

Washington State Judicial Branch

2025-27 Biennial Budget

Continue Pre-Trial Services for Indigent Defendants

Agency: Administrative Office of the Courts

Decision Package Code/Title: BE – Continue Services for Indigent Def

Agency Recommendation Summary Text:

The Administrative Office of the Courts and the Board for Judicial Administration Alternatives to Incarceration Task Force request 1.0 FTE and \$2.2 million to: 1) continue statewide pretrial services; and 2) increase access to alternatives to incarceration for individuals who are indigent and cannot afford to pay for both pretrial and post-conviction services ordered as an alternative to jail/incarceration. This funding will increase the availability and equity of alternatives to incarceration and will reduce disproportionate impacts on marginalized groups and inequities between jurisdictions. (General Fund-State)

Fiscal Summary:

	FY 2026	FY 2027	Biennial	FY 2028	FY 2029	Biennial
Staffing						
FTEs	1.0	1.0	1.0	1.0	1.0	1.0
Operating Expenditures						
Fund 001-1	\$1,116,000	\$1,116,000	\$2,232,000	\$1,116,000	\$1,116,000	\$2,232,000
Total Expenditures						
	\$1,116,000	\$1,116,000	\$2,232,000	\$1,116,000	\$1,116,000	\$2,232,000

Package Description:

Over the past seven years, two task forces were convened by Washington judicial associations and the Supreme Court's Minority and Justice Commission to review pretrial and post-conviction incarceration practices and services.

- In 2017, the Pretrial Reform Task Force convened to gather data and information and make recommendations concerning the expansion of pretrial services in Washington.
- In 2022, the Board for Judicial Administration (BJA) formed the Alternatives to Incarceration Task Force to examine how to make pretrial and post-conviction incarceration alternatives uniformly available to individuals throughout the state regardless of the person's ability to pay or the jurisdiction's resources.

Since 2019, pretrial reform has grown in significance to justice system improvements. It is an important component of addressing systemic racism and other inequities in the justice system. But, anecdotal information suggests there are even fewer pretrial service offerings today.

A variety of alternatives to incarceration exist, but they are fragmented and not available in every community. A statewide survey found the top barrier to offering alternatives was lack of funding. Further, in over 50 percent of jurisdictions, persons found indigent were required to pay for electronic home monitoring (EHM) and around 25 percent were required to pay for alcohol and drug monitoring regardless of their ability to pay.¹ Accused individuals should not be detained pretrial or incarcerated post-conviction solely because of their inability to post a bond, pay for EHM, or other court ordered services. Where EHM is not offered on a sliding scale or free for those found indigent, persons are forced to make the difficult decision to serve time in jail rather than serve detention at home through EHM or some other alternative. Similarly, where folks cannot afford to pay for a domestic violence assessment or treatment where

¹Englert, Alternatives to Incarceration, [A look at alternatives across Washington State Survey Summary](#), August 2023.

such services are not offered for free or on a sliding scale, they may be forced to serve jail time for a related probation violation.

Whether or not persons are detained in jail, offering pretrial and post-conviction alternatives should not be based on who can pay or what the community is financially able to provide. This funding will provide equal access to services ordered as alternatives to confinement for individuals found indigent and give them greater opportunities to be successful. Providing state funding for alternatives is aligned with several initiatives the Legislature has already funded to divert people from jail: post-*Blake* legislation, therapeutic courts, superior court pretrial services pilot programs, and text messaging court reminders. This request compliments those efforts and proposes to continue the pretrial services programs appropriated one-time in the 2023-2025 biennial budget for the Administrative Office of the Courts (AOC).

Proposed Solution

Fully describe and quantify expected impacts on state residents.

An estimated 6,500 individuals are held in pretrial detention every day in Washington, including for non-violent or misdemeanor offenses. Many of these individuals could be released with a low risk to public safety and high likelihood to return to court if robust pretrial services were available including access to required services such as EHM and alcohol monitoring, for free. Statewide funding for pretrial services has been recommended by the Pretrial Reform Task Force.² The Washington State Auditor's Office similarly found that full funding for pretrial services would be less costly to taxpayers than pretrial detention.³

Additionally, the Alternatives to Incarceration Task Force, and its diverse membership, agreed that no-cost alternatives should be available to individuals found indigent and to lower-resourced courts in order to maximize the number of people eligible for alternatives to incarceration.

Research demonstrates that individuals held in jail before trial, even for short periods of time, have worse outcomes, such as higher risk of unemployment, sentencing disparity, and recidivism. A study supported by the Laura and John Arnold Foundation looked at 153,407 defendants in Kentucky and found that longer stays in pretrial detention increased the likelihood that a defendant would fail to appear in court (up to a certain point) and would engage in new criminal activity, and increased the likelihood of recidivism after disposition. Even a small amount of time in jail had a huge impact: "When held 2–3 days, low-risk defendants are almost 40 percent more likely to commit new crimes before trial than equivalent defendants held no more than 24 hours." Generally, outcomes were worse for low-risk defendants, and the Foundation noted a hypothesis of failures occurring due to increased periods of defendants' separation from their communities.⁴

In a small, informal sampling of specific court costs across Washington, court practices varied for indigency funding from no-cost, partial, or full cost of the services ordered as alternatives to individuals. These costs also varied for pretrial and post-conviction status. Depending on court size and length of time for EHM, annual costs for EHM can cost \$6,700—\$450,000 per court, \$8 - \$12 per day per person plus enrollment fee; alcohol and drug monitoring and testing can cost \$19,500 - \$506,000 per court, \$10 - \$17 per day per person. One person was on EHM for 116 days, costing over \$1,000. Indigent litigants that are required to pay EHM costs may not be able to afford this option. Some courts have stopped offering EHM monitoring by their county and individuals need to travel outside of their county to access these services privately. To support pretrial release and post-conviction success, cost-barriers to access evidence-supported tools must be eliminated for indigent litigants.

² Surur, I., et al. Pretrial Reform Task Force: Final Recommendations Report. February 2019. Accessible at <https://www.courts.wa.gov/subsite/mjc/docs/PretrialReformTaskForceReport.pdf>

³ Office of the Washington State Auditor. Reforming Bail Practices in Washington State. February 2019. Accessible at https://sao.wa.gov/wp-content/uploads/Tabs/PerformanceAudit/PA_Reforming_Bail_Practices_ar1023411.pdf

⁴ Pilnik, et, al. [A Framework for Pretrial Justice](#). National Institute of Corrections February 2017.

Funding Description:

Funding of \$2.2 million is needed to continue one-time funding for a full-time Senior Court Program Analyst, for grant-funded pretrial services programming, and reimbursement to individual trial courts for offering alternatives to incarceration to individuals found indigent and to lower-resourced jurisdictions for pretrial and post-conviction services.

The ongoing, full-time Senior Court Program Analyst will continue to implement, develop, and expand the Pretrial Services pilot program funded one-time in 2023-2025. During the pilot, staff met with court administrators, judicial officers, court managers, and court line-staff to learn about their pretrial service needs. By the end of the pilot period in June 2025, AOC will have entered agreements with eight counties to support superior court pilot pretrial services sites, built a repository of pretrial resources, streamlined communication with and formed a statewide association of pretrial practitioners, and completed the planning needed to host at least one Pretrial Summit scheduled for September 2024.

The ongoing, additional funds would be used for various alternatives to include (but not limited to):

- Electronic home monitoring.
- Drug and alcohol monitoring and testing.
- Voluntary service referrals pretrial to mental and behavioral health treatment, domestic violence treatment and classes, etc., and the cost of such services ordered post-conviction.
- Other services identified to support release conditions.

Program Eligibility for Alternatives Reimbursement:

- Funds for alternatives would be provided on a reimbursement basis to those providing the services to litigants who do not have sufficient funding.
- Priority given to small and rural county [courts as defined by Office of Financial management](#).

Fully describe and quantify expected impacts on state residents and specific populations served:

In 2019, the Washington State Auditor's Office estimated that each day approximately 6,500 people held in detention were eligible for pretrial services. Releasing these defendants and providing them pretrial services can save taxpayers between \$6 million and \$12 million a year.⁵ There are also individuals serving jail time because they cannot afford EHM or other alternatives.

The racial, ethnic, gender, and economic disparities in the criminal justice system are frequently reflected in pretrial detention and post-conviction demographics. Jurisdictions with robust services and no-cost alternatives to incarceration services can correct and even eliminate these disparities over time. Being held pretrial has been shown to have significant negative impacts on an individual's case, as well as their housing, employment, and family life. Low risk defendants detained prior to trial are four times more likely to receive a sentence of imprisonment and three times more likely to be given a longer prison sentence as compared to similarly situated low risk defendants released prior to trial.⁶

Explain what alternatives were explored by the agency and why this was the best option chosen.

There is no federal funding to reimburse those who provide pretrial and post-conviction alternatives and services. Funding for alternatives has historically either been budgeted at the local level or placed on the individual to pay, regardless of indigency status. The proposed reimbursement model will be available to local jurisdictions across the state, with a priority on small and rural courts that do not have available funding to cover these costs for indigent

⁵ Office of the Washington State Auditor. Reforming Bail Practices in Washington State. February 2019. Accessible at https://sao.wa.gov/wp-content/uploads/Tabs/PerformanceAudit/PA_Reforming_Bail_Practices_ar1023411.pdf

⁶ Lowencamp, C., VanNostrand, M., Holsinger, A.M. (November 2013). Investigating the Impact of Pretrial Detention on Sentencing Outcomes. Retrieved from: https://craftmediabucket.s3.amazonaws.com/uploads/PDFs/LJAF_Report_state-sentencing_FNL.pdf

defendants. These funds will encourage and help local jurisdictions to reevaluate their pretrial and post-conviction alternative offerings in terms of both demographic and fiscal impact.

What are the consequences of not funding this request?

Without well-funded and accessible pretrial and post-conviction alternatives to incarceration, courts are challenged to achieve the mandates set forth in the Washington State Constitution Article I, Section 20 - Bail (“All persons charged with crime shall be bailable by sufficient sureties, except for capital offenses when the proof is evident, or the presumption great,”), Superior Court Criminal Rule 3.2 and Criminal Rules for Courts of Limited Jurisdiction 3.2 – Release of Accused, and various statutes to ensure that all criminal defendants are treated equally and equitably. As recently as 2018, the Legislature further clarified the authority of superior, district, and municipal courts to consider the least restrictive pretrial release conditions while also ensuring public safety.⁷ The large number of low-risk indigent individuals held pretrial, or released without meaningful conditions, will continue unless no-cost alternatives to detention become available. Indigent defendants also will continue to accept plea deals or sentences for jail time if they cannot afford services required as alternatives, such as EHM.

Is this an expansion or alteration of a current program or service?

This request expands the current, one-time superior court pretrial pilot program to make funding available to expand the program to additional courts at all trial court levels. It would also add a new, statewide reimbursement program to help fund specific alternatives to incarceration for individuals found indigent, especially in rural and small courts that may not have programs.

Decision Package expenditure, FTE and revenue assumptions:

Staffing Assumptions

Senior Court Program Analyst. Beginning July 1, 2025 and ongoing, AOC requires salary, benefits, and associated standard costs for 1.0 FTE to coordinate grants for pretrial services pilot programs, convene stakeholders to promote pretrial services best practices, and provide technical assistance to local courts.

Other Non-Standard Costs

Travel to Courts. Staff will spend a lot of time traveling to sites assisting with implementing and maintaining pretrial services. It is anticipated that overnight travel will be required at least once per month. (\$4,000 per year Object G).

Pass-Thru Funding to Courts. Continued funding for pretrial services program helping trial courts make release, setting of pretrial conditions, and bail decisions more accurately, resulting in better appearance rates while also reducing negative impacts on the accused as well as funds for pretrial and post-conviction alternatives, especially targeting small and rural courts (\$925,000 per year Object N).

Expenditures by Object	<u>FY 2026</u>	<u>FY 2027</u>	<u>FY 2028</u>	<u>FY 2029</u>	<u>FY 2030</u>	<u>FY 2031</u>
A Salaries and Wages	108,000	108,000	108,000	108,000	108,000	108,000
B Employee Benefits	34,000	34,000	34,000	34,000	34,000	34,000
E Goods and Services	6,000	6,000	6,000	6,000	6,000	6,000
G Travel	6,000	6,000	6,000	6,000	6,000	6,000
J Capital Outlays	2,000	2,000	2,000	2,000	2,000	2,000

⁷ RCW 10.21.015, 2018 c 276 § 1

Administrative Office of the Courts
Policy Level – BE – Continue Services for Indigent Def

N	Grants, Benefits and Client Services	925,000	925,000	925,000	925,000	925,000	925,000
T	Intra-Agency Reimbursements	35,000	35,000	35,000	35,000	35,000	35,000
	Total Objects	1,116,000	1,116,000	1,116,000	1,116,000	1,116,000	1,116,000

Staffing

Job Class	Salary	<u>FY 2026</u>	<u>FY 2027</u>	<u>FY 2028</u>	<u>FY 2029</u>	<u>FY 2030</u>	<u>FY 2031</u>
SENIOR COURT PROGRAM ANALYST	108,000	1.0	1.0	1.0	1.0	1.0	1.0
	Total FTEs	1.0	1.0	1.0	1.0	1.0	1.0

Explanation of standard costs by object:

A - Salary estimates are current biennium actual rates at Step L.

B - Benefits are the agency average of 31.10% of salaries.

E - Goods and Services are the agency average of \$5,800 per direct program FTE.

G - Travel is the agency average of \$2,000 per direct program FTE.

J – Ongoing Equipment is the agency average of \$1,900 per direct program FTE.

J – One-time IT Equipment is \$5,900 for the first fiscal year per direct program FTE.

Agency Indirect is calculated at a rate of 24.98% of direct program salaries and benefits.

How does the package relate to the Judicial Branch principal policy objectives?

Fair and Effective Administration of Justice

Accused individuals should not be detained pretrial or incarcerated post-conviction solely because of their inability to post a bond, pay for EHM monitoring, or other services. Every entity in the criminal justice system should take steps to ensure that the systems and services in place do not have a disproportionate impact on a person because of their race, ethnicity, gender, socio-economic position, or otherwise.

Accessibility

Lack of access to services ordered as alternatives to incarceration due to cost or indigency is a real and significant concern. The Alternatives to Incarceration Task Force's main goal was to make alternatives accessible throughout the state regardless of ones' ability to pay or lower court resources. Increasing the availability of pretrial and post-conviction services at no cost to the individual or court will maximize the number of individuals supported through pretrial and post-conviction release to help decrease the disproportionate impact of incarceration on Black, Indigenous, persons of color, and lower-income communities, and will reduce inequities between jurisdictions.

Access to Necessary Representation

Nationally it is estimated that approximately 80 percent of individuals coming before the court for criminal cases qualify for indigency. This number anecdotally is similar to several Washington Counties that provided numbers of indigency compared to overall cases. While individuals may receive legal representation, they may not be able to utilize all of the release conditions and alternatives if there is not funding for them.

Commitment to Effective Court Management

Courts will be able to provide pretrial services and no-cost alternatives for low income individuals who otherwise would not be able to access these services. This particularly will assist lower-resourced courts.

How does the package impact equity in the state?

Address any target populations or communities that will benefit from this proposal.

The racial, ethnic, gender, and economic disparities in the criminal justice system are frequently reflected in pretrial detention demographics and overall incarceration rates, but jurisdictions with robust and no-cost access to alternatives can correct and even eliminate these disparities over time.

Pretrial services and alternatives to pretrial and post-conviction detention offer the potential for an individual to maintain employment, income, health and vehicle insurance, housing, and family cohesion, which are fundamental to a person's well-being, and are basic necessities to survive in daily life. Prioritizing and emphasizing the stability of not being incarcerated pretrial or post-conviction helps individuals maintain the essential aspects of their life. Pretrial services can then become part of their support system even prior to release from a jail sentence in overcoming adversity and achieving success in reintegration back into the regular non-criminal part of society.

Describe the how the agency conducted community outreach and engagement.

The Alternatives to Incarceration Task Force's diverse membership consisted of individuals impacted by incarceration or working with advocacy organizations focused on persons and families impacted by incarceration and multidisciplinary statewide organization representatives. The Task Force hosted presentations from various organizations on existing services, needs, and data and research information, and surveyed courts and attorneys. Task Force meetings were live-streamed and recorded by TVW.

The AOC has worked with pilot courts and met with the following to fully understand the pretrial services needs:

- Pretrial Justice Institute
- Center for Justice Innovation
- Justice System Partners
- Office of Public Defense
- Probation Community
- Collaboration meetings with the Pre and Post-Conviction Workgroup with the BJA

Consider which target populations or communities would be disproportionately impacted by this proposal.

Explain why and how these equity impacts will be mitigated.

This proposal is meant to mitigate the disproportionate impact that already exists on incarceration rates and low-income individuals' inability to access pretrial and post-conviction alternatives to jail. In recent years, Washington has incarcerated Indigenous people at 6 times the rate of White people, Black people 5.7 times the rate of White people, and Latinx people 1.5 times the rate of White people.⁸

Are there impacts to other governmental entities?

It is critical that all system partners, including courts, public defense, and prosecutors work together to help ensure success of the pretrial services and overall access to pre and post-conviction alternatives. This proposal will help increase the availability of increased services and alternatives, thus decreasing the number of people in jail and reducing overall incarceration costs. There are no other immediate impacts to governmental entities outside of reduced incarceration rates and associated cost.

⁸ U.S. Bureau of Justice Statistics (Oct 2023) data assembled by the [Prison Policy Initiative](#).

Stakeholder response:

As this proposal arises from recommendations made by the Pretrial Services Task Force and the Alternatives to Incarceration Task Force, organizations participating in these efforts would also be supportive. There has been increased attention over the last five years to reducing court fines and fees to make courts and services more accessible to individuals, especially those who cannot afford them in the first place. Non-governmental stakeholders would not be directly impacted, however, individuals released with no-cost alternatives would directly benefit from this program.

Are there legal or administrative mandates that require this package to be funded?

There are no mandates that require this package.

Does current law need to be changed to successfully implement this package?

No

Are there impacts to state facilities?

No

Are there other supporting materials that strengthen the case for this request?

[Pretrial Task Force](#), [Alternatives to Incarceration Task Force Survey Summaries](#)

Are there information technology impacts?

There are no information technology impacts for this request.

Agency Contacts:

Christopher Stanley, 360-357-2406, christopher.stanley@courts.wa.gov

Angie Wirkkala, 360-704-5528, angie.wirkkala@courts.wa.gov