton	Report	
10 min	Joint Meeting Between the Council and the Access to Justice Board	Daryl Rodrigues	Discussion	pp 59-60
50 min	Committee Updates Pre-Trial Reform LFO Reform Mental Health Standards Public Defense and Independence	Justin Bingham Nick Allen Eileen Farley	Reports	
10 min	WSBA Rules Committee Report	Eileen Farley	Report	pp 61-68
10 min	Other Business, CPD Recruitment	All	Report	pp 69-70



Washington State Bar Association

COUNCIL ON PUBLIC DEFENSE

NOVEMBER 17, 2017, 12:00PM TO 2:30PM AT THE WASHINGTON STATE BAR ASSOCIATION, SEATTLE, WA
MINUTES

CPD members in person: Eileen Farley (Chair), Daryl Rodrigues (Vice-Chair), Justin Bingham, Travis Stearns, Nick Allen, Dani Casselman, Judge Drew Henke, and Ann Christian, Rebecca Stith

CPD voting members on the phone: Kim Ambrose, Michael Killian, , Joanne Moore, Justice Gordon McCloud, Ben Carr, Colin Fieman, Jason Gillmer, Judge Johanna Bender

CPD non-voting members: Marc Boman, Brooks Holland

WSBA Staff: Diana Singleton and Bonnie Sterken

Guests: Sophia Byrd McSherry

Absent: Jon Ostlund, Karen Lindholdt, Jaime Hawk, Deborah Ahrens, Ping Lau, Christie Hedman, Bob Boruchowitz

1) Introductions and Roll Call and Roster

Members introduced themselves.

2) Approval of October Minutes

The September minutes were approved without edits.

3) Office of Public Defense Report: Joanne reported that today is the day of the Echo Glenn CLE portion of the Juvenile Defense Training Academy. She also noted that the National Association of Public Defenders Workload Conference is being held in St Louis and representatives from OPD and others from Washington are attending it.

Sophia reported on the OPD budget request and passed out a handout highlighting the supplemental budget request. She summarized the study they looked at to determine the new contractor costs needed. Eileen summarized the handout for the people on the phone. Sophia and Joanne addressed questions. The Council will submit another letter of support for the budget, which they already voted to approve at a previous meeting. Eileen will work with staff to submit the letter.

4) Race Equity and Justice Initiative: Sophia reported on the Race Equity and Justice Initiative (REJI) invitation to sign their Acknowledgements and Commitments. Sophia provided an overview of what REJI is and its next steps. Diana provided additional context about how REJI started and efforts that are underway. After discussion, the Council agreed to continue considering the invitation at their next meeting. They requested more information on what the participation in REJI involves and noted that the WSBA Board of Governors may be better positioned to respond directly. This will be added to a future agenda with more time for discussion and the materials will include the invitation, recent REJI meeting minutes and any other action from the BOG.

5) Update on Board of Judicial Administration Project

Joanne reported on the project to monitor public defense quality that has been going on for about a year and half. The project is developing a way for third parties to monitor the quality of public defense. The project has been developed under the auspices of the Board of Judicial Administration. OPD staff have been heavily involved in developing criteria and proposed ways of conducting the monitoring. The project is in draft and will be piloted with the City of Sunnyside, and possibly another jurisdiction. The assessment will include efforts to assess implicit bias. Articles about implicit bias in public defense were included in the meeting materials as a resource. The Council discussed the project and members look forward to hearing the results of the pilot.

6) Juvenile Guidelines Update

Eileen and Anne reported on the BOG meeting where they requested action on the Juvenile Performance Guidelines for Juvenile Offender Representation. The BOG approved sending the Guidelines to the Court for to be included in Standards 14.1, along with the Performance Guidelines for Criminal Representation.. The Council also discussed the need to do more to promote the Guidelines overall, including the adult Guidelines. Eileen noted that this issue might dovetail with the project to update the “know your rights” materials. Eileen will find out before the next meeting whether the Juvenile Guidelines will go through the typical court rule comment process. Judge Henke noted that she can help the Council get connected to the fall judicial conference to present the Guidelines. The Council also discuss writing an article for NWLawyer about the release of the Juvenile Guidelines. The next step is to draft a cover letter for WSBA Executive Director Paula Littlewood to sign and transmitting the Guidelines to the Court. Eileen will work with staff to draft the letter.

Meeting adjourned at 1:23 p.m. The LFO and Pretrial Release Committees met after the meeting. The Mental Health Committee met before the meeting.

Council on Public Defense Procedure on Legislative Issues during Legislative Sessions

During the legislative session the Washington State Bar Association (WSBA) Legislative Affairs Manager and his/her staff review almost all proposed legislation. They send bills relevant to a WSBA section or the Council on Public Defense (CPD) to the attention of the section or CPD Chair and Vice-Chair.

Under WSBA rules the CPD may comment on proposed legislation only if a supermajority of its members agree: 1) that the issue is within the scope of GR 12 permitted activities and is not one of the prohibited activities in GR12.1(c)); and 2) on the substance of a comment about the issue.

The CPD meets monthly. Given its limited meeting time, responding as a Council to the volume of proposed legislation is not an efficient use of CPD resources nor an effective way to communicate with WSBA legislative staff. WSBA legislative staff has said that policy statements, like the Legal Financial Obligation (LFO) statement adopted by the CPD in 2016, are useful to WSBA legislative staff during the session.

I recommend the CPD do the following during legislative sessions:

1. CPD members who wishes to receive notices generated by WSBA legislative staff will ask CPD staff to forward the notices to them.
2. CPD members may comment in their individual capacity on proposed legislation. CPD members can ask the CPD Chair to put legislative matters on the agenda for general discussion and/or potential action to support or not support.
3. The CPD Chair will ask the existing committees to draft policy statements for WSBA legislative staff to use to inform their work during a session.
4. The CPD Chair and Vice-Chair will discuss with the Washington Association of Criminal Defense Lawyers (WACDL) and the Washington Defender Association (WDA) about legislation those organizations have identified as priorities, or they either support or oppose.
5. The CPD will work with CPD staff and WSBA legislative staff and the BOG Liaison to guide CPD through the WSBA process if it wishes to comment upon a particular item of legislation.
6. Prior to the start of the legislative session the full CPD and WSBA legislative staff will review these steps to determine if they are to be updated and to clearly communicate expectations.

THE NEED FOR OVERSIGHT IN CORRECTIONS

A World Without Oversight

Washington's state prisons confine almost 17,000 people and are largely closed to the public, with very few outsiders permitted behind the prison walls. This lack of oversight and transparency means that people in prison are often overlooked, neglected, or even placed in dangerous conditions.

With more than 95% of the state's prison population expected to release back to our communities, monitoring and improving prison conditions and services protects inmates' rights, reduces recidivism, avoids costly litigation, and ultimately makes our communities safer.

HB 1889

HB 1889 would create an independent corrections ombuds office in Washington. The bill aims to create an independent office that is available to people in prison, as well as to their family members. The ombuds can be accessed by letter and collect calls, and works to identify, verify, and address issues arising in our state correctional system at the lowest level possible. The bill anticipates collaborative problem solving with the DOC and regular reporting to the legislature and the public.

The True Cost of Oversight

Every year DOC pays out millions of dollars in tort claims and litigation fees. Experts agree that effective oversight systems ultimately save states money because they serve as an early warning system for issues arising in the prisons. Through identifying and resolving these issues through collaboration, before litigation, the independent corrections ombuds created by HB 1889 would ultimately save the state money.

A corrections ombuds could address:

- ◆ *Reports of abuse or neglect*
- ◆ *Excessive solitary confinement*
- ◆ *Inhumane conditions*
- ◆ *PREA issues*
- ◆ *Medical and mental health care*
- ◆ *Educational or vocational services*
- ◆ *Family visitation and correspondence*

What would an independent corrections ombuds do?

- ◆ Monitor all twelve of Washington's state prisons, including solitary confinement units.
- ◆ Provide technical assistance, information, and resources to support self-advocacy by people in prison, and their families.
- ◆ Conduct investigations into potential abuse or neglect of people in prison, alleged rights violations, and violations of prison policy and applicable law.
- ◆ Collaborate with prison staff to address concerns raised by inmates and their families.
- ◆ Issue public reports and make recommendations on issues impacting people in prison and those facing reentry.

Staffing Matters

The cost of a corrections ombuds program is dependent on the number of staff in the ombuds office.

New Jersey, with a prison population of over 21,000, spends approximately \$750,000 annually to fund an independent corrections ombuds staff of eight.

In contrast, Indiana, with a staff of two, spends just over \$150,000 for a prison population of more than 29,000.

Nebraska, which operates an inter-agency ombuds office, reports an annual budget of one million dollars. Almost half of all calls that come into that statewide ombuds relate to corrections facilities.

In the Washington State Senate's 2017 biennium budget, one million dollars was set aside to fund an independent corrections ombuds. This funding would have provided sufficient staffing and administrative support to operate an efficient, effective ombuds office.

What makes an effective corrections ombuds office?

In 2008 the American Bar Association issued a report urging state governments to establish independent entities to monitor our nation's correctional institutions. Twenty key criteria for effective oversight were included in that report, including:

- ♦ Independence from the agency operating the correctional system
- ♦ Authority to conduct monitoring and inspect records
- ♦ Commitment to work collaboratively and constructively with prison staff
- ♦ Confidential communication

Why isn't DOC's internal ombuds enough?

In 2016 the DOC created an internal ombuds. Though this is a valuable resource for inmates and their families, it does not supplant the need for an independent ombuds office because:

- ♦ The internal ombuds is a DOC employee and is not independent
- ♦ The internal ombuds will not address sexual assault or harassment
- ♦ The internal ombuds will not provide advocacy on behalf of inmates or families
- ♦ The internal ombuds may be accessed only after exhausting the DOC's deeply flawed grievance system

Do other states have independent corrections ombuds?

At least six other states have independent corrections ombuds offices or state ombuds offices that take complaints from the correctional system.

Washington State has independent ombuds offices for other populations and issues, including the Long-Term Care Ombudsman, and the Developmental Disabilities Ombuds.

What can you do to support the creation of an independent corrections ombuds?

Call the legislative hotline at 1-800-562-6000 and tell your representative that you support HB 1889.

For further information about this issue, contact Tom Ewell at Quaker Voice for Public Policy at tewell@whidbey.com.

SECOND SUBSTITUTE SENATE BILL 5465

State of Washington

65th Legislature

2018 Regular Session

By Senate Human Services & Corrections (originally sponsored by Senators Miloscia, Hasegawa, Rolfes, O'Ban, Darneille, Angel, and Frockt)

READ FIRST TIME 01/17/18.

1 AN ACT Relating to creating an office of the corrections ombuds;
2 and adding a new chapter to Title 43 RCW.

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

4 NEW SECTION. **Sec. 1.** The legislature intends to increase
5 transparency and accountability in Washington's correctional system
6 by creating an independent entity, the office of the corrections
7 ombuds, which will work for improved conditions and programs, and
8 support fair treatment of inmates in Washington state. The
9 legislature further intends that the ombuds will support changes that
10 facilitate the successful reentry of inmates into the community, and
11 promote high standards of justice throughout the state correctional
12 system.

13 NEW SECTION. **Sec. 2.** Subject to the availability of amounts
14 appropriated for this specific purpose, the office of the corrections
15 ombuds is funded through the office of the state auditor for the
16 purpose of providing information to inmates, family members,
17 representatives of inmates, department employees, and others
18 regarding the rights of inmates; providing technical assistance to
19 support inmate self-advocacy, alternative dispute resolution, and
20 individual representation; identifying systemic issues, reporting to

1 the legislature, and advocating for systemic reform; and monitoring
2 and promoting compliance with statutes, rules, and policies
3 pertaining to conditions of correctional facilities and the rights of
4 inmates.

5 NEW SECTION. **Sec. 3.** The definitions in this section apply
6 throughout this chapter unless the context clearly requires
7 otherwise.

8 (1) "Abuse" means any act or failure to act by a department
9 employee, subcontractor, or volunteer which was performed, or which
10 was failed to be performed, knowingly, recklessly, or intentionally,
11 and which caused, or may have caused, injury or death to an inmate.

12 (2) "Corrections ombuds" or "ombuds" means the corrections
13 ombuds, staff of the corrections ombuds, and volunteers with the
14 office of the corrections ombuds.

15 (3) "Council" means the ombuds advisory council established in
16 section 4(1) of this act.

17 (4) "Department" means the department of corrections.

18 (5) "Inmate" means a person committed to the custody of the
19 department, including, but not limited to, persons residing in a
20 correctional institution or facility; persons released from such
21 facility on furlough, work release, or community custody; and persons
22 received from another state, another state agency, a county, or the
23 federal government.

24 (6) "Neglect" means a negligent act or omission by any department
25 employee, subcontractor, or volunteer which caused, or may have
26 caused, injury or death to an inmate.

27 (7) "Office" means the office of the corrections ombuds.

28 (8) "Organization" means the private nonprofit organization that
29 operates the office of the corrections ombuds.

30 NEW SECTION. **Sec. 4.** (1) No later than August 1, 2018, the
31 governor shall convene an ombuds advisory council with several
32 purposes in support of the ombuds function. The council shall
33 participate in a priority setting process for the purpose of
34 developing priority recommendations to the ombuds, review data
35 collected by the ombuds, review reports issued by the ombuds prior to
36 their release, and make recommendations to the ombuds regarding the
37 accomplishment of its purposes. The council also has authority to
38 issue its own reports and recommendations. The council must

1 biannually review ombuds performance, reporting to the governor and
2 the legislature regarding its findings. The council must provide the
3 legislature with recommendations regarding the ombuds budget and
4 changes in the law that would enhance ombuds effectiveness.

5 (2) The council initially consists of one democrat and one
6 republican member of the legislature. The chairs of the senate
7 committee on law and justice and the house of representatives
8 committee on public safety shall make recommendations to the
9 president of the senate and the speaker of the house of
10 representatives, who shall make the final appointments. These
11 appointed members shall select the following additional members:

12 (a) One former inmate who has successfully reintegrated into the
13 community and is no longer in the custody of the department;

14 (b) Two family members of a current inmate;

15 (c) One expert with significant criminal justice or correctional
16 experience who is not an employee or contractor with the state of
17 Washington;

18 (d) A community member with extensive knowledge and experience in
19 issues related to racial, ethnic, or religious diversity within the
20 correctional system;

21 (e) A community member with extensive knowledge and experience in
22 the accommodation needs of individuals with disabilities; and

23 (f) A community member with dispute resolution training who has
24 experience working in the criminal justice or corrections field.

25 (3) The council also includes:

26 (a) The department staff serving as the internal ombuds, if any;
27 and

28 (b) A bargaining unit representative, as selected by the
29 membership of the bargaining unit.

30 (4) After the full membership is attained, the council shall
31 develop a process for replacing members in case of resignation or
32 expiration of terms.

33 (5) Councilmembers serve a term of three years, except that the
34 council shall create and implement a system of staggered terms, and
35 no member may serve more than two consecutive terms. The council
36 shall convene at least quarterly. Councilmembers will serve without
37 compensation, except that funds appropriated for the implementation
38 of this act may be used to reimburse members who are not employees of
39 Washington state for expenses necessary to the performance of their
40 duties.

1 NEW SECTION. **Sec. 5.** (1) Subject to the availability of amounts
2 appropriated for this specific purpose, the state auditor shall
3 designate, by a competitive bidding process, the nonprofit
4 organization that will contract to operate the office of the
5 corrections ombuds. The selection process must include direct
6 stakeholder participation in the development of the request for
7 proposals, evaluation of bids, and final selection. The state auditor
8 shall select an organization that possesses, directly or through
9 subcontracts, significant legal expertise, competence with mediation
10 and alternative dispute resolution, and experience working within
11 criminal justice and correctional environments addressing issues
12 relating to chemical dependency treatment, disability and disability-
13 related accommodation, respect for racial, ethnic, and religious
14 diversity, and other civil rights and conditions issues. The selected
15 organization must have experience and the capacity to effectively
16 communicate regarding criminal justice issues with policymakers,
17 stakeholders, and the general public, and must be prepared and able
18 to provide all program and staff support necessary, directly or
19 through subcontracts, to carry out all duties of the office.

20 (2) The contracting organization and its subcontractors, if any,
21 are not state agencies or departments, but instead are private,
22 independent entities operating under contract with the state.

23 (3) The state auditor or state may not revoke the designation of
24 the organization contracted to provide the services of the office of
25 the corrections ombuds except upon a showing of neglect of duty,
26 misconduct, or inability to perform duties. Prior to revoking the
27 designation, the state must provide notice and an opportunity for the
28 organization, the ombuds, and the public to comment upon the proposed
29 revocation, and must provide the organization an opportunity to
30 appeal the decision to a court.

31 NEW SECTION. **Sec. 6.** (1) The ombuds shall:

32 (a) Establish priorities for use of the limited resources
33 appropriated to implement this act;

34 (b) Maintain a statewide toll-free telephone number, a collect
35 telephone number, a web site, and a mailing address for the receipt
36 of complaints and inquiries;

37 (c) Provide information, as appropriate, to inmates, family
38 members, representatives of inmates, department employees, and others
39 regarding the rights of inmates;

1 (d) Provide technical assistance to support inmate participation
2 in self-advocacy, utilizing existing kite, grievance, and appeal
3 procedures;

4 (e) Monitor department compliance with applicable federal, state,
5 and local laws, rules, regulations, and policies with a view toward
6 protecting the rights of inmates;

7 (f) Monitor and participate in legislative and policy
8 developments affecting correctional facilities and advocate for
9 systemic reform aimed toward protecting the rights of inmates;

10 (g) Establish a statewide uniform reporting system to collect and
11 analyze data related to complaints regarding the department;

12 (h) Establish procedures to receive, investigate, and resolve
13 complaints;

14 (i) Submit annually to the council, by November 1st of each year,
15 a report analyzing the work of the office, including any
16 recommendations; and

17 (j) Adopt and comply with rules, policies, and procedures
18 necessary to implement this chapter.

19 (2)(a) The ombuds may initiate and attempt to resolve an
20 investigation upon his or her own initiative, or upon receipt of a
21 complaint from an inmate, a family member, a representative of an
22 inmate, a department employee, or others, regarding:

23 (i) Abuse or neglect;

24 (ii) Department decisions or actions;

25 (iii) Inactions or omissions;

26 (iv) Policies, rules, or procedures; or

27 (v) Alleged violations of law.

28 (b) Prior to filing a complaint with the ombuds, an inmate shall
29 have reasonably pursued resolution of the complaint through the
30 internal grievance process with the department of corrections.
31 However, in no event may an inmate be prevented from filing a
32 complaint more than ninety days after filing an internal grievance,
33 regardless of whether the department has completed the grievance
34 process. This subsection (2)(b) does not apply to complaints related
35 to threats of bodily harm including, but not limited to, sexual or
36 physical assaults or the denial of necessary medical treatment.

37 (c) The ombuds may decline to investigate any complaint as
38 provided by the rules adopted under this chapter.

39 (d) The ombuds may not investigate any complaints relating to an
40 inmate's underlying criminal conviction.

1 (e) The ombuds may not investigate a complaint from a department
2 employee that relates to the employee's employment relationship with
3 the department.

4 (f) The ombuds may refer complainants and others to appropriate
5 resources, agencies, or departments.

6 (g) The ombuds may not levy any fees for the submission or
7 investigation of complaints.

8 (h) At the conclusion of an investigation of a complaint, the
9 ombuds must render a public decision on the merits of each complaint,
10 except that the documents supporting the decision are subject to the
11 confidentiality provisions of section 8 of this act. The ombuds must
12 communicate the decision to the inmate, if any, and to the
13 department. The ombuds must state their recommendations and reasoning
14 if, in the ombuds' opinion, the department or any employee thereof
15 should:

16 (i) Consider the matter further;

17 (ii) Modify or cancel any action;

18 (iii) Alter a rule, practice, or ruling;

19 (iv) Explain in detail the administrative action in question;

20 (v) Rectify an omission; or

21 (vi) Take any other action.

22 (i) If the ombuds so requests, the department must, within the
23 time specified, inform the ombuds about any action taken on the
24 recommendations or the reasons for not complying with the
25 recommendations.

26 (j) After the conclusion of an investigation, if the ombuds
27 believes that additional action is warranted, the ombuds may:

28 (i) Report a finding of abuse, neglect, or other rights violation
29 to the appropriate committees of the legislature.

30 (ii) Take any additional action that the ombuds considers
31 appropriate.

32 (k) Before announcing a conclusion or recommendation that
33 expressly, or by implication, criticizes a person or the department,
34 the ombuds must attempt to notify the person or the department. The
35 ombuds may request to be notified by the department, within a
36 specified time, of any action taken on any recommendation presented.
37 The ombuds must notify the inmate, if any, of the actions taken by
38 the department in response to the ombuds' recommendations.

39 (3) This chapter does not require inmates to file a complaint
40 with the ombuds in order to exhaust available administrative remedies

for purposes of the prison litigation reform act of 1995, P.L. 104-134.

NEW SECTION. **Sec. 7.** (1) The ombuds must have reasonable access to correctional facilities at all times necessary to conduct a full investigation of an incident of abuse or neglect. This authority includes the opportunity to interview any inmate, department employee, or other person, including the person thought to be the victim of such abuse, who might be reasonably believed to have knowledge of the incident under investigation. Such access must be afforded, upon request by the ombuds, when:

(a) An incident is reported or a complaint is made to the office;

(b) The ombuds determines there is reasonable suspicion that an incident has or may have occurred; or

(c) The ombuds determines that there is or may be imminent danger of serious abuse or neglect of an inmate.

(2) The ombuds must have reasonable access to department facilities, including all areas which are used by inmates, all areas which are accessible to inmates, and to programs for inmates at reasonable times, which at a minimum must include normal working hours and visiting hours. This access is for the purpose of:

(a) Providing information about individual rights and the services available from the office, including the name, address, and telephone number of the office;

(b) Monitoring compliance with respect to the rights and safety of inmates; and

(c) Inspecting, viewing, photographing, and video recording all areas of the facility which are used by inmates or are accessible to inmates.

(3) Reasonable access to inmates includes the opportunity to meet and communicate privately and confidentially with individuals regularly, both formally and informally, by telephone, mail, and in person.

(4) The ombuds has the right to access, inspect, and obtain copies of all relevant information, records, or documents in the possession or control of the department that the ombuds considers necessary in an investigation of a complaint filed under this chapter, and the department must assist the ombuds in obtaining the necessary releases for those documents which are specifically restricted or privileged for use by the ombuds.

1 (a) When conducting an investigation of potential abuse or
2 neglect, the ombuds must have access to relevant records not later
3 than ten business days after the ombuds makes a written request for
4 such records.

5 (b) The ombuds must have immediate access, not later than
6 seventy-two hours after the ombuds makes such a request, to relevant
7 records, without consent from another party, if the ombuds determines
8 there is reasonable suspicion that the health or safety of an inmate
9 is in serious and immediate jeopardy, or in any case of death of an
10 inmate while in department custody.

11 (5) A state or local government agency or entity that has records
12 that are relevant to a complaint or an investigation conducted by the
13 ombuds must provide the ombuds with access to such records.

14 NEW SECTION. **Sec. 8.** (1) Correspondence and communication with
15 the office is confidential and must be protected as privileged
16 correspondence in the same manner as legal correspondence or
17 communication.

18 (2) The office shall establish confidentiality rules and
19 procedures for all information maintained by the office.

20 (3) The office shall preserve the confidentiality of information
21 obtained while providing services, including general information,
22 technical assistance, and investigations, to individuals, including
23 inmates, family members and representatives of inmates, department
24 employees, and others. Confidential information may not be disclosed
25 unless the individual gives informed consent, the disclosure is
26 impliedly authorized in order to carry out ombuds services, or the
27 disclosure is authorized by subsection (4) of this section.

28 (4) To the extent the ombuds reasonably believes necessary, the
29 ombuds:

30 (a) Must reveal information obtained in the course of providing
31 ombuds services to prevent reasonably certain death or substantial
32 bodily harm; and

33 (b) May reveal information obtained in the course of providing
34 ombuds services to prevent the commission of a crime.

35 (5) If the ombuds receives personally identifying information
36 about individual corrections staff during the course of an
37 investigation that the ombuds determines is unrelated or unnecessary
38 to the subject of the investigation or recommendation for action, the
39 ombuds will not further disclose such information. If the ombuds

1 determines that such disclosure is necessary to an investigation or
2 recommendation, the ombuds will contact the staff member as well as
3 the bargaining unit representative before any disclosure.

4 NEW SECTION. **Sec. 9.** (1) A civil action may not be brought
5 against any employee of the office for good faith performance of
6 responsibilities under this chapter.

7 (2) No discriminatory, disciplinary, or retaliatory action may be
8 taken against a department employee, subcontractor, or volunteer, an
9 inmate, or a family member or representative of an inmate for any
10 communication made, or information given or disclosed, to aid the
11 office in carrying out its responsibilities, unless the communication
12 or information is made, given, or disclosed maliciously or without
13 good faith.

14 (3) The department may not hinder the lawful actions of the
15 ombuds or employees of the office, or willfully refuse to comply with
16 lawful demands of the office.

17 (4) This section is not intended to infringe on the rights of an
18 employer to supervise, discipline, or terminate an employee for other
19 reasons.

20 NEW SECTION. **Sec. 10.** Sections 1 through 9 of this act
21 constitute a new chapter in Title 43 RCW.

--- END ---

HOUSE BILL 2687

State of Washington

65th Legislature

2018 Regular Session

By Representatives Frame, Condotta, Kilduff, Volz, Gregerson, Appleton, Fitzgibbon, Valdez, Muri, Wylie, Jenkins, Goodman, Doglio, Macri, McBride, Ortiz-Self, Sells, Stanford, Kagi, and Pollet

Read first time 01/12/18. Referred to Committee on Judiciary.

1 AN ACT Relating to public defense services; amending RCW
2 10.101.050 and 10.101.060; adding a new section to chapter 10.101
3 RCW; 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:

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 (b) Report the expenditure for all public defense services in the
21 previous calendar year, as well as case statistics for that year,

1 including per attorney caseloads, and shall provide a copy of each
2 current public defense contract to the office of public defense
3 (~~with its application. Each individual or organization that~~
4 ~~contracts to perform public defense services for a county or city~~
5 ~~shall report to the county or city~~));

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

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

13 NEW SECTION. Sec. 2. A new section is added to chapter 10.101
14 RCW to read as follows:

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

18 (a) Beginning in fiscal year 2019, the state shall appropriate
19 funds for not less than ten percent of the cost of public defense
20 services;

21 (b) In fiscal year 2020, the state shall appropriate funds for
22 not less than twenty percent of the cost of public defense services;

23 (c) In fiscal year 2021, the state shall appropriate funds for
24 not less than thirty percent of the cost of public defense services;

25 (d) In fiscal year 2022, the state shall appropriate funds for
26 not less than forty percent of the cost of public defense services;

27 (e) In fiscal year 2023, the state shall appropriate funds for
28 not less than fifty percent of the cost of public defense services;

29 (f) In fiscal year 2024, the state shall appropriate funds for
30 not less than sixty percent of the cost of public defense services;

31 (g) In fiscal year 2025, the state shall appropriate funds for
32 not less than seventy percent of the cost of public defense services;

33 (h) In fiscal year 2026, the state shall appropriate funds for
34 not less than eighty percent of the cost of public defense services;

35 (i) In fiscal year 2027, the state shall appropriate funds for
36 not less than ninety percent of the cost of public defense services;

37 (j) In fiscal year 2028 and thereafter, the state shall
38 appropriate funds for not less than one hundred percent of the cost
39 of public defense services.

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

5 (b) Counties and cities shall annually provide information on the
6 actual expenditures for public defense services to the office of
7 public defense.

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

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

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

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

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

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

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

7 ~~(vi) Identifying funding specifically for the purpose of paying~~
8 ~~investigators (A) for which public defense attorneys may file ex~~
9 ~~parte motions, and (B) which should be specifically designated within~~
10 ~~a public defender agency budget.~~

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

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

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

33 (b) The office of public defense shall establish policies for the
34 distribution of appropriated funds to eligible counties and cities.

35 NEW SECTION. **Sec. 4.** The following acts or parts of acts are
36 each repealed:

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

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

--- END ---

HOUSE BILL 2301

State of Washington

65th Legislature

2018 Regular Session

By Representatives Walsh, Shea, Muri, McDonald, Blake, Pike, Kraft,
and Young

Prefiled 12/18/17. Read first time 01/08/18. Referred to Committee
on Commerce & Gaming.

1 AN ACT Relating to the appropriation to counties of moneys from
2 the dedicated marijuana account for the purpose of funding legal
3 services for indigent defendants in criminal cases; and amending RCW
4 69.50.540.

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

6 **Sec. 1.** RCW 69.50.540 and 2017 3rd sp.s. c 1 s 979 are each
7 amended to read as follows:

8 The legislature must annually appropriate moneys in the dedicated
9 marijuana account created in RCW 69.50.530 as follows:

10 ~~(1) ((For the purposes listed in this subsection (1), the~~
11 ~~legislature must appropriate to the respective agencies))~~ Beginning
12 July 1, 2019, 33.3 percent of all moneys in the dedicated marijuana
13 account must be appropriated annually to the treasurer for
14 distribution to counties on a pro rata basis in accordance with the
15 requirements of this subsection (1).

16 (a) The moneys distributed to an individual county under this
17 subsection must be equal to that county's proportional share of the
18 total appropriation authorized under this subsection. The dollar
19 amount of this proportional share must be calculated on a pro rata
20 basis as determined by reference to the total excise tax revenues

1 collected pursuant to RCW 69.50.535 from licensees located in the
2 cities, towns, and unincorporated areas within that county.

3 (b) A county receiving a distribution under this subsection must
4 use the funds for the sole purpose of funding legal services for
5 indigent defendants in criminal cases;

6 (2) Following the appropriation required under subsection (1) of
7 this section, and for the purposes listed in this subsection (2), the
8 moneys remaining in the dedicated marijuana account must be
9 appropriated to the respective agencies in amounts sufficient to make
10 the following expenditures on a quarterly basis:

11 (a) Beginning July 1, 2015, one hundred twenty-five thousand
12 dollars to the department of social and health services to design and
13 administer the Washington state healthy youth survey, analyze the
14 collected data, and produce reports, in collaboration with the office
15 of the superintendent of public instruction, department of health,
16 department of commerce, family policy council, and state liquor and
17 cannabis board. The survey must be conducted at least every two years
18 and include questions regarding, but not necessarily limited to,
19 academic achievement, age at time of substance use initiation,
20 antisocial behavior of friends, attitudes toward antisocial behavior,
21 attitudes toward substance use, laws and community norms regarding
22 antisocial behavior, family conflict, family management, parental
23 attitudes toward substance use, peer rewarding of antisocial
24 behavior, perceived risk of substance use, and rebelliousness. Funds
25 disbursed under this subsection may be used to expand administration
26 of the healthy youth survey to student populations attending
27 institutions of higher education in Washington;

28 (b) Beginning July 1, 2015, fifty thousand dollars to the
29 department of social and health services for the purpose of
30 contracting with the Washington state institute for public policy to
31 conduct the cost-benefit evaluation and produce the reports described
32 in RCW 69.50.550. This appropriation ends after production of the
33 final report required by RCW 69.50.550;

34 (c) Beginning July 1, 2015, five thousand dollars to the
35 University of Washington alcohol and drug abuse institute for the
36 creation, maintenance, and timely updating of web-based public
37 education materials providing medically and scientifically accurate
38 information about the health and safety risks posed by marijuana use;

39 (d)(i) An amount not less than one million two hundred fifty
40 thousand dollars to the state liquor and cannabis board for

administration of this chapter as appropriated in the omnibus appropriations act; and

(ii) Three hundred fifty-one thousand seven hundred fifty dollars for fiscal year 2018 and three hundred fifty-one thousand seven hundred fifty dollars for fiscal year 2019 to the health professions account established under RCW 43.70.320 for the development and administration of the marijuana authorization database by the department of health. It is the intent of the legislature that this policy will be continued in the 2019-2021 fiscal biennium;

(e) Twenty-three thousand seven hundred fifty dollars to the department of enterprise services provided solely for the state building code council established under RCW 19.27.070, to develop and adopt fire and building code provisions related to marijuana processing and extraction facilities. The distribution under this subsection ~~((+1))~~ (2)(e) is for fiscal year 2016 only;

~~((+2))~~ (3) From the amounts remaining in the dedicated marijuana account after appropriation of the amounts identified in subsections (1) and (2) of this section, the legislature must appropriate for the purposes listed in this subsection ~~((+2))~~ (3) as follows:

(a)(i) Up to fifteen percent to the department of social and health services division of behavioral health and recovery for the development, implementation, maintenance, and evaluation of programs and practices aimed at the prevention or reduction of maladaptive substance use, substance use disorder, substance abuse or substance dependence, as these terms are defined in the Diagnostic and Statistical Manual of Mental Disorders, among middle school and high school-age students, whether as an explicit goal of a given program or practice or as a consistently corresponding effect of its implementation, mental health services for children and youth, and services for pregnant and parenting women; PROVIDED, That:

(A) Of the funds appropriated under (a)(i) of this subsection for new programs and new services, at least eighty-five percent must be directed to evidence-based or research-based programs and practices that produce objectively measurable results and, by September 1, 2020, are cost-beneficial; and

(B) Up to fifteen percent of the funds appropriated under (a)(i) of this subsection for new programs and new services may be directed to proven and tested practices, emerging best practices, or promising practices.

(ii) In deciding which programs and practices to fund, the secretary of the department of social and health services must consult, at least annually, with the University of Washington's social development research group and the University of Washington's alcohol and drug abuse institute.

(iii) For the fiscal year beginning July 1, 2016, the legislature must appropriate a minimum of twenty-seven million seven hundred eighty-six thousand dollars, and for each subsequent fiscal year thereafter, the legislature must appropriate a minimum of twenty-five million five hundred thirty-six thousand dollars under this subsection ~~((+2+))~~ (3)(a);

(b)(i) Up to ten percent to the department of health for the following, subject to (b)(ii) of this subsection ~~((+2+))~~ (3):

(A) Creation, implementation, operation, and management of a marijuana education and public health program that contains the following:

(I) A marijuana use public health hotline that provides referrals to substance abuse treatment providers, utilizes evidence-based or research-based public health approaches to minimizing the harms associated with marijuana use, and does not solely advocate an abstinence-only approach;

(II) A grants program for local health departments or other local community agencies that supports development and implementation of coordinated intervention strategies for the prevention and reduction of marijuana use by youth; and

(III) Media-based education campaigns across television, internet, radio, print, and out-of-home advertising, separately targeting youth and adults, that provide medically and scientifically accurate information about the health and safety risks posed by marijuana use;

(B) The Washington poison control center; and

(C) During the 2015-2017 fiscal biennium, the funds appropriated under this subsection ~~((+2+))~~ (3)(b) may be used for prevention activities that target youth and populations with a high incidence of tobacco use.

(ii) For the fiscal year beginning July 1, 2016, the legislature must appropriate a minimum of seven million five hundred thousand dollars and for each subsequent fiscal year thereafter, the legislature must appropriate a minimum of nine million seven hundred fifty thousand dollars under this subsection ~~((+2+))~~ (3)(b);

1 (c)(i) Up to six-tenths of one percent to the University of
2 Washington and four-tenths of one percent to Washington State
3 University for research on the short and long-term effects of
4 marijuana use, to include but not be limited to formal and informal
5 methods for estimating and measuring intoxication and impairment, and
6 for the dissemination of such research.

7 (ii) For the fiscal year beginning July 1, 2016, the legislature
8 must appropriate a minimum of two hundred seven thousand dollars and
9 for each subsequent fiscal year, except for the 2017-2019 fiscal
10 biennium, the legislature must appropriate a minimum of one million
11 twenty-one thousand dollars to the University of Washington. For the
12 fiscal year beginning July 1, 2016, the legislature must appropriate
13 a minimum of one hundred thirty-eight thousand dollars and for each
14 subsequent fiscal year thereafter, except for the 2017-2019 fiscal
15 biennium, a minimum of six hundred eighty-one thousand dollars to
16 Washington State University under this subsection ((+2)) (3)(c). It
17 is the intent of the legislature that this policy will be continued
18 in the 2019-2021 fiscal biennium;

19 (d) Fifty percent to the state basic health plan trust account to
20 be administered by the Washington basic health plan administrator and
21 used as provided under chapter 70.47 RCW;

22 (e) Five percent to the Washington state health care authority to
23 be expended exclusively through contracts with community health
24 centers to provide primary health and dental care services, migrant
25 health services, and maternity health care services as provided under
26 RCW 41.05.220;

27 (f)(i) Up to three-tenths of one percent to the office of the
28 superintendent of public instruction to fund grants to building
29 bridges programs under chapter 28A.175 RCW.

30 (ii) For the fiscal year beginning July 1, 2016, and each
31 subsequent fiscal year, the legislature must appropriate a minimum of
32 five hundred eleven thousand dollars to the office of the
33 superintendent of public instruction under this subsection ((+2))
34 (3)(f); and

35 (g) At the end of each fiscal year, the treasurer must transfer
36 into the general fund any amounts in the dedicated marijuana account
37 that are not appropriated pursuant to subsections (1) through (3) of
38 this section ~~((and this subsection (2) into the general fund))~~,
39 except as provided in (g)(i) of this subsection ((+2)) (3).

1 (i) Beginning in fiscal year 2018, if marijuana excise tax
2 collections deposited into the general fund in the prior fiscal year
3 exceed twenty-five million dollars, then each fiscal year the
4 legislature must appropriate an amount equal to thirty percent of all
5 marijuana excise taxes deposited into the general fund the prior
6 fiscal year to the treasurer for distribution to counties, cities,
7 and towns as follows:

8 (A) Thirty percent must be distributed to counties, cities, and
9 towns where licensed marijuana retailers are physically located. Each
10 jurisdiction must receive a share of the revenue distribution under
11 this subsection (~~((2))~~) (3)(g)(i)(A) based on the proportional share
12 of the total revenues generated in the individual jurisdiction from
13 the taxes collected under RCW 69.50.535, from licensed marijuana
14 retailers physically located in each jurisdiction. For purposes of
15 this subsection (~~((2))~~) (3)(g)(i)(A), one hundred percent of the
16 proportional amount attributed to a retailer physically located in a
17 city or town must be distributed to the city or town.

18 (B) Seventy percent must be distributed to counties, cities, and
19 towns ratably on a per capita basis. Counties must receive sixty
20 percent of the distribution, which must be disbursed based on each
21 county's total proportional population. Funds may only be distributed
22 to jurisdictions that do not prohibit the siting of any state
23 licensed marijuana producer, processor, or retailer.

24 (ii) Distribution amounts allocated to each county, city, and
25 town must be distributed in four installments by the last day of each
26 fiscal quarter.

27 (iii) By September 15th of each year, the state liquor and
28 cannabis board must provide the state treasurer the annual
29 distribution amount, if any, for each county and city as determined
30 in (g)(i) of this subsection (~~((2))~~) (3).

31 (iv) The total share of marijuana excise tax revenues distributed
32 to counties and cities in (g)(i) of this subsection (~~((2))~~) (3) may
33 not exceed six million dollars in fiscal years 2018 and 2019 and
34 twenty million dollars per fiscal year thereafter. However, if the
35 February 2018 forecast of state revenues for the general fund in the
36 2017-2019 fiscal biennium exceeds the amount estimated in the June
37 2017 revenue forecast by over eighteen million dollars after
38 adjusting for changes directly related to legislation adopted in the
39 2017 legislative session, the total share of marijuana excise tax
40 revenue distributed to counties and cities in (g)(i) of this

1 subsection (~~((2))~~) (3) may not exceed fifteen million dollars in
2 fiscal years 2018 and 2019. It is the intent of the legislature that
3 the policy for the maximum distributions in the subsequent fiscal
4 biennia will be no more than (~~(\$6)~~) six million dollars per fiscal
5 year.

6 For the purposes of this section, "marijuana products" means
7 "useable marijuana," "marijuana concentrates," and "marijuana-infused
8 products" as those terms are defined in RCW 69.50.101.

--- END ---

Commerce & Gaming Committee

HB 2301

Brief Description: Concerning the appropriation to counties of moneys from the dedicated marijuana account for the purpose of funding legal services for indigent defendants in criminal cases.

Sponsors: Representatives Walsh, Shea, Muri, McDonald, Blake, Pike, Kraft and Young.

Brief Summary of Bill

- Requires that 33.3 percent of all moneys in the Dedicated Marijuana Account be distributed annually to counties based on the total excise tax revenues collected from marijuana business licensees located in the cities, towns, and unincorporated areas within that county.
- Requires that the share of the distribution going to individual counties be calculated on a pro rata basis based upon the marijuana excise tax revenues generated by the cities, towns, and unincorporated areas within that county.
- Requires that a county receiving this distribution must use the funds for the sole purpose of funding legal services for indigent defendants in criminal cases.

Hearing Date: 1/8/18

Staff: Thamas Osborn (786-7129).

Background:

Marijuana Excise Tax.

The state imposes a marijuana excise tax on licensed marijuana-related businesses equal to 37 percent of the selling price on each retail sale of marijuana, marijuana concentrates, useable marijuana, and marijuana-infused products. All revenues derived from the marijuana excise tax must be deposited in the Dedicated Marijuana Account.

Dedicated Marijuana Account.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Initiative 502 created a Dedicated Marijuana Account consisting of moneys derived from marijuana excise taxes, license fees, penalties, forfeitures, and all other moneys, income, or revenue received by the LCB from marijuana-related commerce and activities. Proceeds from the account must be distributed every three months by the Liquor and Cannabis Board (LCB) to specified public entities and in amounts established in statute. The recipients of distributions from the Dedicated Marijuana Account include:

- Department of Social and Health Services;
- University of Washington;
- Department of Health;
- counties, cities, and towns;
- local health departments;
- Washington State Poison Control Center; and
- various public health-related programs.

Distribution of Marijuana Excise Tax Revenue to Counties, Cities, and Towns.

Beginning in fiscal year 2018, a portion of marijuana excise tax revenues deposited into the State General Fund will be shared with counties, cities, and towns. However, distributions to local jurisdictions will not occur until \$25 million of marijuana tax revenues have been deposited into the State General Fund, at which point 30 percent of the previous fiscal year's General Fund revenues will be distributed to eligible counties, cities, and towns.

Thirty percent of the local government distribution must be disbursed to individual counties, cities, and towns based upon the amount of marijuana excise tax revenues generated by licensed retail marijuana stores within the county, city, or town. The remaining 70 percent must be disbursed based on population, with counties receiving 60 percent of this allocation and cities and towns sharing the remaining 40 percent. Jurisdictions that prohibit the siting of state-licensed marijuana producers, processors, and retailers are not eligible for a share of marijuana excise tax revenues.

Summary of Bill:

Beginning July 1, 2019, 33.3 percent of all moneys in the Dedicated Marijuana Account must be appropriated annually to the treasurer for distribution to counties on a pro rata basis in accordance with specified requirements. First, the moneys distributed to an individual county must be equal to that county's proportional share of the 33.3 percent appropriation from the Dedicated Marijuana Account. The dollar amount of this proportional share must, in turn, be calculated on a pro rata basis as determined by reference to the total excise tax revenues collected from marijuana business licensees located in the cities, towns, and unincorporated areas within that county. In other words, the dollar amount of the distribution going to a particular county is contingent on the marijuana excise tax revenues generated the within that county. Finally, a county receiving this distribution must use the funds for the sole purpose of funding legal services for indigent defendants in criminal cases.

The 33.3 percent distribution required under the act has priority over, and comes before, all other distributions from the Dedicated Marijuana Account as specified in statute.

Appropriation: None.

Fiscal Note: Available.

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

SENATE BILL 6420

State of Washington

65th Legislature

2018 Regular Session

By Senators Braun, Takko, and Fain

1 AN ACT Relating to criminal justice; amending RCW 46.20.342,
2 10.37.015, 10.37.015, 46.20.005, 46.20.341, 46.20.341, 46.55.113,
3 46.55.120, 46.63.020, 10.101.050, and 10.101.060; reenacting and
4 amending RCW 10.31.100; adding a new section to chapter 10.101 RCW;
5 repealing RCW 10.101.070 and 10.101.080; prescribing penalties;
6 providing an effective date; and providing an expiration date.

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

8 **Sec. 1.** RCW 46.20.342 and 2015 c 149 s 1 are each amended to
9 read as follows:

10 (1) It is unlawful for any person to drive a motor vehicle in
11 this state while that person is in a suspended or revoked status or
12 when his or her privilege to drive is suspended or revoked in this or
13 any other state. Any person who has a valid Washington driver's
14 license is not guilty of a violation of this section.

15 (a) A person found to be a habitual offender under chapter 46.65
16 RCW, who violates this section while an order of revocation issued
17 under chapter 46.65 RCW prohibiting such operation is in effect, is
18 guilty of driving while license suspended or revoked in the first
19 degree, a gross misdemeanor. Upon the first such conviction, the
20 person shall be punished by imprisonment for not less than ten days.
21 Upon the second conviction, the person shall be punished by

1 imprisonment for not less than ninety days. Upon the third or
2 subsequent conviction, the person shall be punished by imprisonment
3 for not less than one hundred eighty days. If the person is also
4 convicted of the offense defined in RCW 46.61.502 or 46.61.504, when
5 both convictions arise from the same event, the minimum sentence of
6 confinement shall be not less than ninety days. The minimum sentence
7 of confinement required shall not be suspended or deferred. A
8 conviction under this subsection does not prevent a person from
9 petitioning for reinstatement as provided by RCW 46.65.080.

10 (b) A person who violates this section while an order of
11 suspension or revocation prohibiting such operation is in effect and
12 while the person is not eligible to reinstate his or her driver's
13 license or driving privilege, other than for a suspension for the
14 reasons described in (c) of this subsection, is guilty of driving
15 while license suspended or revoked in the second degree, a gross
16 misdemeanor. For the purposes of this subsection, a person is not
17 considered to be eligible to reinstate his or her driver's license or
18 driving privilege if the person is eligible to obtain an ignition
19 interlock driver's license but did not obtain such a license. This
20 subsection applies when a person's driver's license or driving
21 privilege has been suspended or revoked by reason of:

22 (i) A conviction of a felony in the commission of which a motor
23 vehicle was used;

24 (ii) A previous conviction under this section;

25 (iii) A notice received by the department from a court or
26 diversion unit as provided by RCW 46.20.265, relating to a minor who
27 has committed, or who has entered a diversion unit concerning an
28 offense relating to alcohol, legend drugs, controlled substances, or
29 imitation controlled substances;

30 (iv) A conviction of RCW 46.20.410, relating to the violation of
31 restrictions of an occupational driver's license, a temporary
32 restricted driver's license, or an ignition interlock driver's
33 license;

34 (v) A conviction of RCW 46.20.345, relating to the operation of a
35 motor vehicle with a suspended or revoked license;

36 (vi) A conviction of RCW 46.52.020, relating to duty in case of
37 injury to or death of a person or damage to an attended vehicle;

38 (vii) A conviction of RCW 46.61.024, relating to attempting to
39 elude pursuing police vehicles;

1 (viii) A conviction of RCW 46.61.212(4), relating to reckless
2 endangerment of emergency zone workers;

3 (ix) A conviction of RCW 46.61.500, relating to reckless driving;

4 (x) A conviction of RCW 46.61.502 or 46.61.504, relating to a
5 person under the influence of intoxicating liquor or drugs;

6 (xi) A conviction of RCW 46.61.520, relating to vehicular
7 homicide;

8 (xii) A conviction of RCW 46.61.522, relating to vehicular
9 assault;

10 (xiii) A conviction of RCW 46.61.527(4), relating to reckless
11 endangerment of roadway workers;

12 (xiv) A conviction of RCW 46.61.530, relating to racing of
13 vehicles on highways;

14 (xv) A conviction of RCW 46.61.685, relating to leaving children
15 in an unattended vehicle with motor running;

16 (xvi) A conviction of RCW 46.61.740, relating to theft of motor
17 vehicle fuel;

18 (xvii) A conviction of RCW 46.64.048, relating to attempting,
19 aiding, abetting, coercing, and committing crimes;

20 (xviii) An administrative action taken by the department under
21 chapter 46.20 RCW;

22 (xix) A conviction of a local law, ordinance, regulation, or
23 resolution of a political subdivision of this state, the federal
24 government, or any other state, of an offense substantially similar
25 to a violation included in this subsection; or

26 (xx) A finding that a person has committed a traffic infraction
27 under RCW 46.61.526 and suspension of driving privileges pursuant to
28 RCW 46.61.526 (4)(b) or (7)(a)(ii).

29 (c) A person who violates this section when his or her driver's
30 license or driving privilege is, at the time of the violation,
31 suspended or revoked solely because (i) the person must furnish proof
32 of satisfactory progress in a required alcoholism or drug treatment
33 program, (ii) the person must furnish proof of financial
34 responsibility for the future as provided by chapter 46.29 RCW, (iii)
35 the person has failed to comply with the provisions of chapter 46.29
36 RCW relating to uninsured accidents, (iv) the person has failed to
37 respond to a notice of traffic infraction, failed to appear at a
38 requested hearing, violated a written promise to appear in court, or
39 has failed to comply with the terms of a notice of traffic infraction
40 or citation, as provided in RCW 46.20.289, (v) the person has

1 committed an offense in another state that, if committed in this
2 state, would not be grounds for the suspension or revocation of the
3 person's driver's license, (vi) the person has been suspended or
4 revoked by reason of one or more of the items listed in (b) of this
5 subsection, but was eligible to reinstate his or her driver's license
6 or driving privilege at the time of the violation, (vii) the person
7 has received traffic citations or notices of traffic infraction that
8 have resulted in a suspension under RCW 46.20.267 relating to
9 intermediate drivers' licenses, or (viii) the person has been
10 certified by the department of social and health services as a person
11 who is not in compliance with a child support order as provided in
12 RCW 74.20A.320, or any combination of (c)(i) through (viii) of this
13 subsection, (~~((is guilty of))~~) has committed driving while license
14 suspended or revoked in the third degree, a (~~((misdemeanor))~~) traffic
15 infraction subject to a penalty of two hundred fifty dollars. If the
16 person appears in person before the court or submits by mail written
17 proof that he or she has reinstated his or her license after being
18 cited, the court shall reduce the penalty to fifty dollars. For the
19 purposes of this subsection, a person is not considered to be
20 eligible to reinstate his or her driver's license or driving
21 privilege if the person is eligible to obtain an ignition interlock
22 driver's license but did not obtain such a license.

23 (2) Upon receiving a record of conviction or infraction of any
24 person or upon receiving an order by any juvenile court or any duly
25 authorized court officer of the conviction or infraction of any
26 juvenile under this section, the department shall:

27 (a) For a conviction of driving while suspended or revoked in the
28 first degree, as provided by subsection (1)(a) of this section,
29 extend the period of administrative revocation imposed under chapter
30 46.65 RCW for an additional period of one year from and after the
31 date the person would otherwise have been entitled to apply for a new
32 license or have his or her driving privilege restored; or

33 (b) For a conviction of driving while suspended or revoked in the
34 second degree, as provided by subsection (1)(b) of this section, not
35 issue a new license or restore the driving privilege for an
36 additional period of one year from and after the date the person
37 would otherwise have been entitled to apply for a new license or have
38 his or her driving privilege restored; or

39 (c) Not extend the period of suspension or revocation (~~((if the~~
40 ~~conviction was))~~) for an infraction under subsection (1)(c) of this

1 section. (~~If the~~) For a conviction (~~was~~) under subsection (1)(a)
2 or (b) of this section (~~and~~), if the court recommends against the
3 extension and the convicted person has obtained a valid driver's
4 license, the period of suspension or revocation shall not be
5 extended.

6 **Sec. 2.** RCW 10.31.100 and 2017 c 336 s 3 and 2017 c 223 s 1 are
7 each reenacted and amended to read as follows:

8 A police officer having probable cause to believe that a person
9 has committed or is committing a felony shall have the authority to
10 arrest the person without a warrant. A police officer may arrest a
11 person without a warrant for committing a misdemeanor or gross
12 misdemeanor only when the offense is committed in the presence of an
13 officer, except as provided in subsections (1) through (11) of this
14 section.

15 (1) Any police officer having probable cause to believe that a
16 person has committed or is committing a misdemeanor or gross
17 misdemeanor, involving physical harm or threats of harm to any person
18 or property or the unlawful taking of property or involving the use
19 or possession of cannabis, or involving the acquisition, possession,
20 or consumption of alcohol by a person under the age of twenty-one
21 years under RCW 66.44.270, or involving criminal trespass under RCW
22 9A.52.070 or 9A.52.080, shall have the authority to arrest the
23 person.

24 (2) A police officer shall arrest and take into custody, pending
25 release on bail, personal recognizance, or court order, a person
26 without a warrant when the officer has probable cause to believe
27 that:

28 (a) An order has been issued of which the person has knowledge
29 under RCW 26.44.063, or chapter 7.92, 7.90, 9A.46, 10.99, 26.09,
30 26.10, 26.26, 26.50, or 74.34 RCW restraining the person and the
31 person has violated the terms of the order restraining the person
32 from acts or threats of violence, or restraining the person from
33 going onto the grounds of or entering a residence, workplace, school,
34 or day care, or prohibiting the person from knowingly coming within,
35 or knowingly remaining within, a specified distance of a location or,
36 in the case of an order issued under RCW 26.44.063, imposing any
37 other restrictions or conditions upon the person; or

38 (b) A foreign protection order, as defined in RCW 26.52.010, has
39 been issued of which the person under restraint has knowledge and the

1 person under restraint has violated a provision of the foreign
2 protection order prohibiting the person under restraint from
3 contacting or communicating with another person, or excluding the
4 person under restraint from a residence, workplace, school, or day
5 care, or prohibiting the person from knowingly coming within, or
6 knowingly remaining within, a specified distance of a location, or a
7 violation of any provision for which the foreign protection order
8 specifically indicates that a violation will be a crime; or

9 (c) The person is eighteen years or older and within the
10 preceding four hours has assaulted a family or household member as
11 defined in RCW 10.99.020 and the officer believes: (i) A felonious
12 assault has occurred; (ii) an assault has occurred which has resulted
13 in bodily injury to the victim, whether the injury is observable by
14 the responding officer or not; or (iii) that any physical action has
15 occurred which was intended to cause another person reasonably to
16 fear imminent serious bodily injury or death. Bodily injury means
17 physical pain, illness, or an impairment of physical condition. When
18 the officer has probable cause to believe that family or household
19 members have assaulted each other, the officer is not required to
20 arrest both persons. The officer shall arrest the person whom the
21 officer believes to be the primary physical aggressor. In making this
22 determination, the officer shall make every reasonable effort to
23 consider: (A) The intent to protect victims of domestic violence
24 under RCW 10.99.010; (B) the comparative extent of injuries inflicted
25 or serious threats creating fear of physical injury; and (C) the
26 history of domestic violence of each person involved, including
27 whether the conduct was part of an ongoing pattern of abuse.

28 (3) Any police officer having probable cause to believe that a
29 person has committed or is committing a violation of any of the
30 following traffic laws shall have the authority to arrest the person:

31 (a) RCW 46.52.010, relating to duty on striking an unattended car
32 or other property;

33 (b) RCW 46.52.020, relating to duty in case of injury to or death
34 of a person or damage to an attended vehicle;

35 (c) RCW 46.61.500 or 46.61.530, relating to reckless driving or
36 racing of vehicles;

37 (d) RCW 46.61.502 or 46.61.504, relating to persons under the
38 influence of intoxicating liquor or drugs;

39 (e) RCW 46.61.503 or 46.25.110, relating to persons having
40 alcohol or THC in their system;

1 (f) RCW 46.20.342 (1)(a) or (b), relating to driving a motor
2 vehicle while operator's license is suspended or revoked;

3 (g) RCW 46.61.5249, relating to operating a motor vehicle in a
4 negligent manner.

5 (4) A law enforcement officer investigating at the scene of a
6 motor vehicle accident may arrest the driver of a motor vehicle
7 involved in the accident if the officer has probable cause to believe
8 that the driver has committed in connection with the accident a
9 violation of any traffic law or regulation.

10 (5)(a) A law enforcement officer investigating at the scene of a
11 motor vessel accident may arrest the operator of a motor vessel
12 involved in the accident if the officer has probable cause to believe
13 that the operator has committed, in connection with the accident, a
14 criminal violation of chapter 79A.60 RCW.

15 (b) A law enforcement officer investigating at the scene of a
16 motor vessel accident may issue a citation for an infraction to the
17 operator of a motor vessel involved in the accident if the officer
18 has probable cause to believe that the operator has committed, in
19 connection with the accident, a violation of any boating safety law
20 of chapter 79A.60 RCW.

21 (6) Any police officer having probable cause to believe that a
22 person has committed or is committing a violation of RCW 79A.60.040
23 shall have the authority to arrest the person.

24 (7) An officer may act upon the request of a law enforcement
25 officer in whose presence a traffic infraction was committed, to
26 stop, detain, arrest, or issue a notice of traffic infraction to the
27 driver who is believed to have committed the infraction. The request
28 by the witnessing officer shall give an officer the authority to take
29 appropriate action under the laws of the state of Washington.

30 (8) Any police officer having probable cause to believe that a
31 person has committed or is committing any act of indecent exposure,
32 as defined in RCW 9A.88.010, may arrest the person.

33 (9) A police officer may arrest and take into custody, pending
34 release on bail, personal recognizance, or court order, a person
35 without a warrant when the officer has probable cause to believe that
36 an order has been issued of which the person has knowledge under
37 chapter 10.14 RCW and the person has violated the terms of that
38 order.

1 (10) Any police officer having probable cause to believe that a
2 person has, within twenty-four hours of the alleged violation,
3 committed a violation of RCW 9A.50.020 may arrest such person.

4 (11) A police officer having probable cause to believe that a
5 person illegally possesses or illegally has possessed a firearm or
6 other dangerous weapon on private or public elementary or secondary
7 school premises shall have the authority to arrest the person.

8 For purposes of this subsection, the term "firearm" has the
9 meaning defined in RCW 9.41.010 and the term "dangerous weapon" has
10 the meaning defined in RCW 9.41.250 and 9.41.280(1) (c) through (e).

11 (12) A law enforcement officer having probable cause to believe
12 that a person has committed a violation under RCW 77.15.160(~~(+4)~~)
13 (5) may issue a citation for an infraction to the person in
14 connection with the violation.

15 (13) A law enforcement officer having probable cause to believe
16 that a person has committed a criminal violation under RCW 77.15.809
17 or 77.15.811 may arrest the person in connection with the violation.

18 (14) Except as specifically provided in subsections (2), (3),
19 (4), and (7) of this section, nothing in this section extends or
20 otherwise affects the powers of arrest prescribed in Title 46 RCW.

21 (15) No police officer may be held criminally or civilly liable
22 for making an arrest pursuant to subsection (2) or (9) of this
23 section if the police officer acts in good faith and without malice.

24 (16)(a) Except as provided in (b) of this subsection, a police
25 officer shall arrest and keep in custody, until release by a judicial
26 officer on bail, personal recognizance, or court order, a person
27 without a warrant when the officer has probable cause to believe that
28 the person has violated RCW 46.61.502 or 46.61.504 or an equivalent
29 local ordinance and the police officer: (i) Has knowledge that the
30 person has a prior offense as defined in RCW 46.61.5055 within ten
31 years; or (ii) has knowledge, based on a review of the information
32 available to the officer at the time of arrest, that the person is
33 charged with or is awaiting arraignment for an offense that would
34 qualify as a prior offense as defined in RCW 46.61.5055 if it were a
35 conviction.

36 (b) A police officer is not required to keep in custody a person
37 under (a) of this subsection if the person requires immediate medical
38 attention and is admitted to a hospital.

1 **Sec. 3.** RCW 10.37.015 and 2011 c 46 s 1 are each amended to read
2 as follows:

3 (1) No person shall be held to answer in any court for an alleged
4 crime or offense, unless upon an information filed by the prosecuting
5 attorney, or upon an indictment by a grand jury, except in cases of
6 misdemeanor or gross misdemeanor before a district or municipal
7 judge, or before a court martial, except as provided in subsection
8 (2) of this section.

9 (2) Violations of RCW 46.20.342(1)(c)(iv) that occur prior to the
10 effective date of this section may be required by the prosecuting
11 attorney to be referred to his or her office for consideration of
12 filing an information or for entry into a precharge diversion
13 program.

14 **Sec. 4.** RCW 10.37.015 and 2011 c 46 s 1 are each amended to read
15 as follows:

16 ~~((1))~~ No person shall be held to answer in any court for an
17 alleged crime or offense, unless upon an information filed by the
18 prosecuting attorney, or upon an indictment by a grand jury, except
19 in cases of misdemeanor or gross misdemeanor before a district or
20 municipal judge, or before a court martial~~((, except as provided in~~
21 ~~subsection (2) of this section.~~

22 ~~(2) Violations of RCW 46.20.342(1)(c)(iv) may be required by the~~
23 ~~prosecuting attorney to be referred to his or her office for~~
24 ~~consideration of filing an information or for entry into a precharge~~
25 ~~diversion program)).~~

26 **Sec. 5.** RCW 46.20.005 and 1997 c 66 s 1 are each amended to read
27 as follows:

28 Except as expressly exempted by this chapter, it is a misdemeanor
29 for a person to drive any motor vehicle upon a highway in this state
30 without a valid driver's license issued to Washington residents under
31 this chapter. This section does not apply if at the time of the stop
32 the person is not in violation of RCW 46.20.342(1) or ~~((46.20.420))~~
33 46.20.345 and has in his or her possession an expired driver's
34 license or other valid identifying documentation under RCW 46.20.035.
35 A violation of this section is a lesser included offense within the
36 offenses described in RCW 46.20.342(1) ~~((or 46.20.420))~~ (a) and (b)
37 and 46.20.345.

1 **Sec. 6.** RCW 46.20.341 and 2009 c 490 s 1 are each amended to
2 read as follows:

3 (1)(a) A person who violates RCW 46.20.342(1)(c)(iv) in a
4 jurisdiction that does not have a relicensing (~~((diversion))~~) program
5 shall be provided with an abstract of his or her driving record by
6 the court or the prosecuting attorney, in addition to a list of his
7 or her unpaid traffic offense related fines and the contact
8 information for each jurisdiction or collection agency to which money
9 is owed.

10 (b) A fee of up to twenty dollars may be imposed by the court in
11 addition to any fee required by the department for provision of the
12 driving abstract.

13 (2)(a) Superior courts or courts of limited jurisdiction in
14 counties or cities are authorized to participate or provide
15 relicensing (~~((diversion))~~) programs to persons who violate RCW
16 46.20.342(1)(c)(iv).

17 (b) Eligibility for the relicensing (~~((diversion))~~) program shall
18 be limited to violators with no more than four convictions or
19 infractions under RCW 46.20.342(1)(c)(iv) in the ten years preceding
20 the date of entering the relicensing (~~((diversion))~~) program, subject
21 to a less restrictive rule imposed by the presiding judge of the
22 county district court or municipal court. People subject to arrest
23 under a warrant are not eligible for the (~~((diversion))~~) relicensing
24 program.

25 (c) (~~((The diversion option))~~) (i) For violations that occurred
26 prior to the effective date of this section, participation in a
27 relicensing program may be offered at the discretion of the
28 prosecuting attorney before charges are filed, or by the court after
29 charges are filed.

30 (ii) For violations that occurred on or after the effective date
31 of this section, participation in a relicensing program may be
32 offered at the discretion of the court.

33 (d) A person who is the holder of a commercial driver's license
34 or who was operating a commercial motor vehicle at the time of the
35 violation of RCW 46.20.342(1)(c)(iv) may not participate in the
36 (~~((diversion))~~) relicensing program under this section.

37 (e) A relicensing (~~((diversion))~~) program that is structured to
38 occur after charges are filed may charge participants a one-time fee
39 of up to one hundred dollars, which is not subject to chapters 3.50,
40 3.62, and 35.20 RCW, and shall be used to support administration of

1 the program. The fee of up to one hundred dollars shall be included
2 in the total to be paid by the participant in the relicensing
3 ((~~diversion~~)) program.

4 (3) A relicensing ((~~diversion~~)) program shall be designed to
5 assist suspended drivers to regain their license and insurance and
6 pay outstanding fines.

7 (4)(a) Counties and cities that operate relicensing ((~~diversion~~))
8 programs shall, subject to available funds, provide information to
9 the administrative office of the courts on an annual basis regarding
10 the eligibility criteria used for the program, the number of
11 referrals from law enforcement, the number of participants accepted
12 into the program, the number of participants who regain their
13 driver's license and insurance, the total amount of fines collected,
14 the costs associated with the program, and other information as
15 determined by the office.

16 (b) The administrative office of the courts is directed, subject
17 to available funds, to compile and analyze the data required to be
18 submitted in this section and develop recommendations for a best
19 practices model for relicensing ((~~diversion~~)) programs.

20 **Sec. 7.** RCW 46.20.341 and 2009 c 490 s 1 are each amended to
21 read as follows:

22 (1)(a) A person who violates RCW 46.20.342(1)(c)(iv) in a
23 jurisdiction that does not have a relicensing ((~~diversion~~)) program
24 shall be provided with an abstract of his or her driving record by
25 the court ((~~or the prosecuting attorney~~)), in addition to a list of
26 his or her unpaid traffic offense related fines and the contact
27 information for each jurisdiction or collection agency to which money
28 is owed.

29 (b) A fee of up to twenty dollars may be imposed by the court in
30 addition to any fee required by the department for provision of the
31 driving abstract.

32 (2)(a) Superior courts or courts of limited jurisdiction in
33 counties or cities are authorized to participate or provide
34 relicensing ((~~diversion~~)) programs to persons who violate RCW
35 46.20.342(1)(c)(iv).

36 (b) Eligibility for the relicensing ((~~diversion~~)) program shall
37 be limited to violators with no more than four convictions or
38 infractions under RCW 46.20.342(1)(c)(iv) in the ten years preceding
39 the date of entering the relicensing ((~~diversion~~)) program, subject

1 to a less restrictive rule imposed by the presiding judge of the
2 county district court or municipal court. People subject to arrest
3 under a warrant are not eligible for the ~~((diversion))~~ relicensing
4 program.

5 ~~(c) ((The diversion option may be offered at the discretion of~~
6 ~~the prosecuting attorney before charges are filed, or by the court~~
7 ~~after charges are filed.))~~ Participation in a relicensing program may
8 be offered at the discretion of the court.

9 (d) A person who is the holder of a commercial driver's license
10 or who was operating a commercial motor vehicle at the time of the
11 violation of RCW 46.20.342(1)(c)(iv) may not participate in the
12 ~~((diversion))~~ relicensing program under this section.

13 (e) A relicensing ~~((diversion))~~ program ~~((that is structured to~~
14 ~~occur after charges are filed))~~ may charge participants a one-time
15 fee of up to one hundred dollars, which is not subject to chapters
16 3.50, 3.62, and 35.20 RCW, and shall be used to support
17 administration of the program. The fee of up to one hundred dollars
18 shall be included in the total to be paid by the participant in the
19 relicensing ~~((diversion))~~ program.

20 (3) A relicensing ~~((diversion))~~ program shall be designed to
21 assist suspended drivers to regain their license and insurance and
22 pay outstanding fines.

23 (4)(a) Counties and cities that operate relicensing ~~((diversion))~~
24 programs shall, subject to available funds, provide information to
25 the administrative office of the courts on an annual basis regarding
26 the eligibility criteria used for the program, the number of
27 referrals from law enforcement, the number of participants accepted
28 into the program, the number of participants who regain their
29 driver's license and insurance, the total amount of fines collected,
30 the costs associated with the program, and other information as
31 determined by the office.

32 (b) The administrative office of the courts is directed, subject
33 to available funds, to compile and analyze the data required to be
34 submitted in this section and develop recommendations for a best
35 practices model for relicensing ~~((diversion))~~ programs.

36 **Sec. 8.** RCW 46.55.113 and 2011 c 167 s 6 are each amended to
37 read as follows:

38 (1) Whenever the driver of a vehicle is arrested for a violation
39 of RCW 46.20.342(1) (a) or (b) or 46.20.345, the vehicle is subject

1 to summary impoundment, pursuant to the terms and conditions of an
2 applicable local ordinance or state agency rule at the direction of a
3 law enforcement officer.

4 (2) In addition, a police officer may take custody of a vehicle,
5 at his or her discretion, and provide for its prompt removal to a
6 place of safety under any of the following circumstances:

7 (a) Whenever a police officer finds a vehicle standing upon the
8 roadway in violation of any of the provisions of RCW 46.61.560, the
9 officer may provide for the removal of the vehicle or require the
10 driver or other person in charge of the vehicle to move the vehicle
11 to a position off the roadway;

12 (b) Whenever a police officer finds a vehicle unattended upon a
13 highway where the vehicle constitutes an obstruction to traffic or
14 jeopardizes public safety;

15 (c) Whenever a police officer finds an unattended vehicle at the
16 scene of an accident or when the driver of a vehicle involved in an
17 accident is physically or mentally incapable of deciding upon steps
18 to be taken to protect his or her property;

19 (d) Whenever the driver of a vehicle is arrested and taken into
20 custody by a police officer;

21 (e) Whenever a police officer discovers a vehicle that the
22 officer determines to be a stolen vehicle;

23 (f) Whenever a vehicle without a special license plate, placard,
24 or decal indicating that the vehicle is being used to transport a
25 person with disabilities under RCW 46.19.010 is parked in a stall or
26 space clearly and conspicuously marked under RCW 46.61.581 which
27 space is provided on private property without charge or on public
28 property;

29 (g) Upon determining that a person is operating a motor vehicle
30 without a valid and, if required, a specially endorsed driver's
31 license or with a license that has been expired for ninety days or
32 more;

33 (h) When a vehicle is illegally occupying a truck, commercial
34 loading zone, restricted parking zone, bus, loading, hooded-meter,
35 taxi, street construction or maintenance, or other similar zone
36 where, by order of the director of transportation or chiefs of police
37 or fire or their designees, parking is limited to designated classes
38 of vehicles or is prohibited during certain hours, on designated days
39 or at all times, if the zone has been established with signage for at
40 least twenty-four hours and where the vehicle is interfering with the

proper and intended use of the zone. Signage must give notice to the public that a vehicle will be removed if illegally parked in the zone;

(i) When a vehicle with an expired registration of more than forty-five days is parked on a public street.

(3) When an arrest is made for a violation of RCW 46.20.342(1) (a) or (b), if the vehicle is a commercial vehicle or farm transport vehicle and the driver of the vehicle is not the owner of the vehicle, before the summary impoundment directed under subsection (1) of this section, the police officer shall attempt in a reasonable and timely manner to contact the owner of the vehicle and may release the vehicle to the owner if the owner is reasonably available, as long as the owner was not in the vehicle at the time of the stop and arrest and the owner has not received a prior release under this subsection or RCW 46.55.120(1)((~~a~~)) (b)(ii).

(4) Nothing in this section may derogate from the powers of police officers under the common law. For the purposes of this section, a place of safety may include the business location of a registered tow truck operator.

(5) For purposes of this section "farm transport vehicle" means a motor vehicle owned by a farmer and that is being actively used in the transportation of the farmer's or another farmer's farm, orchard, aquatic farm, or dairy products, including livestock and plant or animal wastes, from point of production to market or disposal, or supplies or commodities to be used on the farm, orchard, aquatic farm, or dairy, and that has a gross vehicle weight rating of 7,258 kilograms (16,001 pounds) or more.

Sec. 9. RCW 46.55.120 and 2017 c 152 s 1 are each amended to read as follows:

(1)(a) Vehicles or other items of personal property registered or titled with the department that are impounded by registered tow truck operators pursuant to RCW 46.55.080, 46.55.085, 46.55.113, or 9A.88.140 may be redeemed only by the following persons or entities:

- (i) The legal owner;
- (ii) The registered owner;
- (iii) A person authorized in writing by the registered owner;
- (iv) The vehicle's insurer or a vendor working on behalf of the vehicle's insurer;

1 (v) A third-party insurer that has a duty to repair or replace
2 the vehicle, has obtained consent from the registered owner or the
3 owner's agent to move the vehicle, and has documented that consent in
4 the insurer's claim file, or a vendor working on behalf of a third-
5 party insurer that has received such consent; provided, however, that
6 at all times the registered owner must be granted access to and may
7 reclaim possession of the vehicle. For the purposes of this
8 subsection, "owner's agent" means the legal owner of the vehicle, a
9 driver in possession of the vehicle with the registered owner's
10 permission, or an adult member of the registered owner's family;

11 (vi) A person who is determined and verified by the operator to
12 have the permission of the registered owner of the vehicle or other
13 item of personal property registered or titled with the department;

14 (vii) A person who has purchased a vehicle or item of personal
15 property registered or titled with the department from the registered
16 owner who produces proof of ownership or written authorization and
17 signs a receipt therefor; or

18 (viii) If (a)(i) through (vii) of this subsection do not apply, a
19 person, who is known to the registered or legal owner of a motorcycle
20 or moped, as each are defined in chapter 46.04 RCW, that was towed
21 from the scene of an accident, may redeem the motorcycle or moped as
22 a bailment in accordance with RCW 46.55.125 while the registered or
23 legal owner is admitted as a patient in a hospital due to the
24 accident.

25 (b) In addition, a vehicle impounded because the operator is
26 ~~((in))~~ arrested for a violation of RCW 46.20.342(1)(c) prior to the
27 effective date of this section shall not be released until a person
28 eligible to redeem it under (a) of this subsection satisfies the
29 requirements of (f) of this subsection, including paying all towing,
30 removal, and storage fees, notwithstanding the fact that the hold was
31 ordered by a government agency. If the department's records show that
32 the operator has been convicted of a violation of RCW 46.20.342 or a
33 similar local ordinance within the past five years, the vehicle may
34 be held for up to thirty days at the written direction of the agency
35 ordering the vehicle impounded. A vehicle impounded because the
36 operator is arrested for a violation of RCW 46.20.342 may be released
37 only pursuant to a written order from the agency that ordered the
38 vehicle impounded or from the court having jurisdiction. An agency
39 shall issue a written order to release pursuant to a provision of an

1 applicable state agency rule or local ordinance authorizing release
2 on the basis of the following:

3 (i) Economic or personal hardship to the spouse of the operator,
4 taking into consideration public safety factors, including the
5 operator's criminal history and driving record; or

6 (ii) The owner of the vehicle was not the driver, the owner did
7 not know that the driver's license was suspended or revoked, and the
8 owner has not received a prior release under this subsection or RCW
9 46.55.113(3).

10 In order to avoid discriminatory application, other than for the
11 reasons for release set forth in (b)(i) and (ii) of this subsection,
12 an agency shall, under a provision of an applicable state agency rule
13 or local ordinance, deny release in all other circumstances without
14 discretion.

15 If a vehicle is impounded because the operator is in violation of
16 RCW 46.20.342(1) (a) or (b), the vehicle may be held for up to thirty
17 days at the written direction of the agency ordering the vehicle
18 impounded. However, if the department's records show that the
19 operator has been convicted of a violation of RCW 46.20.342(1) (a) or
20 (b) or a similar local ordinance within the past five years, the
21 vehicle may be held at the written direction of the agency ordering
22 the vehicle impounded for up to sixty days, and for up to ninety days
23 if the operator has two or more such prior offenses. If a vehicle is
24 impounded because the operator is arrested for a violation of RCW
25 46.20.342(1) (a) or (b), the vehicle may not be released until a
26 person eligible to redeem it under (a) of this subsection satisfies
27 the requirements of (f) of this subsection, including paying all
28 towing, removal, and storage fees, notwithstanding the fact that the
29 hold was ordered by a government agency.

30 (c) If the vehicle is directed to be held for a suspended license
31 impound, a person who desires to redeem the vehicle at the end of the
32 period of impound shall within five days of the impound at the
33 request of the tow truck operator pay a security deposit to the tow
34 truck operator of not more than one-half of the applicable impound
35 storage rate for each day of the proposed suspended license impound.
36 The tow truck operator shall credit this amount against the final
37 bill for removal, towing, and storage upon redemption. The tow truck
38 operator may accept other sufficient security in lieu of the security
39 deposit. If the person desiring to redeem the vehicle does not pay
40 the security deposit or provide other security acceptable to the tow

1 truck operator, the tow truck operator may process and sell at
2 auction the vehicle as an abandoned vehicle within the normal time
3 limits set out in RCW 46.55.130(1). The security deposit required by
4 this section may be paid and must be accepted at any time up to
5 twenty-four hours before the beginning of the auction to sell the
6 vehicle as abandoned. The registered owner is not eligible to
7 purchase the vehicle at the auction, and the tow truck operator shall
8 sell the vehicle to the highest bidder who is not the registered
9 owner.

10 (d) Notwithstanding (c) of this subsection, a rental car business
11 may immediately redeem a rental vehicle it owns by payment of the
12 costs of removal, towing, and storage, whereupon the vehicle will not
13 be held for a suspended license impound.

14 (e) Notwithstanding (c) of this subsection, a motor vehicle
15 dealer or lender with a perfected security interest in the vehicle
16 may redeem or lawfully repossess a vehicle immediately by payment of
17 the costs of removal, towing, and storage, whereupon the vehicle will
18 not be held for a suspended license impound. A motor vehicle dealer
19 or lender with a perfected security interest in the vehicle may not
20 knowingly and intentionally engage in collusion with a registered
21 owner to repossess and then return or resell a vehicle to the
22 registered owner in an attempt to avoid a suspended license impound.
23 However, this provision does not preclude a vehicle dealer or a
24 lender with a perfected security interest in the vehicle from
25 repossessing the vehicle and then selling, leasing, or otherwise
26 disposing of it in accordance with chapter 62A.9A RCW, including
27 providing redemption rights to the debtor under RCW 62A.9A-623. If
28 the debtor is the registered owner of the vehicle, the debtor's right
29 to redeem the vehicle under chapter 62A.9A RCW is conditioned upon
30 the debtor obtaining and providing proof from the impounding
31 authority or court having jurisdiction that any fines, penalties, and
32 forfeitures owed by the registered owner, as a result of the
33 suspended license impound, have been paid, and proof of the payment
34 must be tendered to the vehicle dealer or lender at the time the
35 debtor tenders all other obligations required to redeem the vehicle.
36 Vehicle dealers or lenders are not liable for damages if they rely in
37 good faith on an order from the impounding agency or a court in
38 releasing a vehicle held under a suspended license impound.

39 (f) The vehicle or other item of personal property registered or
40 titled with the department shall be released upon the presentation to

1 any person having custody of the vehicle of commercially reasonable
2 tender sufficient to cover the costs of towing, storage, or other
3 services rendered during the course of towing, removing, impounding,
4 or storing any such vehicle, with credit being given for the amount
5 of any security deposit paid under (c) of this subsection. In
6 addition, if a vehicle is impounded because the operator was arrested
7 for a violation of RCW 46.20.342 or 46.20.345 and was being operated
8 by the registered owner when it was impounded under local ordinance
9 or agency rule, it must not be released to any person until the
10 registered owner establishes with the agency that ordered the vehicle
11 impounded or the court having jurisdiction that any penalties, fines,
12 or forfeitures owed by him or her have been satisfied. Registered tow
13 truck operators are not liable for damages if they rely in good faith
14 on an order from the impounding agency or a court in releasing a
15 vehicle held under a suspended license impound. Commercially
16 reasonable tender shall include, without limitation, cash, major bank
17 credit cards issued by financial institutions, or personal checks
18 drawn on Washington state branches of financial institutions if
19 accompanied by two pieces of valid identification, one of which may
20 be required by the operator to have a photograph. If the towing firm
21 cannot determine through the customer's bank or a check verification
22 service that the presented check would be paid by the bank or
23 guaranteed by the service, the towing firm may refuse to accept the
24 check. Any person who stops payment on a personal check or credit
25 card, or does not make restitution within ten days from the date a
26 check becomes insufficient due to lack of funds, to a towing firm
27 that has provided a service pursuant to this section or in any other
28 manner defrauds the towing firm in connection with services rendered
29 pursuant to this section shall be liable for damages in the amount of
30 twice the towing and storage fees, plus costs and reasonable
31 attorney's fees.

32 (2)(a) The registered tow truck operator shall give to each
33 person who seeks to redeem an impounded vehicle, or item of personal
34 property registered or titled with the department, written notice of
35 the right of redemption and opportunity for a hearing, which notice
36 shall be accompanied by a form to be used for requesting a hearing,
37 the name of the person or agency authorizing the impound, and a copy
38 of the towing and storage invoice. The registered tow truck operator
39 shall maintain a record evidenced by the redeeming person's signature
40 that such notification was provided.

1 (b) Any person seeking to redeem an impounded vehicle under this
2 section has a right to a hearing in the district or municipal court
3 for the jurisdiction in which the vehicle was impounded to contest
4 the validity of the impoundment or the amount of towing and storage
5 charges. The district court has jurisdiction to determine the issues
6 involving all impoundments including those authorized by the state or
7 its agents. The municipal court has jurisdiction to determine the
8 issues involving impoundments authorized by agents of the
9 municipality. Any request for a hearing shall be made in writing on
10 the form provided for that purpose and must be received by the
11 appropriate court within ten days of the date the opportunity was
12 provided for in (a) of this subsection and more than five days before
13 the date of the auction. At the time of the filing of the hearing
14 request, the petitioner shall pay to the court clerk a filing fee in
15 the same amount required for the filing of a suit in district court.
16 If the hearing request is not received by the court within the ten-
17 day period, the right to a hearing is waived and the registered owner
18 is liable for any towing, storage, or other impoundment charges
19 permitted under this chapter. Upon receipt of a timely hearing
20 request, the court shall proceed to hear and determine the validity
21 of the impoundment.

22 (3)(a) The court, within five days after the request for a
23 hearing, shall notify the registered tow truck operator, the person
24 requesting the hearing if not the owner, the registered and legal
25 owners of the vehicle or other item of personal property registered
26 or titled with the department, and the person or agency authorizing
27 the impound in writing of the hearing date and time.

28 (b) At the hearing, the person or persons requesting the hearing
29 may produce any relevant evidence to show that the impoundment,
30 towing, or storage fees charged were not proper. The court may
31 consider a written report made under oath by the officer who
32 authorized the impoundment in lieu of the officer's personal
33 appearance at the hearing.

34 (c) At the conclusion of the hearing, the court shall determine
35 whether the impoundment was proper, whether the towing or storage
36 fees charged were in compliance with the posted rates, and who is
37 responsible for payment of the fees. The court may not adjust fees or
38 charges that are in compliance with the posted or contracted rates.

39 (d) If the impoundment is found proper, the impoundment, towing,
40 and storage fees as permitted under this chapter together with court

1 costs shall be assessed against the person or persons requesting the
2 hearing, unless the operator did not have a signed and valid
3 impoundment authorization from a private property owner or an
4 authorized agent.

5 (e) If the impoundment is determined to be in violation of this
6 chapter, then the registered and legal owners of the vehicle or other
7 item of personal property registered or titled with the department
8 shall bear no impoundment, towing, or storage fees, and any security
9 shall be returned or discharged as appropriate, and the person or
10 agency who authorized the impoundment shall be liable for any towing,
11 storage, or other impoundment fees permitted under this chapter. The
12 court shall enter judgment in favor of the registered tow truck
13 operator against the person or agency authorizing the impound for the
14 impoundment, towing, and storage fees paid. In addition, the court
15 shall enter judgment in favor of the registered and legal owners of
16 the vehicle, or other item of personal property registered or titled
17 with the department, for the amount of the filing fee required by law
18 for the impound hearing petition as well as reasonable damages for
19 loss of the use of the vehicle during the time the same was impounded
20 against the person or agency authorizing the impound. However, if an
21 impoundment arising from an arrest for an alleged violation of RCW
22 46.20.342 or 46.20.345 is determined to be in violation of this
23 chapter, then the law enforcement officer directing the impoundment
24 and the government employing the officer are not liable for damages
25 if the officer relied in good faith and without gross negligence on
26 the records of the department in ascertaining that the operator of
27 the vehicle had a suspended or revoked driver's license. If any
28 judgment entered is not paid within fifteen days of notice in writing
29 of its entry, the court shall award reasonable attorneys' fees and
30 costs against the defendant in any action to enforce the judgment.
31 Notice of entry of judgment may be made by registered or certified
32 mail, and proof of mailing may be made by affidavit of the party
33 mailing the notice. Notice of the entry of the judgment shall read
34 essentially as follows:

35 TO:

36 YOU ARE HEREBY NOTIFIED JUDGMENT was entered against you in
37 the Court located at in the sum of
38 \$., in an action entitled, Case
39 No. YOU ARE FURTHER NOTIFIED that attorneys fees and

costs will be awarded against you under RCW . . . if the judgment is not paid within 15 days of the date of this notice.

DATED this . . . day of . . . , (year) . . .

Signature

Typed name and address

of party mailing notice

(4) Any impounded abandoned vehicle or item of personal property registered or titled with the department that is not redeemed within fifteen days of mailing of the notice of custody and sale as required by RCW 46.55.110(3) shall be sold at public auction in accordance with all the provisions and subject to all the conditions of RCW 46.55.130. A vehicle or item of personal property registered or titled with the department may be redeemed at any time before the start of the auction upon payment of the applicable towing and storage fees.

Sec. 10. RCW 46.63.020 and 2016 c 213 s 4 are each amended to read as follows:

Failure to perform any act required or the performance of any act prohibited by this title or an equivalent administrative regulation or local law, ordinance, regulation, or resolution relating to traffic including parking, standing, stopping, and pedestrian offenses, is designated as a traffic infraction and may not be classified as a criminal offense, except for an offense contained in the following provisions of this title or a violation of an equivalent administrative regulation or local law, ordinance, regulation, or resolution:

(1) RCW 46.09.457(1)(b)(i) relating to a false statement regarding the inspection of and installation of equipment on wheeled all-terrain vehicles;

(2) RCW 46.09.470(2) relating to the operation of a nonhighway vehicle while under the influence of intoxicating liquor or a controlled substance;

(3) RCW 46.09.480 relating to operation of nonhighway vehicles;

(4) RCW 46.10.490(2) relating to the operation of a snowmobile while under the influence of intoxicating liquor or narcotics or habit-forming drugs or in a manner endangering the person of another;

(5) RCW 46.10.495 relating to the operation of snowmobiles;

1 (6) Chapter 46.12 RCW relating to certificates of title,
2 registration certificates, and markings indicating that a vehicle has
3 been destroyed or declared a total loss;

4 (7) RCW 46.16A.030 and 46.16A.050(3) relating to the nonpayment
5 of taxes and fees by failure to register a vehicle and falsifying
6 residency when registering a motor vehicle;

7 (8) RCW 46.16A.520 relating to permitting unauthorized persons to
8 drive;

9 (9) RCW 46.16A.320 relating to vehicle trip permits;

10 (10) RCW 46.19.050(1) relating to knowingly providing false
11 information in conjunction with an application for a special placard
12 or license plate for disabled persons' parking;

13 (11) RCW 46.19.050(8) relating to illegally obtaining a parking
14 placard, special license plate, special year tab, or identification
15 card;

16 (12) RCW 46.19.050(9) relating to sale of a parking placard,
17 special license plate, special year tab, or identification card;

18 (13) RCW 46.20.005 relating to driving without a valid driver's
19 license;

20 (14) RCW 46.20.091 relating to false statements regarding a
21 driver's license or instruction permit;

22 (15) RCW 46.20.0921 relating to the unlawful possession and use
23 of a driver's license;

24 (16) RCW 46.20.342(1) (a) and (b) relating to driving with a
25 suspended or revoked license or status;

26 (17) RCW 46.20.345 relating to the operation of a motor vehicle
27 with a suspended or revoked license;

28 (18) RCW 46.20.410 relating to the violation of restrictions of
29 an occupational driver's license, temporary restricted driver's
30 license, or ignition interlock driver's license;

31 (19) RCW 46.20.740 relating to operation of a motor vehicle
32 without an ignition interlock device in violation of a license
33 notation that the device is required;

34 (20) RCW 46.20.750 relating to circumventing an ignition
35 interlock device;

36 (21) RCW 46.25.170 relating to commercial driver's licenses;

37 (22) Chapter 46.29 RCW relating to financial responsibility;

38 (23) RCW 46.30.040 relating to providing false evidence of
39 financial responsibility;

40 (24) RCW 46.35.030 relating to recording device information;

1 (25) RCW 46.37.435 relating to wrongful installation of
2 sunscreening material;

3 (26) RCW 46.37.650 relating to the manufacture, importation,
4 sale, distribution, or installation of a counterfeit air bag,
5 nonfunctional air bag, or previously deployed or damaged air bag;

6 (27) RCW 46.37.660 relating to the sale or installation of a
7 device that causes a vehicle's diagnostic system to inaccurately
8 indicate that the vehicle has a functional air bag when a counterfeit
9 air bag, nonfunctional air bag, or no air bag is installed;

10 (28) RCW 46.37.671 through 46.37.675 relating to signal
11 preemption devices;

12 (29) RCW 46.37.685 relating to switching or flipping license
13 plates, utilizing technology to flip or change the appearance of a
14 license plate, selling a license plate flipping device or technology
15 used to change the appearance of a license plate, or falsifying a
16 vehicle registration;

17 (30) RCW 46.44.180 relating to operation of mobile home pilot
18 vehicles;

19 (31) RCW 46.48.175 relating to the transportation of dangerous
20 articles;

21 (32) RCW 46.52.010 relating to duty on striking an unattended car
22 or other property;

23 (33) RCW 46.52.020 relating to duty in case of injury to or death
24 of a person or damage to an attended vehicle;

25 (34) RCW 46.52.090 relating to reports by repairers, storage
26 persons, and appraisers;

27 (35) RCW 46.52.130 relating to confidentiality of the driving
28 record to be furnished to an insurance company, an employer, and an
29 alcohol/drug assessment or treatment agency;

30 (36) RCW 46.55.020 relating to engaging in the activities of a
31 registered tow truck operator without a registration certificate;

32 (37) RCW 46.55.035 relating to prohibited practices by tow truck
33 operators;

34 (38) RCW 46.55.300 relating to vehicle immobilization;

35 (39) RCW 46.61.015 relating to obedience to police officers,
36 flaggers, or firefighters;

37 (40) RCW 46.61.020 relating to refusal to give information to or
38 cooperate with an officer;

39 (41) RCW 46.61.022 relating to failure to stop and give
40 identification to an officer;

1 (42) RCW 46.61.024 relating to attempting to elude pursuing
2 police vehicles;
3 (43) RCW 46.61.212(4) relating to reckless endangerment of
4 emergency zone workers;
5 (44) RCW 46.61.500 relating to reckless driving;
6 (45) RCW 46.61.502 and 46.61.504 relating to persons under the
7 influence of intoxicating liquor or drugs;
8 (46) RCW 46.61.503 relating to a person under age twenty-one
9 driving a motor vehicle after consuming alcohol;
10 (47) RCW 46.61.520 relating to vehicular homicide by motor
11 vehicle;
12 (48) RCW 46.61.522 relating to vehicular assault;
13 (49) RCW 46.61.5249 relating to first degree negligent driving;
14 (50) RCW 46.61.527(4) relating to reckless endangerment of
15 roadway workers;
16 (51) RCW 46.61.530 relating to racing of vehicles on highways;
17 (52) RCW 46.61.655(7) (a) and (b) relating to failure to secure a
18 load;
19 (53) RCW 46.61.685 relating to leaving children in an unattended
20 vehicle with the motor running;
21 (54) RCW 46.61.740 relating to theft of motor vehicle fuel;
22 (55) RCW 46.64.010 relating to unlawful cancellation of or
23 attempt to cancel a traffic citation;
24 (56) RCW 46.64.048 relating to attempting, aiding, abetting,
25 coercing, and committing crimes;
26 (57) Chapter 46.65 RCW relating to habitual traffic offenders;
27 (58) RCW 46.68.010 relating to false statements made to obtain a
28 refund;
29 (59) Chapter 46.70 RCW relating to unfair motor vehicle business
30 practices, except where that chapter provides for the assessment of
31 monetary penalties of a civil nature;
32 (60) Chapter 46.72 RCW relating to the transportation of
33 passengers in for hire vehicles;
34 (61) RCW 46.72A.060 relating to limousine carrier insurance;
35 (62) RCW 46.72A.070 relating to operation of a limousine without
36 a vehicle certificate;
37 (63) RCW 46.72A.080 relating to false advertising by a limousine
38 carrier;
39 (64) Chapter 46.80 RCW relating to motor vehicle wreckers;
40 (65) Chapter 46.82 RCW relating to driver's training schools;

(66) RCW 46.87.260 relating to alteration or forgery of a cab card, letter of authority, or other temporary authority issued under chapter 46.87 RCW;

(67) RCW 46.87.290 relating to operation of an unregistered or unlicensed vehicle under chapter 46.87 RCW.

Sec. 11. RCW 10.101.050 and 2005 c 157 s 3 are each amended to read as follows:

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

(2) In order to receive appropriated funds under RCW 10.101.060, each ((applying)) county or city must:

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

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

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

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

NEW SECTION. **Sec. 12.** A new section is added to chapter 10.101 RCW to read as follows:

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

(a) Beginning in fiscal year 2019, the state shall appropriate funds for not less than ten percent of the cost of public defense services;

(b) In fiscal year 2020, the state shall appropriate funds for not less than twenty percent of the cost of public defense services;

(c) In fiscal year 2021, the state shall appropriate funds for not less than thirty percent of the cost of public defense services;

(d) In fiscal year 2022, the state shall appropriate funds for not less than forty percent of the cost of public defense services;

(e) In fiscal year 2023, the state shall appropriate funds for not less than fifty percent of the cost of public defense services;

(f) In fiscal year 2024, the state shall appropriate funds for not less than sixty percent of the cost of public defense services;

(g) In fiscal year 2025, the state shall appropriate funds for not less than seventy percent of the cost of public defense services;

(h) In fiscal year 2026, the state shall appropriate funds for not less than eighty percent of the cost of public defense services;

(i) In fiscal year 2027, the state shall appropriate funds for not less than ninety percent of the cost of public defense services;

(j) In fiscal year 2028 and thereafter, the state shall appropriate funds for not less than one hundred percent of the cost of public defense services.

(2)(a) The office of public defense 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.

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

Sec. 13. RCW 10.101.060 and 2005 c 157 s 4 are each amended to read as follows:

(1)((~~a~~)) Subject to the availability of funds appropriated for this purpose, the office of public defense shall disburse to ((~~applying~~)) all counties and cities that meet the requirements of ((~~RCW 10.101.050~~)) this chapter designated funds under this chapter on a pro rata basis pursuant to the formula set forth in ((~~RCW~~

1 ~~10.101.070 and shall disburse to eligible cities, funds pursuant to~~
2 ~~RCW 10.101.080)) subsection (3) of this section.~~ Each fiscal year for
3 which it receives state ~~((funds)) reimbursement~~ under this chapter, a
4 county or city must document to the office of public defense that it
5 is meeting the standards for provision of indigent defense services
6 as endorsed by the Washington state bar association ~~((or that the~~
7 ~~funds received under this chapter have been used to make appreciable~~
8 ~~demonstrable improvements in the delivery of public defense services,~~
9 ~~including the following:~~

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

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

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

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

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

31 ~~(vi) Identifying funding specifically for the purpose of paying~~
32 ~~investigators (A) for which public defense attorneys may file ex~~
33 ~~parte motions, and (B) which should be specifically designated within~~
34 ~~a public defender agency budget.~~

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

38 (2) The office of public defense shall monitor trial level
39 criminal public defense services to determine eligibility of counties
40 and cities to receive state funds under this chapter. If a

determination is made that a county or city receiving state funds under this chapter did not substantially comply with this section, the office of public defense shall notify the county or city of the failure to comply and unless the county or city contacts the office of public defense and substantially corrects the deficiencies within ninety days after the date of notice, or some other mutually agreed period of time, the county's or city's eligibility to continue receiving funds under this chapter is terminated. If an applying county or city disagrees with the determination of the office of public defense as to the county's or city's eligibility, the county or city may file an appeal with the advisory committee of the office of public defense within thirty days of the eligibility determination. The decision of the advisory committee is final.

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

(b) The office of public defense shall establish policies for the distribution of appropriated funds to eligible counties and cities.

NEW SECTION. **Sec. 14.** Sections 4 and 7 of this act take effect July 1, 2019.

NEW SECTION. **Sec. 15.** Sections 3 and 6 of this act expire July 1, 2019.

NEW SECTION. **Sec. 16.** The following acts or parts of acts are each repealed:

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

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

--- END ---



Joint Meeting of the Access to Justice Board and WSBA Council on Public Defense Draft Agenda

**March 23, 2018 – 12:30 to 3:30 p.m. (check-in starts at 12:15)
Seattle University School of Law – 901 12th Avenue, Seattle 98122
Call: 1-866-577-9294; Access: 52140#**

20 min	Check In and Lunch Buffet	Guests and members are invited to get their lunch and find a seat
12:15-12:35		
10 min	Welcome (5 min each - talking points to include explaining the purpose and mission of each entity and recognition of the need and opportunity for connection, coordination, and collaboration)	Geoff Revelle, ATJ Board Chair Eileen Farley, CPD Chair
12:35-12:45		
10 min	Opening Remarks (talking points to include naming and eschewing the civil/criminal divide and giving a roadmap for the afternoon)	CPD or ATJ Board member
12:45-12:55		
25 min	Vision Casting (10 min each – talking about their experience straddling the criminal/civil system, offering their vision or call to action on effecting change and breaking down the civil/criminal divide.	What's Next Washington Civil Survival
12:55-1:20		
30 min	Ignite Panel: (Ignite talks are where speakers have 5 minutes to talk on a subject accompanied by 20 slides, 15 seconds each, automatically advancing; each panelists would have 5 minutes to answer the following: why the project/org exists, what they do and how they do it; we have 10 minutes for questions; intros are unnecessary bc we'll have it in the program)	<ul style="list-style-type: none"> Public Defender Association (LEAD) TeamChild King County Dept. of Defense's Civil Legal Aid Project Spokane Community Court
1:20-1:50		

15 min **Small Group Discussion** (people will break up into small groups of two to four people and discuss the following questions: potential ways to replicate project, model or systemic approach, barriers and ways to address barriers)

1:50 –
2:05
2:05-2:25 **BREAK**

30 min **Ignite Panel:** (Ignite talks are where speakers have 5 minutes to talk on a subject accompanied by 20 slides, 15 seconds each, automatically advancing; each panelists would have 5 minutes to answer the following: why the project/org exists, what they do and how they do it; we have 10 minutes for questions; intros are unnecessary bc we'll have it in the program)

- NJP (RISE)
- WDA (IPP)
- Project Safety
- Columbia Legal Services

15 min **Small Group Discussion** (people will break up into small groups of two to four people and discuss the following questions: potential ways to replicate project, model or systemic approach, barriers and ways to address barriers)

2:55 –
3:10
10 min **Large Group Debrief** (moderator who leads a conversation to learn about small group discussions and how it can inform next steps)

3:10 –
3:20
10 min **Closing Remarks** (inspiring person to close out the meeting and give encouragement)

3:20 –
3:30

Other:

- DRW
- ACLU

The agenda for the Criminal Rules subcommittee next meeting, Thursday, February 8 at 3 p.m., will be to start working through the rules identified for further discussion. Attached are the relevant portions of the rules (but not the larger ones 4.7 and 4.8) in a format that's easy to read. Here are the rules they will discuss and hope to finish:

- 1.3 Effect
Should we clarify confusing language?
- 2.3 Search and Seizure
(e) conflicts with CrRLJ as to where motion for return of property may be filed and provides no notice. See *In re Matter of Search Warrant*, 194 Wn. App. 365
- 4.4 Severance
Do the cross references in section (b) and section (c)(2) make sense? (See attached proposal)
- 4.5 Omnibus Hearing
Omnibus Application form, motion by plaintiff, §11 does not acknowledge constitutional constraints
- 4.6 Depositions
(d) broad language does not recognize constitutional constraints
- 4.7 Discovery
Generally review whether obligations workable and consistent with case law
- 4.8 Subpoena
Subsections regarding issuance track the CR in substance, but not in form

RULE 1.3

EFFECT

Except as otherwise provided elsewhere in these rules, on their effective date:

(a) Any acts done before the effective date in any proceedings then pending or any action taken in any proceeding pending under rules of procedure in effect prior to the effective date of these rules and any constitutional right are not impaired by these rules.

(b) These rules also apply to any proceedings in court then pending or thereafter commenced regardless of when the proceedings were commenced, except to the extent that in the opinion of the court, the former procedure should continue to be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedures of these rules.

Rule 2.3 SEARCH AND SEIZURE

(e) Motion for Return of Property. A person aggrieved by an unlawful search and seizure may move the court for the return of the property on the ground that the property was illegally seized and that the person is lawfully entitled to possession thereof. If the motion is granted the property shall be returned. If a motion for return of property is made or comes on for hearing after an indictment or information is filed in the court in which the motion is pending, it shall be treated as a motion to suppress.

Compare to CrRLJ 2.3

(e) Motion for Return of Property. A person may move the issuing court for the return of the property seized under the warrant on the ground that the property was illegally seized, or does not appear relevant or reasonably calculated to lead to the discovery of relevant evidence, and that the person is lawfully entitled to possession of the property. The motion shall be filed in the court which issued the warrant and a copy served upon the chief executive of the law enforcement agency that obtained the warrant. Proof of service shall be filed with the court. The prosecuting authority's assertion that property lawfully seized is relevant or reasonably calculated to lead to the discovery of relevant evidence shall be binding on the court.

SUPERIOR COURT CRIMINAL RULES (CrR)
Rule 4.4 SEVERANCE OF OFFENSES AND DEFENDANTS

(a) Timeliness of Motion--Waiver.

(1) A defendant's motion for severance of offenses or defendants must be made before trial, except that a motion for severance may be made before or at the close of all the evidence if the interests of justice require. Severance is waived if the motion is not made at the appropriate time.

(2) If a defendant's pretrial motion for severance was overruled he may renew the motion on the same ground before or at the close of all the evidence. Severance is waived by failure to renew the motion.

(b) Severance of Offenses. The court, on application of the prosecuting attorney; or ~~on application of the defendant~~ other than under section (a), shall grant a severance of offenses whenever before trial or during trial with consent of the defendant, the court determines that severance will promote a fair determination of the defendant's guilt or innocence of each offense.

(c) Severance of Defendants.

(1) A defendant's motion for severance on the ground that an out-of-court statement of a codefendant referring to him is inadmissible against him shall be granted unless:

(i) the prosecuting attorney elects not to offer the statement in the case in chief; or

(ii) deletion of all references to the moving defendant will eliminate any prejudice to him from the admission of the statement.

(2) The court, on application of the prosecuting attorney, or on application of the defendant other than under subsection ~~(b)~~(c)(1), should grant a severance of defendants whenever:

(i) if before trial, it is deemed necessary to protect a defendant's rights to a speedy trial, or it is deemed appropriate to promote a fair determination of the guilt or innocence of a defendant; or

(ii) if during trial upon consent of the severed defendant, it is deemed necessary to achieve a fair determination of the guilt or innocence of a defendant.

(3) When such information would assist the court in ruling on a motion for severance of defendants, the court may order the prosecuting attorney to disclose any statements made by the defendants which he intends to introduce in evidence at the trial.

(4) The assignment of a separate cause number to each defendant of those named on a single charging document is not considered a severance. Should a defendant desire that the case be severed, the defendant must move for severance.

(d) –(e) [Unchanged]

MOTION BY PLAINTIFF

The plaintiff makes the application or motions checked:

1. Defendant to state the general nature of his defense.

2. Defendant to state whether or not he will rely on an alibi and, if so, to furnish a list of his alibi witnesses and their addresses. Granted _____ Denied _____.

3. Defendant to state whether or not he will rely on a defense of insanity at the time of the offense.

(a) If so, defendant to supply the name(s) of his witness(es) on the issue, both lay and professional.

(b) If so, defendant to permit the prosecution to inspect and copy all medical reports under his control or the control of his attorney.

(c) Defendant will also state whether or not he will submit to a psychiatric examination by a doctor selected by the prosecution.

4. Defendant to furnish results of scientific tests, experiments or comparisons and the names of persons who conducted the tests.

5. Defendant to appear in a lineup.

6. Defendant to speak for voice identification by witnesses.

7. Defendant to be fingerprinted.

8. Defendant to pose for photographs (not involving a reenactment of the crime).

9. Defendant to try on articles of clothing.

10. Defendant to permit taking of specimens of material under

fingernails.

11. Defendant to permit taking samples of blood, hair and other materials of his body which involve no unreasonable intrusion thereof.

CrR 4.6

(d) Use. Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as witness, or as substantive evidence under circumstances permitted by the Rules of Evidence.

Council on Public Defense Volunteer Position Description

The Council on Public Defense (CPD) unites representatives of the bar; private and public criminal defense attorneys; judicial representatives appointed by the Washington Supreme Court, the Superior Court Judges Association and the District and Municipal Court Judges Association; current and former prosecutors; and the public to address new and recurring challenges that impact the public defense system. The CPD educates and informs policy makers on issues that need reform and provides concrete proposals that are enhanced by the comprehensive nature of the CPD membership. The CPD's 2018 work plan focuses on five areas: Pre-Trial Justice, Legal Financial Obligations, Defense Standards, Public Defense and Independence, and Mental Health and Public Defense. The CPD's Charter can be viewed at <https://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/council-public-defense>.

Position overview: The CPD unites diverse members of the legal community and public in a shared project of the WSBA to support high-quality and accessible public defense services. Members of the CPD have a unique opportunity to influence public defense practices in WA State by:

- Attending monthly meeting and bringing their experience and perspective to discussions and votes.
- Participating as active members on at least one committee. Current committees include: Pre-Trial Justice, Legal Financial Obligations, Defense Standards, Public Defense and Independence, and Mental Health and Public Defense.
- Providing review and feedback on substantive areas relating to public defense, including but not limited to proposed court rules, potential legislation, comments and other issue advocacy.

Appointment is for a two-year term with eligibility to be reappointed for two additional two-year terms.

Time commitment: Council members are requested to actively participate in the CPD's mission.

- The CPD meets monthly for 2.5 hours at the WSBA office in downtown Seattle and through conference calls.
- Council members are expected to participate in at least one committee, which generally meet monthly by phone with additional meetings as needed to accomplish the goals of the committee.
- Monthly time commitments range from 3.5 to 10 hours.

Requirements: The positions that will begin in October 2018 are:

- Two at-large members (may be WSBA members or members of the public)
- One representative from local government or public defense administrator

Preferred qualifications and skills:

- Knowledge/experience with public defense in WA state and nationally
- Willingness to take initiative on tasks and committees
- Openness to productive discussion/debate
- Ability to fulfill time and involvement commitments
- Current or former prosecutors/city attorneys and those with experience in public health funding are encouraged to apply

(cont.)

Benefits

- CPD members have an opportunity to improve the criminal justice system and to evaluate practices which particularly impact the poor.
- Networking.
- Influence, improve and support public defense across the state.
- Leadership opportunities.
- Public service.

Reimbursement policy: This is an unpaid volunteer position. Voting Council members are eligible for reimbursement under WSBA's committee volunteer reimbursement policy.

Selection and appointment process: Candidates are vetted by a Nomination Team including the CPD chair, vice-chair and BOG liaison. Recommendations are made to the Board of Governor's Nominations Committee, which makes the appointments.

For further information: See <http://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/Council-on-Public-Defense>

How to apply: <https://www.mywsba.org/CommitteeNomination.aspx> (requires myWSBA login).
Deadline is February 28, 2018. Questions about the application? Email barleaders@wsba.org.