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SENATE BILL 5939

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State of Washington                      58th Legislature                      2003 Regular Session

By Senators Johnson and Kline

Read first time 02/21/2003. Referred to Committee on Judiciary.

1            AN ACT Relating to civil legal services funding, administration,  
2 and oversight; amending RCW 43.08.260, 43.08.270, and 2.56.030;  
3 reenacting and amending RCW 43.08.250; adding a new chapter to Title 2  
4 RCW; and recodifying RCW 43.08.260 and 43.08.270.

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

6            **Sec. 1.** RCW 43.08.250 and 2001 2nd sp.s. c 7 s 914 and 2001 c 289  
7 s 4 are each reenacted and amended to read as follows:

8            The money received by the state treasurer from fees, fines,  
9 forfeitures, penalties, reimbursements or assessments by any court  
10 organized under Title 3 or 35 RCW, or chapter 2.08 RCW, shall be  
11 deposited in the public safety and education account which is hereby  
12 created in the state treasury. The legislature shall appropriate the  
13 funds in the account to promote traffic safety education, highway  
14 safety, criminal justice training, crime victims' compensation,  
15 judicial education, the judicial information system, civil  
16 representation of indigent persons under RCW 43.08.260 (as recodified  
17 by this act), winter recreation parking, drug court operations, and  
18 state game programs. During the fiscal biennium ending June 30, 2003,  
19 the legislature may appropriate moneys from the public safety and

1 education account for purposes of appellate indigent defense and other  
2 operations of the office of public defense, the criminal litigation  
3 unit of the attorney general's office, the treatment alternatives to  
4 street crimes program, crime victims advocacy programs, justice  
5 information network telecommunication planning, treatment for  
6 supplemental security income clients, sexual assault treatment,  
7 operations of the office of administrator for the courts, security in  
8 the common schools, alternative school start-up grants, programs for  
9 disruptive students, criminal justice data collection, Washington state  
10 patrol criminal justice activities, drug court operations, unified  
11 family courts, local court backlog assistance, financial assistance to  
12 local jurisdictions for extraordinary costs incurred in the  
13 adjudication of criminal cases, domestic violence treatment and related  
14 services, the department of corrections' costs in implementing chapter  
15 196, Laws of 1999, reimbursement of local governments for costs  
16 associated with implementing criminal and civil justice legislation,  
17 the replacement of the department of corrections' offender-based  
18 tracking system, and methamphetamine-related enforcement, education,  
19 training, and drug and alcohol treatment services.

20 **Sec. 2.** RCW 43.08.260 and 1997 c 319 s 2 are each amended to read  
21 as follows:

22 (1)(a) The legislature recognizes the ethical obligation of  
23 attorneys to represent clients without interference by third parties in  
24 the discharge of professional obligations to clients. However, to  
25 ensure the most beneficial use of state resources, the legislature  
26 finds that it is within the authority of the legislature to specify the  
27 categories of legal cases in which qualified legal aid programs may  
28 provide civil representation with state moneys. Accordingly, moneys  
29 appropriated for civil legal representation (~~pursuant to this~~  
30 ~~section~~) shall not be used for legal representation that is either  
31 outside the scope of this section or prohibited by this section.

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

1           (2) Any money appropriated by the legislature (~~((from the public~~  
2 ~~safety and education account pursuant to RCW 43.08.250 or from any~~  
3 ~~other state fund or account))~~) for civil representation of indigent  
4 persons shall be deposited in the state civil legal services account  
5 under section 5 of this act and used solely for the purpose of  
6 administering the account and contracting with qualified legal aid  
7 programs for legal representation of indigent persons in matters  
8 relating to: (a) Domestic relations and family law matters, (b) public  
9 assistance and health care, (c) housing and utilities, (d) social  
10 security, (e) mortgage foreclosures, (f) home protection bankruptcies,  
11 (g) consumer fraud and unfair sales practices, (h) rights of residents  
12 of long-term care facilities, (i) wills, estates, and living wills, (j)  
13 elder abuse, and (k) guardianship.

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

20           (4) The (~~department of community, trade, and economic~~  
21 ~~development)) administrator for the courts shall establish a  
22 distribution formula based on the distribution by county of individuals  
23 with incomes below the official federal poverty level guidelines. When  
24 entering into a contract with a qualified legal services provider under  
25 this section, the (~~department~~) administrator for the courts shall  
26 require the provider to provide legal services in a manner that  
27 maximizes geographic access in accordance with the formula established  
28 in this subsection (4).~~

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

31           (a) Lobbying.

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

37           (A) In connection with any act, bill, resolution, or similar  
38 legislation by the congress of the United States or by any state or

1 local legislative body, or any administrative rule, rule-making  
2 activity, standard, rate, or other enactment by any federal, state, or  
3 local administrative agency;

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

8 (C) In connection with inclusion of any provision in a legislative  
9 measure appropriating funds to, or defining or limiting the functions  
10 or authority of, the recipient of funds under this 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. This  
14 exception does not authorize communication with anyone other than the  
15 requesting party, or agent or employee of such agency, official, or  
16 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 staff  
21 in support of or in opposition to pending or proposed legislation; or  
22 contribute to or participate in a demonstration, march, rally, lobbying  
23 campaign, or letter writing or telephone campaign for the purpose of  
24 influencing the course of pending or proposed legislation.

25 (c) Class action lawsuits.

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

34 (e) Representation in fee-generating cases. For purposes of this  
35 section, "fee-generating" means a case that might reasonably be  
36 expected to result in a fee for legal services if undertaken by a  
37 private attorney. The charging of a fee pursuant to subsection (6) of  
38 this 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 attorneys  
4 will consider the case without payment of a consultation fee; (iii)  
5 after consultation with the appropriate representatives of the private  
6 bar, the program has determined that the type of case is one that  
7 private attorneys do not ordinarily accept, or do not accept without  
8 prepayment of a fee; or (iv) the director of the program or the  
9 director's designee has determined that referral of the case to the  
10 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, but  
13 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 (5)(f)  
18 prohibits the provision of legal services to clients as otherwise  
19 permitted by this section.

20           (g) Representation of undocumented aliens.

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

22           (i) Engaging in inappropriate solicitation. For purposes of this  
23 section, "inappropriate solicitation" means promoting the assertion of  
24 specific legal claims among persons who know of their rights to make a  
25 claim and who decline to do so. Nothing in this subsection precludes  
26 a legal services program or its employees from providing information  
27 regarding legal rights and responsibilities or providing information  
28 regarding the program's services and intake procedures through  
29 community legal education activities, responding to an individual's  
30 specific question about whether the individual should consult with an  
31 attorney or take legal action, or responding to an individual's  
32 specific request for information about the individual's legal rights or  
33 request for assistance in connection with a specific legal problem.

34           (j) Conducting training programs that: (i) Advocate particular  
35 public policies; (ii) encourage or facilitate political activities,  
36 labor or antilabor activities, boycotts, picketing, strikes, or  
37 demonstrations; or (iii) attempt to influence legislation or rule

1 making. Nothing in this subsection (5)(j) precludes representation of  
2 clients as otherwise permitted by this section.

3 (6) The (~~department~~) administrator for the courts may establish  
4 requirements for client participation in the provision of civil legal  
5 services under this section, including but not limited to copayments  
6 and sliding fee scales.

7 (7)(a) Contracts entered into by the (~~department of community,~~  
8 ~~trade, and economic development~~) administrator for the courts with  
9 qualified legal services programs under this section must specify that  
10 the program's expenditures of moneys distributed under this section:

11 (i) Must be audited annually by an independent outside auditor.  
12 These audit results must be provided to the (~~department of community,~~  
13 ~~trade, and economic development~~) administrator for the courts; and

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

15 (b)(i) Any entity auditing a legal services program under this  
16 section shall have access to all records of the legal services program  
17 to the full extent necessary to determine compliance with this section,  
18 with the exception of confidential information protected by the United  
19 States Constitution, the state Constitution, the attorney-client  
20 privilege, and applicable rules of attorney conduct.

21 (ii) The legal services program shall have a system allowing for  
22 production of case-specific information, including client eligibility  
23 and case type, to demonstrate compliance with this section, with the  
24 exception of confidential information protected by the United States  
25 Constitution, the state Constitution, the attorney-client privilege,  
26 and applicable rules of attorney conduct. Such information shall be  
27 available to any entity that audits the program.

28 (8) The (~~department of community, trade, and economic~~  
29 ~~development~~) administrator for the courts must recover or withhold  
30 amounts determined by an audit to have been used in violation of this  
31 section.

32 (9) The (~~department of community, trade, and economic~~  
33 ~~development~~) administrator for the courts may adopt rules to implement  
34 this section. In addition to all other rule-making requirements and  
35 procedures, the supreme court must approve proposed rules. The supreme  
36 court may also recommend rules to be adopted by the administrator for  
37 the courts.

1           **Sec. 3.** RCW 43.08.270 and 1997 c 319 s 3 are each amended to read  
2 as follows:

3           The joint legislative civil legal services oversight committee is  
4 established.

5           (1) The committee's members are one member from each of the  
6 minority and majority caucuses of the house of representatives, who are  
7 appointed by the speaker of the house of representatives, and one  
8 member from each of the minority and majority caucuses of the senate,  
9 who are appointed by the president of the senate.

10           (2)(a) The committee shall oversee the provision of civil legal  
11 services funded through RCW 43.08.260 (as recodified by this act) and  
12 shall act as a forum for discussion of issues related to state-funded  
13 civil legal services.

14           (b) By December 1, 1997, and by December 1st of each year  
15 thereafter, the committee must report to the appropriate standing  
16 policy and fiscal committees of the legislature on the provision of  
17 legal services under RCW 43.08.260 (as recodified by this act).

18           (3) The committee chairman is selected by the members and shall  
19 serve a one-year term. The chairman position rotates between the house  
20 and senate members and the political parties.

21           (4) The committee shall meet at least four times during each fiscal  
22 year. The committee shall accept public testimony at a minimum of two  
23 of these meetings.

24           **Sec. 4.** RCW 2.56.030 and 2002 c 49 s 2 are each amended to read as  
25 follows:

26           The administrator for the courts shall, under the supervision and  
27 direction of the chief justice:

28           (1) Examine the administrative methods and systems employed in the  
29 offices of the judges, clerks, stenographers, and employees of the  
30 courts and make recommendations, through the chief justice, for the  
31 improvement of the same;

32           (2) Examine the state of the dockets of the courts and determine  
33 the need for assistance by any court;

34           (3) Make recommendations to the chief justice relating to the  
35 assignment of judges where courts are in need of assistance and carry  
36 out the direction of the chief justice as to the assignments of judges  
37 to counties and districts where the courts are in need of assistance;

1 (4) Collect and compile statistical and other data and make reports  
2 of the business transacted by the courts and transmit the same to the  
3 chief justice to the end that proper action may be taken in respect  
4 thereto;

5 (5) Prepare and submit budget estimates of state appropriations  
6 necessary for the maintenance and operation of the judicial system and  
7 make recommendations in respect thereto;

8 (6) Collect statistical and other data and make reports relating to  
9 the expenditure of public moneys, state and local, for the maintenance  
10 and operation of the judicial system and the offices connected  
11 therewith;

12 (7) Obtain reports from clerks of courts in accordance with law or  
13 rules adopted by the supreme court of this state on cases and other  
14 judicial business in which action has been delayed beyond periods of  
15 time specified by law or rules of court and make report thereof to  
16 supreme court of this state;

17 (8) Act as secretary of the judicial conference referred to in RCW  
18 2.56.060;

19 (9) Submit annually, as of February 1st, to the chief justice, a  
20 report of the activities of the administrator's office for the  
21 preceding calendar year including activities related to courthouse  
22 security;

23 (10) Administer programs and standards for the training and  
24 education of judicial personnel;

25 (11) Examine the need for new superior court and district judge  
26 positions under a weighted caseload analysis that takes into account  
27 the time required to hear all the cases in a particular court and the  
28 amount of time existing judges have available to hear cases in that  
29 court. The results of the weighted caseload analysis shall be reviewed  
30 by the board for judicial administration which shall make  
31 recommendations to the legislature. It is the intent of the  
32 legislature that weighted caseload analysis become the basis for  
33 creating additional district court positions, and recommendations  
34 should address that objective;

35 (12) Provide staff to the judicial retirement account plan under  
36 chapter 2.14 RCW;

37 (13) Attend to such other matters as may be assigned by the supreme  
38 court of this state;

1 (14) Within available funds, develop a curriculum for a general  
2 understanding of child development, placement, and treatment resources,  
3 as well as specific legal skills and knowledge of relevant statutes  
4 including chapters 13.32A, 13.34, and 13.40 RCW, cases, court rules,  
5 interviewing skills, and special needs of the abused or neglected  
6 child. This curriculum shall be completed and made available to all  
7 juvenile court judges, court personnel, and service providers and be  
8 updated yearly to reflect changes in statutes, court rules, or case  
9 law;

10 (15) Develop, in consultation with the entities set forth in RCW  
11 2.56.150(3), a comprehensive statewide curriculum for persons who act  
12 as guardians ad litem under Title 13 or 26 RCW. The curriculum shall  
13 be made available July 1, 1997, and include specialty sections on child  
14 development, child sexual abuse, child physical abuse, child neglect,  
15 clinical and forensic investigative and interviewing techniques, family  
16 reconciliation and mediation services, and relevant statutory and legal  
17 requirements. The curriculum shall be made available to all superior  
18 court judges, court personnel, and all persons who act as guardians ad  
19 litem;

20 (16) Develop a curriculum for a general understanding of crimes of  
21 malicious harassment, as well as specific legal skills and knowledge of  
22 RCW 9A.36.080, relevant cases, court rules, and the special needs of  
23 malicious harassment victims. This curriculum shall be made available  
24 to all superior court and court of appeals judges and to all justices  
25 of the supreme court;

26 (17) Develop, in consultation with the criminal justice training  
27 commission and the commissions established under chapters 43.113,  
28 43.115, and 43.117 RCW, a curriculum for a general understanding of  
29 ethnic and cultural diversity and its implications for working with  
30 youth of color and their families. The curriculum shall be available  
31 to all superior court judges and court commissioners assigned to  
32 juvenile court, and other court personnel. Ethnic and cultural  
33 diversity training shall be provided annually so as to incorporate  
34 cultural sensitivity and awareness into the daily operation of juvenile  
35 courts statewide;

36 (18) Authorize the use of closed circuit television and other  
37 electronic equipment in judicial proceedings. The administrator shall

1 promulgate necessary standards and procedures and shall provide  
2 technical assistance to courts as required;

3 (19) Develop a Washington family law handbook in accordance with  
4 RCW 2.56.180;

5 (20) Administer funds for civil legal representation purposes under  
6 RCW 43.08.260 (as recodified by this act).

7 NEW SECTION. Sec. 5. The state civil legal services account is  
8 created in the custody of the state treasurer. All moneys appropriated  
9 from any source, fund, or account for civil representation of indigent  
10 persons shall be deposited in the civil legal services account. Any  
11 revenues deposited directly into the account may be spent only after  
12 appropriation. Expenditures from the account may be used only for  
13 civil representation of indigent persons as authorized in RCW 43.08.260  
14 and 43.08.270 (both as recodified by this act).

15 NEW SECTION. Sec. 6. RCW 43.08.260 (as amended by this act) and  
16 43.08.270 (as amended by this act) are each recodified as a new chapter  
17 in Title 2 RCW.

18 NEW SECTION. Sec. 7. Section 5 of this act is added to the new  
19 chapter created in section 6 of this act.

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