
SUBSTITUTE HOUSE BILL 1747

State of Washington **59th Legislature** **2005 Regular Session**

By House Committee on Judiciary (originally sponsored by Representatives Wood, Rodne, Priest, Clements, Lantz, Williams, Darneille and Ormsby)

READ FIRST TIME 02/21/05.

1 AN ACT Relating to state-funded civil representation of indigent
2 persons; amending RCW 43.08.250 and 43.08.260; adding a new chapter to
3 Title 2 RCW; creating a new section; recodifying RCW 43.08.260;
4 repealing RCW 43.08.270; providing an effective date; and declaring an
5 emergency.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that the provision of
8 civil legal aid services to indigent persons is an important component
9 of the state's responsibility to provide for the proper and effective
10 administration of civil and criminal justice. The legislature further
11 finds that state-funded legal aid services should be administered by an
12 independent office of civil legal aid located within the judicial
13 branch and subject to formal continuing oversight that includes
14 bipartisan legislative representation.

15 **Sec. 2.** RCW 43.08.250 and 2003 1st sp.s. c 25 s 918 are each
16 amended to read as follows:

17 The money received by the state treasurer from fees, fines,
18 forfeitures, penalties, reimbursements or assessments by any court

1 organized under Title 3 or 35 RCW, or chapter 2.08 RCW, shall be
2 deposited in the public safety and education account which is hereby
3 created in the state treasury. The legislature shall appropriate the
4 funds in the account to promote traffic safety education, highway
5 safety, criminal justice training, crime victims' compensation,
6 judicial education, the judicial information system, civil
7 representation of indigent persons under RCW 43.08.260 (as recodified
8 by this act), winter recreation parking, drug court operations, and
9 state game programs. During the fiscal biennium ending June 30, 2005,
10 the legislature may appropriate moneys from the public safety and
11 education account for purposes of appellate indigent defense and other
12 operations of the office of public defense, the criminal litigation
13 unit of the attorney general's office, the treatment alternatives to
14 street crimes program, crime victims advocacy programs, justice
15 information network telecommunication planning, treatment for
16 supplemental security income clients, sexual assault treatment,
17 operations of the office of administrator for the courts, security in
18 the common schools, alternative school start-up grants, programs for
19 disruptive students, criminal justice data collection, Washington state
20 patrol criminal justice activities, drug court operations, unified
21 family courts, local court backlog assistance, financial assistance to
22 local jurisdictions for extraordinary costs incurred in the
23 adjudication of criminal cases, domestic violence treatment and related
24 services, the department of corrections' costs in implementing chapter
25 196, Laws of 1999, reimbursement of local governments for costs
26 associated with implementing criminal and civil justice legislation,
27 the replacement of the department of corrections' offender-based
28 tracking system, secure and semi-secure crisis residential centers,
29 HOPE beds, the family policy council and community public health and
30 safety networks, the street youth program, public notification about
31 registered sex offenders, and narcotics or methamphetamine-related
32 enforcement, education, training, and drug and alcohol treatment
33 services.

34 **Sec. 3.** RCW 43.08.260 and 1997 c 319 s 2 are each amended to read
35 as follows:

36 (1)(a) The legislature recognizes the ethical obligation of
37 attorneys to represent clients without interference by third parties in

1 the discharge of professional obligations to clients. However, to
2 ensure the most beneficial use of state resources, the legislature
3 finds that it is within the authority of the legislature to specify the
4 categories of legal cases in which qualified legal aid programs may
5 provide civil representation with state moneys. Accordingly, moneys
6 appropriated for civil legal representation (~~pursuant to this~~
7 ~~section~~) shall not be used for legal representation that is either
8 outside the scope of this section or prohibited by this section.

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

14 (2) Any money appropriated by the legislature (~~from the public~~
15 ~~safety and education account pursuant to RCW 43.08.250 or from any~~
16 ~~other state fund or account~~) for civil representation of indigent
17 persons shall be administered by the office of civil legal aid
18 established under section 5 of this act, and shall be used solely for
19 the purpose of contracting with qualified legal aid programs for legal
20 representation of indigent persons in matters relating to: (a)
21 Domestic relations and family law matters, (b) public assistance and
22 health care, (c) housing and utilities, (d) social security, (e)
23 mortgage foreclosures, (f) home protection bankruptcies, (g) consumer
24 fraud and unfair sales practices, (h) rights of residents of long-term
25 care facilities, (i) wills, estates, and living wills, (j) elder abuse,
26 and (k) guardianship.

27 (3) For purposes of this section, a "qualified legal aid program"
28 means a not-for-profit corporation incorporated and operating
29 exclusively in Washington which has received basic field funding for
30 the provision of civil legal (~~services~~) aid to indigents from the
31 federal legal services corporation or that has received funding for
32 civil legal (~~services~~) aid for indigents under this section before
33 July 1, 1997.

34 (4) (~~The department of community, trade, and economic development~~
35 ~~shall establish a distribution formula based on the distribution by~~
36 ~~county of individuals with incomes below the official federal poverty~~
37 ~~level guidelines.)) When entering into a contract with a qualified
38 legal (~~services~~) aid provider under this section, the (~~department~~)~~

1 office of civil legal aid shall require the provider to provide legal
2 (~~(services))~~ aid in a manner that maximizes geographic access (~~(in~~
3 ~~accordance with the formula established in this subsection (4))~~
4 throughout the state.

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

7 (a) Lobbying.

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

13 (A) In connection with any act, bill, resolution, or similar
14 legislation by the congress of the United States or by any state or
15 local legislative body, or any administrative rule, rule-making
16 activity, standard, rate, or other enactment by any federal, state, or
17 local administrative agency;

18 (B) In connection with any referendum, initiative, constitutional
19 amendment, or any similar procedure of the congress, any state
20 legislature, any local council, or any similar governing body acting in
21 a legislative capacity; or

22 (C) In connection with inclusion of any provision in a legislative
23 measure appropriating funds to, or defining or limiting the functions
24 or authority of, the recipient of funds under this section.

25 (ii) "Lobbying" does not include the response of an employee of a
26 legal aid program to a written request from a governmental agency, an
27 elected or appointed official, or committee on a specific matter. This
28 exception does not authorize communication with anyone other than the
29 requesting party, or agent or employee of such agency, official, or
30 committee.

31 (b) Grass roots lobbying. For purposes of this section, "grass
32 roots lobbying" means preparation, production, or dissemination of
33 information the purpose of which is to encourage the public at large,
34 or any definable segment thereof, to contact legislators or their staff
35 in support of or in opposition to pending or proposed legislation; or
36 contribute to or participate in a demonstration, march, rally, lobbying
37 campaign, or letter writing or telephone campaign for the purpose of
38 influencing the course of pending or proposed legislation.

1 (c) Class action lawsuits.

2 (d) Participating in or identifying the program with prohibited
3 political activities. For purposes of this section, "prohibited
4 political activities" means (i) any activity directed toward the
5 success or failure of a political party, a candidate for partisan or
6 nonpartisan office, a partisan political group, or a ballot measure;
7 (ii) advertising or contributing or soliciting financial support for or
8 against any candidate, political group, or ballot measure; or (iii)
9 voter registration or transportation activities.

10 (e) Representation in fee-generating cases. For purposes of this
11 section, "fee-generating" means a case that might reasonably be
12 expected to result in a fee for legal (~~services~~) aid if undertaken by
13 a private attorney. The charging of a fee pursuant to subsection (6)
14 of this section does not establish the fee-generating nature of a case.

15 A fee-generating case may be accepted when: (i) The case has been
16 rejected by the local lawyer referral services or by two private
17 attorneys; (ii) neither the referral service nor two private attorneys
18 will consider the case without payment of a consultation fee; (iii)
19 after consultation with the appropriate representatives of the private
20 bar, the program has determined that the type of case is one that
21 private attorneys do not ordinarily accept, or do not accept without
22 prepayment of a fee; or (iv) the director of the program or the
23 director's designee has determined that referral of the case to the
24 private bar is not possible because documented attempts to refer
25 similar cases in the past have been futile, or because emergency
26 circumstances compel immediate action before referral can be made, but
27 the client is advised that, if appropriate and consistent with
28 professional responsibility, referral will be attempted at a later
29 time.

30 (f) Organizing any association, union, or federation, or
31 representing a labor union. However, nothing in this subsection (5)(f)
32 prohibits the provision of legal (~~services~~) aid to clients as
33 otherwise permitted by this section.

34 (g) Representation of undocumented aliens.

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

36 (i) Engaging in inappropriate solicitation. For purposes of this
37 section, "inappropriate solicitation" means promoting the assertion of
38 specific legal claims among persons who know of their rights to make a

1 claim and who decline to do so. Nothing in this subsection precludes
2 a legal ~~((services))~~ aid program or its employees from providing
3 information regarding legal rights and responsibilities or providing
4 information regarding the program's services and intake procedures
5 through community legal education activities, responding to an
6 individual's specific question about whether the individual should
7 consult with an attorney or take legal action, or responding to an
8 individual's specific request for information about the individual's
9 legal rights or request for assistance in connection with a specific
10 legal problem.

11 (j) Conducting training programs that: (i) Advocate particular
12 public policies; (ii) encourage or facilitate political activities,
13 labor or antilabor activities, boycotts, picketing, strikes, or
14 demonstrations; or (iii) attempt to influence legislation or rule
15 making. Nothing in this subsection (5)(j) precludes representation of
16 clients as otherwise permitted by this section.

17 (6) The ~~((department))~~ office of civil legal aid may establish
18 requirements for client participation in the provision of civil legal
19 ~~((services))~~ aid under this section, including but not limited to
20 copayments and sliding fee scales.

21 (7)(a) Contracts entered into by the ~~((department of community,
22 trade, and economic development))~~ office of civil legal aid with
23 qualified legal ~~((services))~~ aid programs under this section must
24 specify that the program's expenditures of moneys distributed under
25 this section:

26 (i) Must be audited annually by an independent outside auditor.
27 These audit results must be provided to the ~~((department of community,
28 trade, and economic development))~~ office of civil legal aid; and

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

30 (b)(i) Any entity auditing a legal ~~((services))~~ aid program under
31 this section shall have access to all records of the legal ~~((services))~~
32 aid program to the full extent necessary to determine compliance with
33 this section, with the exception of confidential information protected
34 by the United States Constitution, the state Constitution, the
35 attorney-client privilege, and applicable rules of attorney conduct.

36 (ii) The legal ~~((services))~~ aid program shall have a system
37 allowing for production of case-specific information, including client
38 eligibility and case type, to demonstrate compliance with this section,

1 with the exception of confidential information protected by the United
2 States Constitution, the state Constitution, the attorney-client
3 privilege, and applicable rules of attorney conduct. Such information
4 shall be available to any entity that audits the program.

5 (8) The (~~department of community, trade, and economic~~
6 ~~development~~) office of civil legal aid must recover or withhold
7 amounts determined by an audit to have been used in violation of this
8 section.

9 (9) The (~~department of community, trade, and economic~~
10 ~~development~~) office of civil legal aid may adopt rules to implement
11 this section.

12 NEW SECTION. Sec. 4. (1) There is created a civil legal aid
13 oversight committee consisting of the following members:

14 (a) Three persons appointed by the supreme court from a list of
15 nominees submitted by the access to justice board, one of whom at the
16 time of appointment is income eligible to receive state-funded civil
17 legal aid;

18 (b) Two persons appointed by the board for judicial administration;

19 (c) Two senators, one from each of the two largest caucuses,
20 appointed by the president of the senate; and two members of the house
21 of representatives, one from each of the two largest caucuses,
22 appointed by the speaker of the house of representatives;

23 (d) One person appointed by the Washington state bar association;
24 and

25 (e) One person appointed by the governor.

26 (2) During the term of his or her appointment, an appointee may not
27 be employed by a state-funded legal aid provider.

28 (3) Members shall each serve a three-year term, subject to renewal
29 for no more than one additional three-year term. The oversight
30 committee shall develop rules that provide for the staggering of terms
31 so that, after the first three years of the committee's existence, the
32 terms of one-third of the members expire each year. Members of the
33 oversight committee receive no compensation for their services as
34 members of the oversight committee, but may be reimbursed for travel
35 and other expenses in accordance with rules adopted by the office of
36 financial management.

1 (4) The oversight committee shall: Oversee the activities of the
2 office of civil legal aid created in section 5 of this act; review the
3 performance of the director of the office of civil legal aid; and may,
4 from time to time, make recommendations to the supreme court, the
5 access to justice board, and the legislature regarding the provision of
6 civil legal aid funded through RCW 43.08.260 (as recodified by this
7 act).

8 NEW SECTION. **Sec. 5.** (1) There is created an office of civil
9 legal aid as an independent agency of the judicial branch.

10 (2) Activities of the office of civil legal aid shall be carried
11 out by a director of civil legal aid services. The director of civil
12 legal aid services shall be appointed by the supreme court from a list
13 of three names forwarded by the access to justice board.
14 Qualifications for the director include admission to practice law in
15 this state for at least five years; experience in representation of
16 low-income people in civil matters, which experience may be in the form
17 of volunteer representation; knowledge of and demonstrated commitment
18 to promoting access to the civil justice system for indigent persons;
19 and proven managerial or supervisory experience. The director shall
20 serve at the pleasure of the supreme court and receive a salary to be
21 fixed by the oversight committee.

22 (3) The director shall:

23 (a) Contract with one or more qualified legal aid providers to
24 provide civil legal aid services authorized by RCW 43.08.260 (as
25 recodified by this act);

26 (b) Monitor and oversee the use of state funding to ensure
27 compliance with this chapter;

28 (c) Report quarterly to the civil legal aid oversight committee
29 established in section 4 of this act and the supreme court's access to
30 justice board on the use of state funds for legal aid; and report
31 biennially on the status of access to the civil justice system for low-
32 income people eligible for state-funded legal aid; and

33 (d) Submit a biennial budget request.

34 (4) The office shall not provide direct representation of clients.

35 NEW SECTION. **Sec. 6.** RCW 43.08.270 (Joint legislative civil legal
36 services oversight committee) and 1997 c 319 s 3 are each repealed.

1 NEW SECTION. **Sec. 7.** Sections 4 and 5 of this act constitute a
2 new chapter in Title 2 RCW.

3 NEW SECTION. **Sec. 8.** RCW 43.08.260 (as amended by this act) is
4 recodified in the chapter created under section 7 of this act.

5 NEW SECTION. **Sec. 9.** This act is necessary for the immediate
6 preservation of the public peace, health, or safety, or support of the
7 state government and its existing public institutions, and takes effect
8 July 1, 2005.

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