

SENATE BILL REPORT

SB 5046

As of January 9, 2023

Title: An act relating to postconviction access to counsel.

Brief Description: Concerning postconviction access to counsel.

Sponsors: Senators Saldaña, Nguyen, Trudeau, Wilson, C. and Dhingra.

Brief History:

Committee Activity: Law & Justice: 1/12/23.

Brief Summary of Bill

- Directs the director of the Office of Public Defense to administer additional state-funded services for appellate and postconviction indigent defense.
- Allows counsel to be appointed at state expense to indigent persons filing a first, timely personal restraint petition; for petitions authorized by the Legislature; or if a final decision of an appellate court creates an ability to challenge a conviction or sentence.
- Clarifies when counsel may be appointed at state expense to file or prosecute collateral attacks.
- Tasks the Office of Public Defense to study the barriers to providing postconviction counsel to indigent persons.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Ryan Giannini (786-7285)

Background: Office of Public Defense. The Office of Public Defense (OPD) was created in 1996 as an independent agency within the judicial branch to implement the constitutional

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and statutory guarantees to counsel for indigent persons and to ensure effective and efficient delivery of state-funded public defenses services. The director of OPD administers state-funded services for indigent defense, including appellate indigent defense.

Right to Counsel on Appeal. Counsel is provided 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, and the offender:

- files an appeal as a matter of right;
- responds to an appeal as a matter of right or responds to a motion for discretionary review or petition for review filed by the state;
- is under a sentence of death and requests counsel be appointed to file and prosecute a motion or petition for collateral attack, or file or prosecute a second or subsequent collateral attack on the same judgment and sentence if the court determines that the second or subsequent collateral attack is not barred by the statute of limitation or the offender has not previously filed a petition for personal restraint on similar grounds;
- is not under a sentence of death and requests counsel to prosecute a collateral attack if the chief judge determines the issues raised by the petition are not frivolous;
- responds to a collateral attack or responds to or prosecutes an appeal from a collateral attack filed by the state;
- 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
- prosecutes a motion or petition for review after the Supreme Court has accepted discretionary review of a court of appeals decision.

Definitions. "Indigent" means a person who, at any stage of a court proceeding:

- is receiving certain types of public assistance;
- is involuntarily committed to a public mental health facility;
- has household income of 125 percent or less of the federal poverty guidelines; or
- is unable to retain counsel because of insufficient funds.

"Indigent and able to contribute" means a person who, at any stage of a court proceeding, is unable to pay the anticipated cost of counsel because the person's available funds are less than the anticipated cost of counsel but sufficient for the person to pay a portion of that cost.

"Collateral attack" means any form of postconviction relief other than a direct appeal. Collateral attack includes, but is not limited to, a personal restraint petition, a habeas corpus petition, a motion to vacate judgment, a motion to withdraw guilty plea, a motion for a new trial, and a motion to arrest judgment.

In the context of criminal proceedings, a personal restraint petition is a collateral attack on the judgement and sentence that is only available after the defendant has exhausted all forms of direct appeal. Personal restraint petitions in a criminal case, like other collateral attacks, must be filed within one year after a judgment becomes final, unless the petition is based on certain circumstances, such as newly discovered evidence or significant changes in

the law.

Summary of Bill: The director of OPD shall administer all state-funded services for appellate indigent defense and postconviction indigent defense to adult offenders convicted of a crime and to juvenile offenders convicted of an offense.

Offenders who are indigent, or indigent and able to contribute, can request counsel be appointed to file and prosecute a first, timely personal restraint petition. Offenders who are indigent, or indigent and able to contribute, may also request counsel to file or prosecute a collateral attack other than a personal restraint petition or to file a second or subsequent collateral attack on the same judgment and sentence if the court determines that the collateral attack is not barred by the statute of limitations, or the offender has not previously filed a petition for personal restraint on similar grounds. The distinctions in requests for counsel between offenders who are under a sentence of death and offenders who are not under a sentence of death are removed.

Offenders who are indigent, or indigent and able to contribute, can request counsel be appointed to petition the sentencing court if the Legislature creates an ability to petition the sentencing court or if a final decision of an appellate court creates the ability to challenge a conviction or sentence.

OPD will study the barriers to providing postconviction counsel to indigent persons seeking to file and prosecute one, timely motion for collateral attack other than for personal restraint petitions, and report its findings to the Legislature by December 1, 2024.

Appropriation: None.

Fiscal Note: Requested on January 3, 2023.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill takes effect on January 1, 2024.