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**SUBSTITUTE SENATE BILL 5046**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

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

READ FIRST TIME 01/20/23.

1 AN ACT Relating to postconviction access to counsel; amending RCW  
2 2.70.020 and 10.73.150; creating new sections; and providing an  
3 effective date.

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

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

12 The legislature observes that wealthy people retain attorneys to  
13 represent them in these complex, high-stakes postconviction legal  
14 proceedings. However, at least 80 percent of persons charged with  
15 felonies are indigent and cannot afford to hire a lawyer. In  
16 addition, nearly 40 percent of incarcerated persons have a cognitive  
17 or physical disability that would limit their capacity to access or  
18 understand critical legal documents, draft required petitions, or  
19 otherwise effectively represent themselves pro se in legal  
20 proceedings. Up to 70 percent of persons in prison cannot read above  
21 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 persons must  
10 have access to public defense counsel to advise, initiate, and  
11 execute certain postconviction procedures. In addition, the  
12 legislature finds that the state should fund and administer access to  
13 counsel for certain types of postconviction procedures through the  
14 Washington state office of public defense. This act is intended to:  
15 Provide appointment of state-funded public defense counsel for  
16 indigent adults and juveniles to file and prosecute one, timely  
17 personal restraint petition; petition a sentencing court when the  
18 legislature creates an opportunity to do so; and challenge a  
19 conviction or sentence if a final decision of an appellate court  
20 creates an opportunity to do so.

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

23 The director shall:

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

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

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

30 (c) Postconviction indigent defense to file and prosecute a  
31 first, timely personal restraint petition as authorized by RCW  
32 10.73.150(4) and for proceedings as authorized by RCW 10.73.150 (9)  
33 and (10);

34 (d) Representation of indigent parents qualified for appointed  
35 counsel in dependency and termination cases, as provided in RCW  
36 13.34.090 and 13.34.092;

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

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

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

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

9       ~~((2))~~ (3) Submit a biennial budget for all costs related to the  
10 office's program areas;

11       ~~((3))~~ (4) Establish administrative procedures, standards, and  
12 guidelines for the office's program areas, including cost-efficient  
13 systems that provide for authorized recovery of costs;

14       ~~((4))~~ (5) Provide oversight and technical assistance to ensure  
15 the effective and efficient delivery of services in the office's  
16 program areas;

17       ~~((5))~~ (6) Recommend criteria and standards for determining and  
18 verifying indigency. In recommending criteria for determining  
19 indigency, the director shall compile and review the indigency  
20 standards used by other state agencies and shall periodically submit  
21 the compilation and report to the legislature on the appropriateness  
22 and consistency of such standards;

23       ~~((6))~~ (7) Collect information regarding indigent defense  
24 services funded by the state and report annually to the advisory  
25 committee, the legislature, and the supreme court;

26       ~~((7))~~ (8) Coordinate with the supreme court and the judges of  
27 each division of the court of appeals to determine how appellate  
28 attorney services should be provided.

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

31       **Sec. 3.** RCW 10.73.150 and 1995 c 275 s 2 are each amended to  
32 read as follows:

33       Counsel shall be provided at state expense to an adult offender  
34 convicted of a crime and to a juvenile offender convicted of an  
35 offense when the offender is indigent or indigent and able to  
36 contribute as those terms are defined in RCW 10.101.010 and the  
37 offender:

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

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

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

10 (4) Is not under a sentence of death and requests counsel to file  
11 or prosecute a ~~((collateral attack after the chief judge has~~  
12 ~~determined that the issues raised by the petition are not frivolous,~~  
13 ~~in accordance with the procedure contained in rules of appellate~~  
14 ~~procedure 16.11))~~ first, timely personal restraint petition. Counsel  
15 ~~((shall not))~~ may be provided at public expense to file or prosecute  
16 a second or subsequent ~~((collateral attack))~~ personal restraint  
17 petition on the same judgment and sentence if the court determines  
18 the personal restraint petition is not barred by RCW 10.73.090 or  
19 10.73.140;

20 (5) Is not under a sentence of death and requests counsel to  
21 prosecute a motion for collateral attack other than a personal  
22 restraint petition, after the court has determined that the issues  
23 raised by the petition establish grounds for relief. Counsel may be  
24 provided at public expense to file or prosecute a second or  
25 subsequent collateral attack other than a personal restraint petition  
26 on the same judgment and sentence if the court determines the  
27 collateral attack is not barred by RCW 10.73.090 or 10.73.140;

28 (6) Responds to a collateral attack filed by the state or  
29 responds to or prosecutes an appeal from a collateral attack that was  
30 filed by the state;

31 ~~((+6))~~ (7) Prosecutes a motion or petition for review after the  
32 supreme court or court of appeals has accepted discretionary review  
33 of a decision of a court of limited jurisdiction; ~~((=~~

34 ~~+7))~~ (8) Prosecutes a motion or petition for review after the  
35 supreme court has accepted discretionary review of a court of appeals  
36 decision;

37 (9) Requests counsel be appointed to petition the sentencing  
38 court if the legislature creates an ability to petition the  
39 sentencing court; or

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

4       NEW SECTION.   **Sec. 4.**   The office of public defense shall:

5       (1) Examine and evaluate barriers to providing postconviction  
6 counsel at the request of indigent persons seeking to file and  
7 prosecute one, timely motion for collateral attack other than for a  
8 personal restraint petition. Barriers to be examined and evaluated  
9 include issues related to statutes, state and local court rules and  
10 practices, availability of qualified attorneys, and any other issues  
11 that may come to the attention of the office of public defense;

12       (2) Identify resources and reforms to overcome the barriers;

13       (3) Report findings and recommendations to the appropriate fiscal  
14 and policy committees of the legislature not later than December 1,  
15 2024.

16       NEW SECTION.   **Sec. 5.**   This act takes effect January 1, 2024.

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