

HOUSE BILL REPORT

HB 2308

As Reported by House Committee On:
Judiciary

Title: An act relating to civil legal aid.

Brief Description: Concerning civil legal aid.

Sponsors: Representatives Jinkins, 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.

Brief History:

Committee Activity:

Judiciary: 1/11/18, 1/23/18 [DPS].

Brief Summary of Substitute Bill

- Amends provisions governing the Office of Civil Legal Aid, including provisions relating to the types of matters for which state moneys may and may not be used.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Rodne, Ranking Minority Member; Graves, Assistant Ranking Minority Member; Goodman, Haler, Hansen, Kirby, Muri, Orwall and Valdez.

Minority Report: Do not pass. Signed by 2 members: Representatives Klippert and Shea.

Staff: Cece Clynch (786-7195).

Background:

Office of Civil Legal Aid.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The Office of Civil Legal Aid (OCLA) is an independent agency of the judicial branch. The Supreme Court appoints the director from a list of three names provided by the Access To Justice Board (ATJB). The director serves at the pleasure of the Supreme Court and is tasked with the following:

- contracting with legal aid providers to provide authorized civil legal aid services (the OCLA is prohibited from providing direct representation of clients);
- monitoring and overseeing the use of state funding to ensure compliance;
- reporting to the Civil Legal Aid Oversight Committee (Committee) and the ATJB on the use of state funds;
- reporting on the status of access to the civil justice system for low-income persons eligible for state-funded legal aid; and
- submitting a biennial budget request.

Moneys appropriated by the Legislature for civil representation are administered by the OCLA, and are to be used solely for the purpose of contracting with qualified legal aid programs for legal representation of indigent person in matters relating to:

- domestic relations and family law matters;
- public assistance and health care;
- housing and utilities;
- Social Security;
- mortgage foreclosures;
- home protection bankruptcies;
- consumer fraud and unfair sales practices;
- rights of residents of long-term care facilities;
- wills, estates, and living wills;
- elder abuse; and
- guardianship.

Moneys distributed to qualified legal aid programs by the OCLA may *not* be used directly or indirectly for:

- lobbying or grass roots lobbying;
- class action lawsuits;
- participating in, or identifying the program with, prohibited political activities, such as any activity directed toward the success or failure of a political party or a candidate or a ballot measure or voter registration or transportation activities;
- representation in fee-generating cases (with some exceptions, including situations when referral to the private bar has been or is likely to be futile);
- organizing any association, union, or federation, or representing a labor union, however, nothing prohibits the provision of legal aid to clients as otherwise permitted;
- representation of undocumented aliens;
- picketing, demonstrations, strikes, or boycotts;
- engaging in inappropriate solicitation; or
- conducting training programs that advocate particular public policies, encouraging or facilitating political activities, labor or antilabor activities, boycotts, picketing, strikes or demonstrations, or attempting to influence legislation or rulemaking. However, nothing precludes representation of clients as otherwise permitted.

Moneys appropriated for civil legal representation may not be used for legal representation that is either expressly prohibited or beyond the scope of what is permitted.

Summary of Substitute Bill:

Office of Civil Legal Aid.

In addition to other duties, the director of the Office of Civil Legal Aid (OCLA) is required to periodically assess the most prevalent civil legal problems experienced by low-income people in the state and the capacity of the state-funded legal aid system to meet these legal needs. The director continues to have responsibility for submitting budget requests but the verbiage is amended.

Legislative findings are added or amended, as follows:

- The prevalence of civil legal problems experienced by low-income people in the state exceeds the capacity of the state-funded legal aid system to address these problems.
- To ensure the most beneficial use of state resources, it is appropriate to authorize legal assistance with respect to civil legal problems that directly affect important rights and basic needs of individual low-income residents and their families and to define certain limits on the use of state moneys appropriated for civil legal aid (replacing a statement that it is within the authority of the Legislature to specify categories of cases in which qualified legal aid programs may provide representation with state moneys).

In the list of subject matter areas for which state moneys may be used, reference is made to "governmental assistance and services" rather than "public assistance," and reference to "social security" is stricken. "Consumer fraud and unfair practices" and "home protection bankruptcies" is replaced with "consumer, financial services, credit, and bankruptcy." The use of state moneys is authorized for matters relating to: employment; disability rights; education including special education; administrative agency decisions; and discrimination prohibited by local, state, or federal law.

With respect to the prohibition on the use of state moneys for the representation of certain individuals, the term "undocumented aliens" is replaced with "individuals who are in the United States without legal authority."

Rather than directing the OCLA to enter into contracts with counties to disburse state funds for attorneys appointed to handle dependency and termination matters, and allowing the OCLA to require a county to use attorneys contracted with the OCLA, the OCLA is directed to enter into contracts with attorneys and agencies for the provision of such services. When entering into a contract with a qualified legal aid provider, the OCLA shall require that the provider meet generally accepted standards for the delivery of civil legal aid.

Substitute Bill Compared to Original Bill:

Amendatory language with respect to recommendations by the Civil Legal Aid Oversight Committee is not included in the substitute.

The list of matters for which state moneys may be used varies somewhat between the original bill and the substitute. Reference to "professional license adjudications" is not included in the substitute; "administrative agency decisions" is included.

The substitute does not include some language found in the original bill relating to the prohibition on the use of state moneys for representation of individuals who are in the United States without legal authority. The language in the original bill stated that the prohibition does not prohibit the use of funding to provide legal assistance to persons who have been battered or subjected to extreme cruelty, who are victims of sexual assault or trafficking in the United States, who were beneficiaries of the federal executive Deferred Action for Childhood Arrivals program, or who were beneficiaries of a federal executive program that had protected them from removal.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The 2015 Civil Legal Needs Study showed that more than 70 percent of the state's low-income households experience at least one civil legal problem each year affecting fundamental aspects of their daily lives, including issues related to housing, health care, employment, financial services, and protection from consumer exploitation. Those who face one problem also often have other interrelated legal problems at the very same time. Many of these people have no access to counsel and do not know how to access the system. The House Judiciary Committee heard a report of this assessment last year. This bill reflects the results of that assessment. Last year, the Legislature provided a reinvestment in civil legal aid. There will be a budget request this year, but this bill is not about that. Rather, it is about access to justice and is an attempt to solve problems before they spiral out of control. It helps make sure that there is actual access to justice for those issues for which the assessment has shown there is so much need. It has been 21 years since the list of issues for which civil legal aid can be provided was updated. The amendments reflect the needs of today. After months of reviewing the results of the study, the Civil Legal Aid Oversight Committee (Committee) asked the Office of Civil Legal Aid to prepare a proposal for legislation that reflects the changes needed, and the Committee unanimously endorsed it. Today, fewer people are on government assistance than were 21 years ago. There are more low-wage workers and more people facing debt collection with much of that related to medical debt. Many people face barriers to employment or financial services. The changes will ensure that demand drives the services provided. The reference in the bill to the federal Deferred Action for Childhood Arrivals (DACA) program is not an authorization to do immigration work. Rather, that language would authorize continued representation of a DACA recipient with respect to substantive areas listed in statute for which the use of state

moneys is allowed. Deferred Action for Childhood Arrivals program recipients today are eligible to receive services in allowed substantive areas. If DACA recipients are, in the future, subject to removal, the prohibition on representation of individuals who are in the country without legal authority would prevent that continued representation, so the language was included to address that possible situation.

(Opposed) None.

Persons Testifying: Representative Jinkins, prime sponsor; Jim Bamberger, Office of Civil Legal Aid; Helen Whitener, Superior Court of Pierce County; and Cesar Torres, Northwest Justice Project.

Persons Signed In To Testify But Not Testifying: None.