
SECOND SUBSTITUTE SENATE BILL 5046

State of Washington

68th Legislature

2023 Regular Session

By Senate Ways & Means (originally sponsored by Senators Saldaña, Nguyen, Trudeau, C. Wilson, Dhingra, Frame, Kuderer, Nobles, Pedersen, and Valdez)

READ FIRST TIME 02/16/23.

1 AN ACT Relating to postconviction access to counsel; amending RCW
2 2.70.020; creating new sections; and providing an effective date.

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

4 NEW SECTION. **Sec. 1.** The legislature recognizes that Washington
5 authorizes personal restraint petitions to challenge potentially
6 unjust criminal judgments and sentences, a procedural safeguard
7 dating back to medieval common law. The legislature further
8 recognizes that recent statutory amendments and Washington supreme
9 court decisions allow thousands of persons impacted by injustices in
10 the criminal legal system to pursue resentencing.

11 The legislature observes that wealthy people retain attorneys to
12 represent them in these complex, high-stakes postconviction legal
13 proceedings. However, at least 80 percent of persons charged with
14 felonies are indigent and cannot afford to hire a lawyer. In
15 addition, nearly 40 percent of incarcerated persons have a cognitive
16 or physical disability that would limit their capacity to access or
17 understand critical legal documents, draft required petitions, or
18 otherwise effectively represent themselves pro se in legal
19 proceedings. Up to 70 percent of persons in prison cannot read above
20 a fourth-grade level.

1 The legislature finds that the criminal legal system
2 disproportionately incarcerates people of color, and that most people
3 in prison are poor and the poorest are women and people of color. The
4 legislature further finds that current law may have the effect of
5 limiting access to counsel to initiate legitimate claims for
6 postconviction relief. The legislature believes this situation
7 perpetuates and exacerbates the disparate impacts of the criminal
8 legal systems on poor persons and persons of color.

9 The legislature therefore declares that indigent incarcerated
10 persons would benefit from access to public defense counsel to
11 advise, initiate, and execute certain postconviction procedures. In
12 addition, the legislature finds that the state should fund and
13 administer access to counsel for certain types of postconviction
14 procedures through the Washington state office of public defense.
15 This act is intended to: Authorize the office of public defense,
16 within amounts appropriated for this purpose, to provide counsel for
17 certain indigent adults and juveniles to file and prosecute one,
18 timely personal restraint petition; petition a sentencing court when
19 the legislature creates an opportunity to do so; and challenge a
20 conviction or sentence if a final decision of an appellate court
21 creates an opportunity to do so.

22 **Sec. 2.** RCW 2.70.020 and 2021 c 328 s 3 are each amended to read
23 as follows:

24 The director shall:

25 (1) Administer all state-funded services in the following program
26 areas:

27 (a) Trial court criminal indigent defense, as provided in chapter
28 10.101 RCW;

29 (b) Appellate indigent defense, as provided in this chapter and
30 RCW 10.73.150;

31 (c) Representation of indigent parents qualified for appointed
32 counsel in dependency and termination cases, as provided in RCW
33 13.34.090 and 13.34.092;

34 (d) Extraordinary criminal justice cost petitions, as provided in
35 RCW 43.330.190;

36 (e) Compilation of copies of DNA test requests by persons
37 convicted of felonies, as provided in RCW 10.73.170; and

1 (f) Representation of indigent respondents qualified for
2 appointed counsel in sexually violent predator civil commitment
3 cases, as provided in chapter 71.09 RCW; (~~and~~

4 ~~(g))~~ (2) Subject to availability of funds appropriated for this
5 specific purpose, provide access to counsel for indigent persons
6 incarcerated in a juvenile rehabilitation or adult correctional
7 facility to file and prosecute a first, timely personal restraint
8 petition under RCW 10.73.150. The office shall establish eligibility
9 criteria that prioritize access to counsel for youth under age 25,
10 youth or adults with sentences in excess of 120 months, youth or
11 adults with disabilities, and youth or adults with limited English
12 proficiency. Nothing in this subsection creates an entitlement to
13 counsel at state expense to file a personal restraint petition;

14 (3) Subject to the availability of funds appropriated for this
15 specific purpose, appoint counsel to petition the sentencing court if
16 the legislature creates an ability to petition the sentencing court,
17 or appoint counsel to challenge a conviction or sentence if a final
18 decision of an appellate court creates the ability to challenge a
19 conviction or sentence. Nothing in this subsection creates an
20 entitlement to counsel at state expense to petition the sentencing
21 court;

22 (4) Provide access to attorneys for juveniles contacted by a law
23 enforcement officer for whom a legal consultation is required under
24 RCW 13.40.740;

25 ~~((2))~~ (5) Submit a biennial budget for all costs related to the
26 office's program areas;

27 ~~((3))~~ (6) Establish administrative procedures, standards, and
28 guidelines for the office's program areas, including cost-efficient
29 systems that provide for authorized recovery of costs;

30 ~~((4))~~ (7) Provide oversight and technical assistance to ensure
31 the effective and efficient delivery of services in the office's
32 program areas;

33 ~~((5))~~ (8) Recommend criteria and standards for determining and
34 verifying indigency. In recommending criteria for determining
35 indigency, the director shall compile and review the indigency
36 standards used by other state agencies and shall periodically submit
37 the compilation and report to the legislature on the appropriateness
38 and consistency of such standards;

1 (~~(6)~~) (9) Collect information regarding indigent defense
2 services funded by the state and report annually to the advisory
3 committee, the legislature, and the supreme court;

4 (~~(7)~~) (10) Coordinate with the supreme court and the judges of
5 each division of the court of appeals to determine how appellate
6 attorney services should be provided.

7 The office of public defense shall not provide direct
8 representation of clients.

9 NEW SECTION. **Sec. 3.** The office of public defense shall:

10 (1) Examine and evaluate barriers to providing postconviction
11 counsel to file and prosecute a collateral attack. Barriers to be
12 examined and evaluated include issues related to statutes, state and
13 local court rules and practices, availability of qualified attorneys,
14 and any other issues that may come to the attention of the office of
15 public defense;

16 (2) Engage in outreach to postconviction stakeholders, and
17 include input from prosecutors, defense counsel, and convicted
18 persons and their families;

19 (3) Identify resources and reforms to overcome the barriers;

20 (4) Report findings and recommendations to the appropriate fiscal
21 and policy committees of the legislature not later than December 1,
22 2024.

23 NEW SECTION. **Sec. 4.** This act takes effect January 1, 2024.

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