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**SUBSTITUTE HOUSE BILL 1911**

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**State of Washington 68th Legislature 2024 Regular Session**

**By** House Civil Rights & Judiciary (originally sponsored by Representatives Taylor, Cheney, Ortiz-Self, Reed, Simmons, Ormsby, Reeves, Fosse, and Davis; by request of Office of Public Defense)

AN ACT Relating to activities in which the office of public defense may engage without violating the prohibition on providing direct representation of clients; reenacting and amending RCW 2.70.020; and adding a new section to chapter 2.70 RCW.

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

**Sec.**  RCW 2.70.020 and 2023 c 261 s 2 and 2023 c 120 s 2 are each reenacted and amended to read as follows:

The director shall:

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

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

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

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

(d) Extraordinary criminal justice cost petitions, as provided in RCW 43.330.190;

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

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

(g) Representation of indigent persons who are acquitted by reason of insanity and committed to state psychiatric care as provided in chapter 10.77 RCW;

(2) Subject to availability of funds appropriated for this specific purpose, provide access to counsel for indigent persons incarcerated in a juvenile rehabilitation or adult correctional facility to file and prosecute a first, timely personal restraint petition under RCW 10.73.150. The office shall establish eligibility criteria that prioritize access to counsel for youth under age 25, youth or adults with sentences in excess of 120 months, youth or adults with disabilities, and youth or adults with limited English proficiency. Nothing in this subsection creates an entitlement to counsel at state expense to file a personal restraint petition;

(3) Subject to the availability of funds appropriated for this specific purpose, appoint counsel to petition the sentencing court if the legislature creates an ability to petition the sentencing court, or appoint counsel to challenge a conviction or sentence if a final decision of an appellate court creates the ability to challenge a conviction or sentence. Nothing in this subsection creates an entitlement to counsel at state expense to petition the sentencing court;

(4) Provide access to attorneys for juveniles contacted by a law enforcement officer for whom a legal consultation is required under RCW 13.40.740;

(5) Submit a biennial budget for all costs related to the office's program areas;

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

(7) Provide oversight and technical assistance to ensure the effective and efficient delivery of services in the office's program areas;

(8) Recommend criteria and standards for determining and verifying indigency. In recommending criteria for determining indigency, the director shall compile and review the indigency standards used by other state agencies and shall periodically submit the compilation and report to the legislature on the appropriateness and consistency of such standards;

(9) Collect information regarding indigent defense services funded by the state and report annually to the advisory committee, the legislature, and the supreme court;

(10) Coordinate with the supreme court and the judges of each division of the court of appeals to determine how appellate attorney services should be provided.

((~~The office of public defense shall not provide direct representation of clients.~~))

NEW SECTION. **Sec.**  A new section is added to chapter 2.70 RCW to read as follows:

(1) Except as otherwise provided in this section, the office of public defense shall not provide direct representation of clients.

(2) In order to protect and preserve client rights when administering the office's statutory duties to provide initial telephonic or video consultation services, managing and supervising attorneys of the office of public defense who meet applicable public defense qualifications may provide limited short-term coverage for the consultation services if office of public defense contracted counsel is unavailable to provide the consultation services. The office shall provide services in a manner consistent with the rules of professional conduct, chapter 42.52 RCW, and applicable policies of the office of public defense.

(3) The office of public defense may facilitate and supervise placement of law clerks, externs, and interns with office of public defense contracted counsel, in a manner consistent with the Washington admission and practice rules, the rules of professional conduct, chapter 42.52 RCW, and applicable policies of the office of public defense.

(4) Employees of the office of public defense may provide pro bono legal services in a manner consistent with the rules of professional conduct, chapter 42.52 RCW, and applicable policies of the office of public defense. The policies of the
office of public defense must require that employees providing pro bono legal services obtain and provide to the office a written statement, signed by any pro bono client, acknowledging that:

(a) The pro bono legal services are provided by the employee acting in the employee's personal capacity and not as an employee of the office of public defense; and

(b) The state of Washington may not be held liable for any claim arising from the provision of pro bono legal services by the employees of the office of public defense.

The office of public defense shall retain the written statements in a manner consistent with records relating to potential conflicts of interest.

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