
HOUSE BILL 2039

State of Washington 56th Legislature 1999 Regular Session

By Representatives Murray, Constantine and Miloscia

Read first time 02/15/1999. Referred to Committee on Judiciary.

1 AN ACT Relating to establishing a death penalty appellate unit;
2 amending RCW 2.70.020 and 2.70.040; adding new sections to chapter 2.70
3 RCW; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that:

6 (1) Since 1981, when Washington instituted its present death
7 penalty law, the costs associated with death penalty defense have
8 steadily increased. Reasons for the rising costs of death penalty
9 appeals include: (a) Federal requirements that defense attorneys
10 thoroughly investigate and raise every legitimate issue in state court;
11 (b) new state supreme court rules establishing that counsel appointed
12 to death penalty appeals and personal restraint petitions must have
13 experience or training in death penalty law and that two such attorneys
14 be appointed for each appeal; (c) increased number of vigorous
15 prosecutions of death penalty appeals by prosecutors; (d) increased
16 investigation needs; (e) rising administrative costs and out-of-pocket
17 expenses; and (f) increasing complexity of legal issues in death
18 penalty cases;

1 (2) In death penalty appellate cases, a defendant's constitutional
2 right to the effective assistance of counsel is guaranteed;

3 (3) Death penalty defendants have a statutory right to collaterally
4 attack their convictions and to the assistance of counsel in their
5 collateral attacks;

6 (4) Failure to devise a fair and functional fee system could have
7 serious implications in the representation of death penalty defendants,
8 including the state's failure to provide defendants their
9 constitutional rights and the reversal of death sentences; and

10 (5) The creation of a death penalty appellate unit will ensure the
11 fulfillment of the state's constitutional and statutory duty to death
12 penalty defendants while providing death penalty appellate attorneys
13 compensation in an amount that reflects the gravity of the cases and
14 market rates.

15 NEW SECTION. **Sec. 2.** A new section is added to chapter 2.70 RCW
16 to read as follows:

17 A death penalty appellate unit is created within the office of
18 public defense to:

19 (1) Provide legal representation to indigent defendants under a
20 sentence of death who have a constitutional right to counsel in filing
21 and prosecuting direct appeals challenging the trial court convictions
22 and sentences; and

23 (2) Provide legal representation to indigent defendants under a
24 sentence of death who have a statutory right to counsel under RCW
25 10.73.150 to file and prosecute motions or petitions for collateral
26 attack of the trial court convictions and sentences and who request
27 counsel.

28 **Sec. 3.** RCW 2.70.020 and 1996 c 221 s 3 are each amended to read
29 as follows:

30 The director, under the supervision and direction of the advisory
31 committee, shall:

32 (1) Administer all criminal appellate indigent defense services;

33 (2) Establish and administer a death penalty appellate unit under
34 section 2 of this act;

35 (3) Submit a biennial budget for all costs related to state
36 appellate indigent defense;

1 (~~(3)~~) (4) Establish administrative procedures, standards, and
2 guidelines for the program and the death penalty appellate unit,
3 including a cost-efficient system that provides for recovery of costs;

4 (~~(4)~~) (5) Recommend criteria and standards for determining and
5 verifying indigency. In recommending criteria for determining
6 indigency, the director shall compile and review the indigency
7 standards used by other state agencies and shall periodically submit
8 the compilation and report to the legislature on the appropriateness
9 and consistency of such standards;

10 (~~(5)~~) (6) Collect information regarding indigency cases funded by
11 the state and report annually to the legislature and the supreme court;

12 (~~(6)~~) (7) Coordinate with the supreme court and the judges of
13 each division of the court of appeals to determine how attorney
14 services should be provided.

15 Except for the representation provided by the death penalty
16 appellate unit, the office of public defense shall not provide direct
17 representation of clients.

18 NEW SECTION. Sec. 4. A new section is added to chapter 2.70 RCW
19 to read as follows:

20 All powers, duties, and functions of the supreme court and the
21 office of the administrator for the courts pertaining to the
22 appointment of attorneys in death penalty appellate cases are
23 transferred to the office of public defense beginning January 1, 2000.

24 NEW SECTION. Sec. 5. A new section is added to chapter 2.70 RCW
25 to read as follows:

26 Among other responsibilities in establishing and administering the
27 death penalty appellate unit, the director shall:

28 (1) Employ qualified attorneys to the death penalty appellate unit
29 as needed;

30 (2) Provide investigative, clerical, and other support to the death
31 penalty appellate unit;

32 (3) Contract with qualified private or nonprofit attorneys for
33 death penalty appellate representation where a conflict of interest
34 arises or when necessary;

35 (4) Establish standards for the delivery of death penalty appellate
36 services, including, but not limited to: Compensation of counsel,
37 duties and responsibilities of counsel, case load limits, training,

1 evaluation of attorneys, substitution of attorneys or assignment of
2 contracts, compensation for expert witness fees, administrative
3 expenses, support services, and other costs associated with
4 representation. The director may work with the Washington state bar
5 association and the supreme court in establishing standards; and

6 (5) Ensure accountability and encourage efficient work by death
7 penalty appellate defense attorneys.

8 **Sec. 6.** RCW 2.70.040 and 1996 c 221 s 5 are each amended to read
9 as follows:

10 All employees of the office of public defense and the death penalty
11 appellate unit shall be exempt from state civil service under chapter
12 41.06 RCW.

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