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**SUBSTITUTE HOUSE BILL 2308**

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**State of Washington**

**65th Legislature**

**2018 Regular Session**

**By** House Judiciary (originally sponsored by 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)

READ FIRST TIME 01/26/18.

1 AN ACT Relating to civil legal aid; and amending RCW 2.53.020,  
2 2.53.030, and 2.53.045.

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

4 **Sec. 1.** RCW 2.53.020 and 2005 c 105 s 5 are each amended to read  
5 as follows:

6 (1) There is created an office of civil legal aid as an  
7 independent agency of the judicial branch.

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

20 (3) The director shall:

1 (a) Contract with one or more qualified legal aid providers to  
2 provide civil legal aid services authorized by RCW 2.53.030;

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

5 (c) Report quarterly to the civil legal aid oversight committee  
6 established in RCW 2.53.010 and the supreme court's access to justice  
7 board on the use of state funds for legal aid; periodically assess  
8 the most prevalent civil legal problems experienced by low-income  
9 people in Washington state and the capacity of the state-funded legal  
10 aid system to meet the legal needs arising from such problems; and  
11 report biennially on the status of access to the civil justice system  
12 for low-income people eligible for state-funded legal aid; and

13 (d) Submit ~~((a biennial))~~ budget requests.

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

16 **Sec. 2.** RCW 2.53.030 and 2005 c 105 s 3 are each amended to read  
17 as follows:

18 (1)(a) The legislature recognizes the ethical obligation of  
19 attorneys to represent clients without interference by third parties  
20 in the discharge of professional obligations to clients. ~~((However,))~~  
21 The legislature further finds that the prevalence of civil legal  
22 problems experienced by low-income people in Washington state exceeds  
23 the capacity of the state-funded legal aid system to address. To  
24 ensure the most beneficial use of state resources, the legislature  
25 finds ~~((that))~~ it ~~((is within the authority of the legislature to~~  
26 ~~specify the categories of legal cases in which qualified legal aid~~  
27 ~~programs may provide civil representation with state moneys))~~  
28 appropriate to authorize legal assistance with respect to civil legal  
29 problems that directly affect important rights and basic needs of  
30 individual low-income residents and their families and to define  
31 certain limits on the use of state moneys appropriated for civil  
32 legal aid. Accordingly, moneys appropriated for civil legal  
33 ~~((representation))~~ aid pursuant to this section shall not be used for  
34 legal representation that is either outside the scope of ~~((this~~  
35 ~~section))~~ or prohibited by this section.

36 (b) Nothing in this section is intended to limit the authority of  
37 existing entities, including but not limited to the Washington state  
38 bar association, the public disclosure commission, the state auditor,

1 and the federal legal services corporation to resolve issues within  
2 their respective jurisdictions.

3 (2) Any money appropriated by the legislature for civil  
4 (~~representation of~~) legal aid to indigent persons pursuant to this  
5 section shall be administered by the office of civil legal aid  
6 established under RCW 2.53.020, and shall be used solely for the  
7 purpose of contracting with qualified legal aid programs for legal  
8 representation of indigent persons in matters relating to: (a)  
9 Domestic relations and family law matters, (b) (~~public~~)  
10 governmental assistance and services, (c) health care, (~~+~~) (d)  
11 housing and utilities, (~~d—social security,~~) (e) mortgage  
12 foreclosures, (f) (~~home protection bankruptcies~~) consumer,  
13 financial services, credit, and bankruptcy, (g) (~~consumer fraud and~~  
14 ~~unfair sales practices~~) employment, (h) rights of residents of long-  
15 term care facilities, (i) wills, estates, and living wills, (j) elder  
16 abuse, (~~and~~) (k) guardianship, (l) disability rights, (m) education  
17 including special education, (n) administrative agency decisions, and  
18 (o) discrimination prohibited by local, state, or federal law.

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

25 (4) When entering into a contract with a qualified legal aid  
26 provider under this section, the office of civil legal aid shall  
27 require the provider to provide legal aid in a manner that maximizes  
28 geographic access throughout the state and meets generally accepted  
29 standards for the delivery of civil legal aid.

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

32 (a) Lobbying.

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

38 (A) In connection with any act, bill, resolution, or similar  
39 legislation by the congress of the United States or by any state or  
40 local legislative body, or any administrative rule, rule-making

1 activity, standard, rate, or other enactment by any federal, state,  
2 or local administrative agency;

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

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

26 (c) Class action lawsuits.

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

35 (e) Representation in fee-generating cases. For purposes of this  
36 section, "fee-generating" means a case that might reasonably be  
37 expected to result in a fee for legal aid if undertaken by a private  
38 attorney. The charging of a fee pursuant to subsection (6) of this  
39 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  
4 attorneys will consider the case without payment of a consultation  
5 fee; (iii) after consultation with the appropriate representatives of  
6 the private bar, the program has determined that the type of case is  
7 one that private attorneys do not ordinarily accept, or do not accept  
8 without prepayment of a fee; or (iv) the director of the program or  
9 the director's designee has determined that referral of the case to  
10 the 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,  
13 but 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  
18 (5)(f) prohibits the provision of legal aid to clients as otherwise  
19 permitted by this section.

20 (g) Representation of (~~undocumented aliens~~) individuals who are  
21 in the United States without legal authority.

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

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

36 (j) Conducting training programs that: (i) Advocate particular  
37 public policies; (ii) encourage or facilitate political activities,  
38 labor or antilabor activities, boycotts, picketing, strikes, or  
39 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 office of civil legal aid may establish requirements for  
4 client participation in the provision of civil legal aid under this  
5 section, including but not limited to copayments and sliding fee  
6 scales.

7 (7)(a) Contracts entered into by the office of civil legal aid  
8 with qualified legal aid programs under this section must specify  
9 that the program's expenditures of moneys distributed under this  
10 section:

11 (i) Must be audited annually by an independent outside auditor.  
12 These audit results must be provided to the office of civil legal  
13 aid; and

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

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

21 (ii) The legal aid 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 office of civil legal aid must recover or withhold  
29 amounts determined by an audit to have been used in violation of this  
30 section.

31 (9) The office of civil legal aid may adopt rules to implement  
32 this section.

33 **Sec. 3.** RCW 2.53.045 and 2014 c 108 s 3 are each amended to read  
34 as follows:

35 (1) Money appropriated by the legislature for legal services  
36 provided by an attorney appointed pursuant to RCW 13.34.100 must be  
37 administered by the office of civil legal aid established under RCW  
38 2.53.020.

1           (2) The office of civil legal aid (~~(may)~~) shall enter into  
2 contracts with (~~the counties to disburse state funds for an attorney~~  
3 ~~appointed pursuant to RCW 13.34.100. The office of civil legal aid~~  
4 ~~may also require a county to use~~) attorneys (~~(under contract with~~  
5 ~~the office)~~) and agencies for the provision of legal services under  
6 RCW 13.34.100 to remain within appropriated amounts.

7           (3) Prior to distributing state funds under subsection (2) of  
8 this section, the office of civil legal aid must verify that  
9 attorneys providing legal representation to children under RCW  
10 13.34.100 meet the standards of practice, voluntary training, and  
11 caseload limits developed and recommended by the statewide children's  
12 representation work group pursuant to section 5, chapter 180, Laws of  
13 2010. Caseload limits described in this subsection must be determined  
14 as provided in RCW 13.34.100(6)(c)(ii).

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