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HOUSE BILL 2308

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State of Washington

65th Legislature

2018 Regular Session

**By** Representatives Jenkins, Graves, Stokesbary, Kilduff, Valdez, Ortiz-Self, Santos, Goodman, Fey, Bergquist, Sawyer, Tharinger, Pellicciotti, Dolan, Haler, Frame, Stanford, Macri, Kloba, Ryu, Appleton, Doglio, Young, and Stonier; by request of Office of Civil Legal Aid

Prefiled 12/20/17. Read first time 01/08/18. Referred to Committee on Judiciary.

1 AN ACT Relating to civil legal aid; and amending RCW 2.53.010,  
2 2.53.020, 2.53.030, and 2.53.045.

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

4 **Sec. 1.** RCW 2.53.010 and 2005 c 105 s 4 are each amended to read  
5 as follows:

6 (1) There is created a civil legal aid oversight committee  
7 consisting of the following members:

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

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

14 (c) Two senators, one from each of the two largest caucuses,  
15 appointed by the president of the senate; and two members of the  
16 house of representatives, one from each of the two largest caucuses,  
17 appointed by the speaker of the house of representatives;

18 (d) One person appointed by the Washington state bar association;  
19 and

20 (e) One person appointed by the governor.

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

3 (3) Members shall each serve a three-year term, subject to  
4 renewal for no more than one additional three-year term. The  
5 oversight committee shall develop rules that provide for the  
6 staggering of terms so that, after the first three years of the  
7 committee's existence, the terms of one-third of the members expire  
8 each year. Members of the oversight committee receive no compensation  
9 for their services as members of the oversight committee, but may be  
10 reimbursed for travel and other expenses in accordance with rules  
11 adopted by the office of financial management.

12 (4) The oversight committee shall: Oversee the activities of the  
13 office of civil legal aid created in RCW 2.53.020; review the  
14 performance of the director of the office of civil legal aid; and  
15 may, from time to time, make recommendations to the supreme court,  
16 the access to justice board, and the legislature regarding the  
17 provision of civil legal aid funded through RCW 2.53.030 or other  
18 matters affecting the activities or operations of the office of civil  
19 legal aid.

20 **Sec. 2.** RCW 2.53.020 and 2005 c 105 s 5 are each amended to read  
21 as follows:

22 (1) There is created an office of civil legal aid as an  
23 independent agency of the judicial branch.

24 (2) Activities of the office of civil legal aid shall be carried  
25 out by a director of civil legal aid services. The director of civil  
26 legal aid services shall be appointed by the supreme court from a  
27 list of three names forwarded by the access to justice board.  
28 Qualifications for the director include admission to practice law in  
29 this state for at least five years; experience in representation of  
30 low-income people in civil matters, which experience may be in the  
31 form of volunteer representation; knowledge of and demonstrated  
32 commitment to promoting access to the civil justice system for  
33 indigent persons; and proven managerial or supervisory experience.  
34 The director shall serve at the pleasure of the supreme court and  
35 receive a salary to be fixed by the oversight committee.

36 (3) The director shall:

37 (a) Contract with one or more qualified legal aid providers to  
38 provide civil legal aid services authorized by RCW 2.53.030;

1 (b) Monitor and oversee the use of state funding to ensure  
2 compliance with this chapter;

3 (c) Report quarterly to the civil legal aid oversight committee  
4 established in RCW 2.53.010 and the supreme court's access to justice  
5 board on the use of state funds for legal aid; periodically assess  
6 the most prevalent civil legal problems experienced by low-income  
7 people in Washington state and the capacity of the state-funded legal  
8 aid system to meet the legal needs arising from such problems; and  
9 report biennially on the status of access to the civil justice system  
10 for low-income people eligible for state-funded legal aid; and

11 (d) Submit ~~((a biennial))~~ budget requests.

12 (4) The office shall not provide direct representation of  
13 clients.

14 **Sec. 3.** RCW 2.53.030 and 2005 c 105 s 3 are each amended to read  
15 as follows:

16 (1)(a) The legislature recognizes the ethical obligation of  
17 attorneys to represent clients without interference by third parties  
18 in the discharge of professional obligations to clients. ~~((However,))~~  
19 The legislature further finds that the prevalence of civil legal  
20 problems experienced by low-income people in Washington state exceeds  
21 the capacity of the state-funded legal aid system to address. To  
22 ensure the most beneficial use of state resources, the legislature  
23 finds ~~((that))~~ it ~~((is within the authority of the legislature to~~  
24 ~~specify the categories of legal cases in which qualified legal aid~~  
25 ~~programs may provide civil representation with state moneys))~~  
26 appropriate to authorize legal assistance with respect to civil legal  
27 problems that directly affect important rights and basic needs of  
28 individual low-income residents and their families and to define  
29 certain limits on the use of state moneys appropriated for civil  
30 legal aid. Accordingly, moneys appropriated for civil legal  
31 ~~((representation))~~ aid pursuant to this section shall not be used for  
32 legal representation that is either outside the scope of ~~((this~~  
33 ~~section))~~ or prohibited by this section.

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

1 (2) Any money appropriated by the legislature for civil  
2 (~~representation of~~) legal aid to indigent persons pursuant to this  
3 section shall be administered by the office of civil legal aid  
4 established under RCW 2.53.020, and shall be used solely for the  
5 purpose of contracting with qualified legal aid programs for legal  
6 representation of indigent persons in matters relating to: (a)  
7 Domestic relations and family law matters, (b) (~~public~~)  
8 governmental assistance and services, (c) health care, (~~(e)~~) (d)  
9 housing and utilities, (~~(d) social security,~~) (e) mortgage  
10 foreclosures, (f) (~~home protection bankruptcies~~) consumer,  
11 financial services, credit, and bankruptcy, (g) (~~consumer fraud and~~  
12 ~~unfair sales practices~~) employment, (h) rights of residents of long-  
13 term care facilities, (i) wills, estates, and living wills, (j) elder  
14 abuse, (~~and~~) (k) guardianship, (l) disability rights, (m) education  
15 including special education, (n) professional license adjudications,  
16 and (o) discrimination on the basis of identity characteristics or  
17 other circumstances prohibited by local, state, or federal law.

18 (3) For purposes of this section, a "qualified legal aid program"  
19 means a not-for-profit corporation incorporated and operating  
20 exclusively in Washington which has received basic field funding for  
21 the provision of civil legal aid to indigents from the federal legal  
22 services corporation or that has received funding for civil legal aid  
23 for indigents under this section before July 1, 1997.

24 (4) When entering into a contract with a qualified legal aid  
25 provider under this section, the office of civil legal aid shall  
26 require the provider to provide legal aid in a manner that maximizes  
27 geographic access throughout the state and meets generally accepted  
28 standards for the delivery of effective and economical civil legal  
29 assistance.

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

32 (a) Lobbying.

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

38 (A) In connection with any act, bill, resolution, or similar  
39 legislation by the congress of the United States or by any state or  
40 local legislative body, or any administrative rule, rule-making

1 activity, standard, rate, or other enactment by any federal, state,  
2 or local administrative agency;

3 (B) In connection with any referendum, initiative, constitutional  
4 amendment, or any similar procedure of the congress, any state  
5 legislature, any local council, or any similar governing body acting  
6 in a legislative capacity; or

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

11 (ii) "Lobbying" does not include the response of an employee of a  
12 legal aid program to a written request from a governmental agency, an  
13 elected or appointed official, or committee on a specific matter.  
14 This exception does not authorize communication with anyone other  
15 than the requesting party, or agent or employee of such agency,  
16 official, or committee.

17 (b) Grass roots lobbying. For purposes of this section, "grass  
18 roots lobbying" means preparation, production, or dissemination of  
19 information the purpose of which is to encourage the public at large,  
20 or any definable segment thereof, to contact legislators or their  
21 staff in support of or in opposition to pending or proposed  
22 legislation; or contribute to or participate in a demonstration,  
23 march, rally, lobbying campaign, or letter writing or telephone  
24 campaign for the purpose of influencing the course of pending or  
25 proposed legislation.

26 (c) Class action lawsuits.

27 (d) Participating in or identifying the program with prohibited  
28 political activities. For purposes of this section, "prohibited  
29 political activities" means (i) any activity directed toward the  
30 success or failure of a political party, a candidate for partisan or  
31 nonpartisan office, a partisan political group, or a ballot measure;  
32 (ii) advertising or contributing or soliciting financial support for  
33 or against any candidate, political group, or ballot measure; or  
34 (iii) voter registration or transportation activities.

35 (e) Representation in fee-generating cases. For purposes of this  
36 section, "fee-generating" means a case that might reasonably be  
37 expected to result in a fee for legal aid if undertaken by a private  
38 attorney. The charging of a fee pursuant to subsection (6) of this  
39 section does not establish the fee-generating nature of a case.

1 A fee-generating case may be accepted when: (i) The case has been  
2 rejected by the local lawyer referral services or by two private  
3 attorneys; (ii) neither the referral service nor two private  
4 attorneys will consider the case without payment of a consultation  
5 fee; (iii) after consultation with the appropriate representatives of  
6 the private bar, the program has determined that the type of case is  
7 one that private attorneys do not ordinarily accept, or do not accept  
8 without prepayment of a fee; or (iv) the director of the program or  
9 the director's designee has determined that referral of the case to  
10 the private bar is not possible because documented attempts to refer  
11 similar cases in the past have been futile, or because emergency  
12 circumstances compel immediate action before referral can be made,  
13 but the client is advised that, if appropriate and consistent with  
14 professional responsibility, referral will be attempted at a later  
15 time.

16 (f) Organizing any association, union, or federation, or  
17 representing a labor union. However, nothing in this subsection  
18 (5)(f) prohibits the provision of legal aid to clients as otherwise  
19 permitted by this section.

20 (g) Representation of ~~((undocumented aliens))~~ individuals who are  
21 in the United States without legal authority. However, this  
22 subsection (5)(g) does not prohibit the use of funding to provide  
23 legal assistance to persons who:

24 (i) Have been battered or subjected to extreme cruelty, or who  
25 are victims of sexual assault or trafficking in the United States.  
26 The term "battered or subjected to extreme cruelty" has the meaning  
27 given to such term by regulations issued pursuant to Subtitle G of  
28 Title IV of the violence against women act of 1994 (P.L. 103-322, 108  
29 Stat. 1953), as such regulations existed on the effective date of  
30 this section.

31 (ii) Were beneficiaries of the federal executive deferred action  
32 for childhood arrivals program or beneficiaries of a federal  
33 executive program that had protected them from removal.

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

35 (i) Engaging in inappropriate solicitation. For purposes of this  
36 section, "inappropriate solicitation" means promoting the assertion  
37 of specific legal claims among persons who know of their rights to  
38 make a claim and who decline to do so. Nothing in this subsection  
39 precludes a legal aid program or its employees from providing  
40 information regarding legal rights and responsibilities or providing

1 information regarding the program's services and intake procedures  
2 through community legal education activities, responding to an  
3 individual's specific question about whether the individual should  
4 consult with an attorney or take legal action, or responding to an  
5 individual's specific request for information about the individual's  
6 legal rights or request for assistance in connection with a specific  
7 legal problem.

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

14 (6) The office of civil legal aid may establish requirements for  
15 client participation in the provision of civil legal aid under this  
16 section, including but not limited to copayments and sliding fee  
17 scales.

18 (7)(a) Contracts entered into by the office of civil legal aid  
19 with qualified legal aid programs under this section must specify  
20 that the program's expenditures of moneys distributed under this  
21 section:

22 (i) Must be audited annually by an independent outside auditor.  
23 These audit results must be provided to the office of civil legal  
24 aid; and

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

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

32 (ii) The legal aid program shall have a system allowing for  
33 production of case-specific information, including client eligibility  
34 and case type, to demonstrate compliance with this section, with the  
35 exception of confidential information protected by the United States  
36 Constitution, the state Constitution, the attorney-client privilege,  
37 and applicable rules of attorney conduct. Such information shall be  
38 available to any entity that audits the program.

1 (8) The office of civil legal aid must recover or withhold  
2 amounts determined by an audit to have been used in violation of this  
3 section.

4 (9) The office of civil legal aid may adopt rules to implement  
5 this section.

6 **Sec. 4.** RCW 2.53.045 and 2014 c 108 s 3 are each amended to read  
7 as follows:

8 (1) Money appropriated by the legislature for legal services  
9 provided by an attorney appointed pursuant to RCW 13.34.100 must be  
10 administered by the office of civil legal aid established under RCW  
11 2.53.020.

12 (2) The office of civil legal aid (~~may~~) shall enter into  
13 contracts with (~~the counties to disburse state funds for an attorney~~  
14 ~~appointed pursuant to RCW 13.34.100. The office of civil legal aid~~  
15 ~~may also require a county to use~~) attorneys (~~under contract with~~  
16 ~~the office~~) and agencies for the provision of legal services under  
17 RCW 13.34.100 to remain within appropriated amounts.

18 (3) Prior to distributing state funds under subsection (2) of  
19 this section, the office of civil legal aid must verify that  
20 attorneys providing legal representation to children under RCW  
21 13.34.100 meet the standards of practice, voluntary training, and  
22 caseload limits developed and recommended by the statewide children's  
23 representation work group pursuant to section 5, chapter 180, Laws of  
24 2010. Caseload limits described in this subsection must be determined  
25 as provided in RCW 13.34.100(6)(c)(ii).

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