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**SENATE BILL 5046**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Senators Saldaña, Nguyen, Trudeau, C. Wilson, Dhingra, Frame, Kuderer, Nobles, Pedersen, and Valdez

Prefiled 12/14/22. Read first time 01/09/23. Referred to Committee on Law & Justice.

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 and for proceedings as  
32 authorized by RCW 10.73.150 (7) and (8);

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

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

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

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

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

7       (~~(2)~~) (3) Submit a biennial budget for all costs related to the  
8 office's program areas;

9       (~~(3)~~) (4) Establish administrative procedures, standards, and  
10 guidelines for the office's program areas, including cost-efficient  
11 systems that provide for authorized recovery of costs;

12       (~~(4)~~) (5) Provide oversight and technical assistance to ensure  
13 the effective and efficient delivery of services in the office's  
14 program areas;

15       (~~(5)~~) (6) Recommend criteria and standards for determining and  
16 verifying indigency. In recommending criteria for determining  
17 indigency, the director shall compile and review the indigency  
18 standards used by other state agencies and shall periodically submit  
19 the compilation and report to the legislature on the appropriateness  
20 and consistency of such standards;

21       (~~(6)~~) (7) Collect information regarding indigent defense  
22 services funded by the state and report annually to the advisory  
23 committee, the legislature, and the supreme court;

24       (~~(7)~~) (8) Coordinate with the supreme court and the judges of  
25 each division of the court of appeals to determine how appellate  
26 attorney services should be provided.

27       The office of public defense shall not provide direct  
28 representation of clients.

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

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

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

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

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

10           (4) ~~((Is not under a sentence of death and requests counsel to~~  
11 ~~prosecute a collateral attack after the chief judge has determined~~  
12 ~~that the issues raised by the petition are not frivolous, in~~  
13 ~~accordance with the procedure contained in rules of appellate~~  
14 ~~procedure 16.11. Counsel shall not be provided at public expense to~~  
15 ~~file or prosecute a second or subsequent collateral attack on the~~  
16 ~~same judgment and sentence;~~

17           ~~(5))~~ Responds to a collateral attack filed by the state or  
18 responds to or prosecutes an appeal from a collateral attack that was  
19 filed by the state;

20           ~~((6))~~ (5) Prosecutes a motion or petition for review after the  
21 supreme court or court of appeals has accepted discretionary review  
22 of a decision of a court of limited jurisdiction; ~~((or~~

23           ~~(7))~~ (6) Prosecutes a motion or petition for review after the  
24 supreme court has accepted discretionary review of a court of appeals  
25 decision;

26           (7) Requests counsel be appointed to petition the sentencing  
27 court if the legislature creates an ability to petition the  
28 sentencing court; or

29           (8) Requests counsel be appointed to challenge a conviction or  
30 sentence if a final decision of an appellate court creates the  
31 ability to challenge a conviction or sentence.

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

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

1           (2) Identify resources and reforms to barriers;  
2           (3) Report findings and recommendations to the appropriate fiscal  
3 and policy committees of the legislature not later than December 1,  
4 2024.

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

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