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SENATE BILL 5685

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State of Washington                      59th Legislature                      2005 Regular Session

By Senators Kline, Johnson, Weinstein and Esser

Read first time 02/02/2005. Referred to Committee on Judiciary.

1            AN ACT Relating to state-funded civil representation of indigent  
2 persons; amending RCW 43.08.250 and 43.08.260; adding a new chapter to  
3 Title 2 RCW; creating a new section; recodifying RCW 43.08.260;  
4 repealing RCW 43.08.270; providing an effective date; and declaring an  
5 emergency.

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

7            NEW SECTION.    **Sec. 1.** The legislature finds that the provision of  
8 civil legal aid services to indigent persons is an important component  
9 of the state's responsibility to provide for the proper and effective  
10 administration of civil and criminal justice. The legislature further  
11 finds that state-funded legal aid services should be administered by an  
12 independent office of civil legal aid located within the judicial  
13 branch and subject to formal continuing oversight that includes  
14 bipartisan legislative representation.

15            **Sec. 2.** RCW 43.08.250 and 2003 1st sp.s. c 25 s 918 are each  
16 amended to read as follows:

17            The money received by the state treasurer from fees, fines,  
18 forfeitures, penalties, reimbursements or assessments by any court

1 organized under Title 3 or 35 RCW, or chapter 2.08 RCW, shall be  
2 deposited in the public safety and education account which is hereby  
3 created in the state treasury. The legislature shall appropriate the  
4 funds in the account to promote traffic safety education, highway  
5 safety, criminal justice training, crime victims' compensation,  
6 judicial education, the judicial information system, civil  
7 representation of indigent persons under RCW 43.08.260 (as recodified  
8 by this act), winter recreation parking, drug court operations, and  
9 state game programs. During the fiscal biennium ending June 30, 2005,  
10 the legislature may appropriate moneys from the public safety and  
11 education account for purposes of appellate indigent defense and other  
12 operations of the office of public defense, the criminal litigation  
13 unit of the attorney general's office, the treatment alternatives to  
14 street crimes program, crime victims advocacy programs, justice  
15 information network telecommunication planning, treatment for  
16 supplemental security income clients, sexual assault treatment,  
17 operations of the office of administrator for the courts, security in  
18 the common schools, alternative school start-up grants, programs for  
19 disruptive students, criminal justice data collection, Washington state  
20 patrol criminal justice activities, drug court operations, unified  
21 family courts, local court backlog assistance, financial assistance to  
22 local jurisdictions for extraordinary costs incurred in the  
23 adjudication of criminal cases, domestic violence treatment and related  
24 services, the department of corrections' costs in implementing chapter  
25 196, Laws of 1999, reimbursement of local governments for costs  
26 associated with implementing criminal and civil justice legislation,  
27 the replacement of the department of corrections' offender-based  
28 tracking system, secure and semi-secure crisis residential centers,  
29 HOPE beds, the family policy council and community public health and  
30 safety networks, the street youth program, public notification about  
31 registered sex offenders, and narcotics or methamphetamine-related  
32 enforcement, education, training, and drug and alcohol treatment  
33 services.

34 **Sec. 3.** RCW 43.08.260 and 1997 c 319 s 2 are each amended to read  
35 as follows:

36 (1)(a) The legislature recognizes the ethical obligation of  
37 attorneys to represent clients without interference by third parties in

1 the discharge of professional obligations to clients. However, to  
2 ensure the most beneficial use of state resources, the legislature  
3 finds that it is within the authority of the legislature to specify the  
4 categories of legal cases in which qualified legal aid programs may  
5 provide civil representation with state moneys. Accordingly, moneys  
6 appropriated for civil legal representation (~~pursuant to this~~  
7 ~~section~~) shall not be used for legal representation that is either  
8 outside the scope of this section or prohibited by this section.

9 (b) Nothing in this section is intended to limit the authority of  
10 existing entities, including but not limited to the Washington state  
11 bar association, the public disclosure commission, the state auditor,  
12 and the federal legal services corporation to resolve issues within  
13 their respective jurisdictions.

14 (2) Any money appropriated by the legislature (~~from the public~~  
15 ~~safety and education account pursuant to RCW 43.08.250 or from any~~  
16 ~~other state fund or account~~) for civil representation of indigent  
17 persons shall be administered by the office of civil legal aid  
18 established under section 5 of this act, and shall be used solely for  
19 the purpose of contracting with qualified legal aid programs for legal  
20 representation of indigent persons in matters relating to: (a)  
21 Domestic relations and family law matters, (b) public assistance and  
22 health care, (c) housing and utilities, (d) social security, (e)  
23 mortgage foreclosures, (f) home protection bankruptcies, (g) consumer  
24 fraud and unfair sales practices, (h) rights of residents of long-term  
25 care facilities, (i) wills, estates, and living wills, (j) elder abuse,  
26 and (k) guardianship.

27 (3) For purposes of this section, a "qualified legal aid program"  
28 means a not-for-profit corporation incorporated and operating  
29 exclusively in Washington which has received basic field funding for  
30 the provision of civil legal (~~services~~) aid to indigents from the  
31 federal legal services corporation or that has received funding for  
32 civil legal (~~services~~) aid for indigents under this section before  
33 July 1, 1997.

34 (4) (~~The department of community, trade, and economic development~~  
35 ~~shall establish a distribution formula based on the distribution by~~  
36 ~~county of individuals with incomes below the official federal poverty~~  
37 ~~level guidelines.)) When entering into a contract with a qualified  
38 legal (~~services~~) aid provider under this section, the (~~department~~)~~

1 office of civil legal aid shall require the provider to provide legal  
2 (~~(services)~~) aid in a manner that maximizes geographic access (~~(in~~  
3 ~~accordance with the formula established in this subsection (4))~~)  
4 throughout the state.

5 (5) Funds distributed to qualified legal aid programs under this  
6 section may not be used directly or indirectly for:

7 (a) Lobbying.

8 (i) For purposes of this section, "lobbying" means any personal  
9 service, advertisement, telegram, telephone communication, letter,  
10 printed or written matter, or other device directly or indirectly  
11 intended to influence any member of congress or any other federal,  
12 state, or local nonjudicial official, whether elected or appointed:

13 (A) In connection with any act, bill, resolution, or similar  
14 legislation by the congress of the United States or by any state or  
15 local legislative body, or any administrative rule, rule-making  
16 activity, standard, rate, or other enactment by any federal, state, or  
17 local administrative agency;

18 (B) In connection with any referendum, initiative, constitutional  
19 amendment, or any similar procedure of the congress, any state  
20 legislature, any local council, or any similar governing body acting in  
21 a legislative capacity; or

22 (C) In connection with inclusion of any provision in a legislative  
23 measure appropriating funds to, or defining or limiting the functions  
24 or authority of, the recipient of funds under this section.

25 (ii) "Lobbying" does not include the response of an employee of a  
26 legal aid program to a written request from a governmental agency, an  
27 elected or appointed official, or committee on a specific matter. This  
28 exception does not authorize communication with anyone other than the  
29 requesting party, or agent or employee of such agency, official, or  
30 committee.

31 (b) Grass roots lobbying. For purposes of this section, "grass  
32 roots lobbying" means preparation, production, or dissemination of  
33 information the purpose of which is to encourage the public at large,  
34 or any definable segment thereof, to contact legislators or their staff  
35 in support of or in opposition to pending or proposed legislation; or  
36 contribute to or participate in a demonstration, march, rally, lobbying  
37 campaign, or letter writing or telephone campaign for the purpose of  
38 influencing the course of pending or proposed legislation.

1 (c) Class action lawsuits.

2 (d) Participating in or identifying the program with prohibited  
3 political activities. For purposes of this section, "prohibited  
4 political activities" means (i) any activity directed toward the  
5 success or failure of a political party, a candidate for partisan or  
6 nonpartisan office, a partisan political group, or a ballot measure;  
7 (ii) advertising or contributing or soliciting financial support for or  
8 against any candidate, political group, or ballot measure; or (iii)  
9 voter registration or transportation activities.

10 (e) Representation in fee-generating cases. For purposes of this  
11 section, "fee-generating" means a case that might reasonably be  
12 expected to result in a fee for legal (~~services~~) aid if undertaken by  
13 a private attorney. The charging of a fee pursuant to subsection (6)  
14 of this section does not establish the fee-generating nature of a case.

15 A fee-generating case may be accepted when: (i) The case has been  
16 rejected by the local lawyer referral services or by two private  
17 attorneys; (ii) neither the referral service nor two private attorneys  
18 will consider the case without payment of a consultation fee; (iii)  
19 after consultation with the appropriate representatives of the private  
20 bar, the program has determined that the type of case is one that  
21 private attorneys do not ordinarily accept, or do not accept without  
22 prepayment of a fee; or (iv) the director of the program or the  
23 director's designee has determined that referral of the case to the  
24 private bar is not possible because documented attempts to refer  
25 similar cases in the past have been futile, or because emergency  
26 circumstances compel immediate action before referral can be made, but  
27 the client is advised that, if appropriate and consistent with  
28 professional responsibility, referral will be attempted at a later  
29 time.

30 (f) Organizing any association, union, or federation, or  
31 representing a labor union. However, nothing in this subsection (5)(f)  
32 prohibits the provision of legal (~~services~~) aid to clients as  
33 otherwise permitted by this section.

34 (g) Representation of undocumented aliens.

35 (h) Picketing, demonstrations, strikes, or boycotts.

36 (i) Engaging in inappropriate solicitation. For purposes of this  
37 section, "inappropriate solicitation" means promoting the assertion of  
38 specific legal claims among persons who know of their rights to make a

1 claim and who decline to do so. Nothing in this subsection precludes  
2 a legal ~~((services))~~ aid program or its employees from providing  
3 information regarding legal rights and responsibilities or providing  
4 information regarding the program's services and intake procedures  
5 through community legal education activities, responding to an  
6 individual's specific question about whether the individual should  
7 consult with an attorney or take legal action, or responding to an  
8 individual's specific request for information about the individual's  
9 legal rights or request for assistance in connection with a specific  
10 legal problem.

11 (j) Conducting training programs that: (i) Advocate particular  
12 public policies; (ii) encourage or facilitate political activities,  
13 labor or antilabor activities, boycotts, picketing, strikes, or  
14 demonstrations; or (iii) attempt to influence legislation or rule  
15 making. Nothing in this subsection (5)(j) precludes representation of  
16 clients as otherwise permitted by this section.

17 (6) The ~~((department))~~ office of civil legal aid may establish  
18 requirements for client participation in the provision of civil legal  
19 ~~((services))~~ aid under this section, including but not limited to  
20 copayments and sliding fee scales.

21 (7)(a) Contracts entered into by the ~~((department of community,  
22 trade, and economic development))~~ office of civil legal aid with  
23 qualified legal ~~((services))~~ aid programs under this section must  
24 specify that the program's expenditures of moneys distributed under  
25 this section:

26 (i) Must be audited annually by an independent outside auditor.  
27 These audit results must be provided to the ~~((department of community,  
28 trade, and economic development))~~ office of civil legal aid; and

29 (ii) Are subject to audit by the state auditor.

30 (b)(i) Any entity auditing a legal ~~((services))~~ aid program under  
31 this section shall have access to all records of the legal ~~((services))~~  
32 aid program to the full extent necessary to determine compliance with  
33 this section, with the exception of confidential information protected  
34 by the United States Constitution, the state Constitution, the  
35 attorney-client privilege, and applicable rules of attorney conduct.

36 (ii) The legal ~~((services))~~ aid program shall have a system  
37 allowing for production of case-specific information, including client  
38 eligibility and case type, to demonstrate compliance with this section,

1 with the exception of confidential information protected by the United  
2 States Constitution, the state Constitution, the attorney-client  
3 privilege, and applicable rules of attorney conduct. Such information  
4 shall be available to any entity that audits the program.

5 (8) The (~~department of community, trade, and economic~~  
6 ~~development~~)) office of civil legal aid must recover or withhold  
7 amounts determined by an audit to have been used in violation of this  
8 section.

9 (9) The (~~department of community, trade, and economic~~  
10 ~~development~~)) office of civil legal aid may adopt rules to implement  
11 this section.

12 NEW SECTION. Sec. 4. (1) There is created a civil legal aid  
13 oversight committee consisting of the following members:

14 (a) Three persons appointed by the supreme court from a list of  
15 nominees submitted by the access to justice board, one of whom at the  
16 time of appointment is income eligible to receive state-funded civil  
17 legal aid;

18 (b) Two persons appointed by the board for judicial administration;

19 (c) Two senators, one from each of the two largest caucuses,  
20 appointed by the president of the senate; and two members of the house  
21 of representatives, one from each of the two largest caucuses,  
22 appointed by the speaker of the house of representatives;

23 (d) One person appointed by the Washington state bar association;  
24 and

25 (e) One person appointed by the governor.

26 (2) During the term of his or her appointment, an appointee may not  
27 be employed by a state-funded legal aid provider.

28 (3) Members shall each serve a three-year term, subject to renewal  
29 for no more than one additional three-year term. The oversight  
30 committee shall develop rules that provide for the staggering of terms  
31 so that, after the first three years of the committee's existence, the  
32 terms of one-third of the members expire each year. Members of the  
33 advisory committee receive no compensation for their services as  
34 members of the advisory committee, but may be reimbursed for travel and  
35 other expenses in accordance with rules adopted by the office of  
36 financial management.

1 (4) The advisory committee shall: Oversee the activities of the  
2 office of civil legal aid created in section 5 of this act; review the  
3 performance of the director of the office of civil legal aid; and may,  
4 from time to time, make recommendations to the supreme court, the  
5 access to justice board, and the legislature regarding the provision of  
6 civil legal aid funded through RCW 43.08.260 (as recodified by this  
7 act).

8 NEW SECTION. **Sec. 5.** (1) There is created an office of civil  
9 legal aid as an independent agency of the judicial branch.

10 (2) Activities of the office of civil legal aid shall be carried  
11 out by a director of civil legal aid services. The director of civil  
12 legal aid services shall be appointed by the supreme court from a list  
13 of three names forwarded by the access to justice board.  
14 Qualifications for the director include admission to practice law in  
15 this state for at least five years; experience in representation of  
16 low-income people in civil matters, which experience may be in the form  
17 of volunteer representation; knowledge of and demonstrated commitment  
18 to promoting access to the civil justice system for indigent persons;  
19 and proven managerial or supervisory experience. The director shall  
20 serve at the pleasure of the supreme court and receive a salary to be  
21 fixed by the oversight committee.

- 22 (3) The director shall:
- 23 (a) Contract with one or more qualified legal aid providers to
  - 24 provide civil legal aid services authorized by RCW 43.08.260 (as
  - 25 recodified by this act);
  - 26 (b) Monitor and oversee the use of state funding to ensure
  - 27 compliance with this chapter;
  - 28 (c) Report quarterly to the civil legal aid oversight committee
  - 29 established in section 4 of this act and the supreme court's access to
  - 30 justice board on the use of state funds for legal aid; and report
  - 31 biennially on the status of access to the civil justice system for low-
  - 32 income people eligible for state-funded legal aid; and
  - 33 (d) Submit a biennial budget request.
- 34 (4) The office shall not provide direct representation of clients.

35 NEW SECTION. **Sec. 6.** RCW 43.08.270 (Joint legislative civil legal  
36 services oversight committee) and 1997 c 319 s 3 are each repealed.



1        NEW SECTION.    **Sec. 7.**    Sections 4 and 5 of this act constitute a  
2    new chapter in Title 2 RCW.

3        NEW SECTION.    **Sec. 8.**    RCW 43.08.260 (as amended by this act) is  
4    recodified in the chapter created under section 7 of this act.

5        NEW SECTION.    **Sec. 9.**    This act is necessary for the immediate  
6    preservation of the public peace, health, or safety, or support of the  
7    state government and its existing public institutions, and takes effect  
8    July 1, 2005.

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