S-3366.1

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**SENATE BILL 5772**

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**State of Washington 67th Legislature 2022 Regular Session**

**By** Senators Saldaña, Nguyen, Dhingra, Hasegawa, Nobles, and Stanford

AN ACT Relating to postconviction access to counsel; amending RCW 2.70.020 and 10.73.150; and providing an effective date.

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

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

The director shall:

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

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

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

(c) Postconviction indigent defense as provided in RCW 10.73.150;

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

((~~(d)~~)) (e) Extraordinary criminal justice cost petitions, as provided in RCW 43.330.190;

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

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

~~(g)~~)) (2) Provide access to attorneys for juveniles contacted by a law enforcement officer for whom a legal consultation is required under RCW 13.40.740;

((~~(2)~~)) (3) Submit a biennial budget for all costs related to the office's program areas;

((~~(3)~~)) (4) Establish administrative procedures, standards, and guidelines for the office's program areas, including cost-efficient systems that provide for authorized recovery of costs;

((~~(4)~~)) (5) Provide oversight and technical assistance to ensure the effective and efficient delivery of services in the office's program areas;

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

((~~(6)~~)) (7) Collect information regarding indigent defense services funded by the state and report annually to the advisory committee, the legislature, and the supreme court;

((~~(7)~~)) (8) Coordinate with the supreme court and the judges of each division of the court of appeals to determine how appellate attorney services should be provided.

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

**Sec.**  RCW 10.73.150 and 1995 c 275 s 2 are each amended to read as follows:

Counsel shall be provided by the office of public defense at state expense to an adult offender convicted of a crime and to a juvenile offender convicted of an offense when the offender is indigent or indigent and able to contribute as those terms are defined in RCW 10.101.010 and the offender:

(1) Files an appeal as a matter of right;

(2) Responds to an appeal filed as a matter of right or responds to a motion for discretionary review or petition for review filed by the state;

(3) ((~~Is under a sentence of death and requests~~)) Requests counsel be appointed to file and prosecute ((~~a~~)) one motion or petition for collateral attack as defined in RCW 10.73.090. Counsel may be provided at public expense to file or prosecute a second or subsequent collateral attack on the same judgment and sentence, if the court determines that the collateral attack is not barred by RCW 10.73.090 or 10.73.140;

(4) ((~~Is not under a sentence of death and requests counsel to prosecute a collateral attack after the chief judge has determined that the issues raised by the petition are not frivolous, in accordance with the procedure contained in rules of appellate procedure 16.11. Counsel shall not be provided at public expense to file or prosecute a second or subsequent collateral attack on the same judgment and sentence;~~

~~(5)~~)) Responds to a collateral attack filed by the state or responds to or prosecutes an appeal from a collateral attack that was filed by the state;

((~~(6)~~)) (5) Prosecutes a motion or petition for review after the supreme court or court of appeals has accepted discretionary review of a decision of a court of limited jurisdiction; ((~~or~~

~~(7)~~)) (6) Prosecutes a motion or petition for review after the supreme court has accepted discretionary review of a court of appeals decision;

(7) Requests counsel be appointed to petition the sentencing court if the legislature creates an ability to petition the sentencing court; or

(8) Requests counsel be appointed to challenge a conviction or sentence if a final decision of an appellate court creates the ability to challenge a conviction or sentence.

NEW SECTION. **Sec.**  This act takes effect January 1, 2023.

**--- END ---**