
SENATE BILL 5772

State of Washington

67th Legislature

2022 Regular Session

By Senators Saldaña and Nguyen

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

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

4 **Sec. 1.** RCW 2.70.020 and 2021 c 328 s 3 are each amended to read
5 as follows:

6 The director shall:

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

9 (a) Trial court criminal indigent defense, as provided in chapter
10 10.101 RCW;

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

13 (c) Postconviction indigent defense as provided in RCW 10.73.150;

14 (d) Representation of indigent parents qualified for appointed
15 counsel in dependency and termination cases, as provided in RCW
16 13.34.090 and 13.34.092;

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

19 ~~((e))~~ (f) Compilation of copies of DNA test requests by persons
20 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. 2.** RCW 10.73.150 and 1995 c 275 s 2 are each amended to
30 read as follows:

31 Counsel shall be provided by the office of public defense at
32 state expense to an adult offender convicted of a crime and to a
33 juvenile offender convicted of an offense when the offender is
34 indigent or indigent and able to contribute as those terms are
35 defined in RCW 10.101.010 and the 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)) one motion or
3 petition for collateral attack as defined in RCW 10.73.090. Counsel
4 may be provided at public expense to file or prosecute a second or
5 subsequent collateral attack on the same judgment and sentence, if
6 the court determines that the collateral attack is not barred by RCW
7 10.73.090 or 10.73.140;

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

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

18 ~~((6))~~ (5) Prosecutes a motion or petition for review after the
19 supreme court or court of appeals has accepted discretionary review
20 of a decision of a court of limited jurisdiction; ~~((e~~

21 ~~(7))~~ (6) Prosecutes a motion or petition for review after the
22 supreme court has accepted discretionary review of a court of appeals
23 decision;

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

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

30 NEW SECTION. Sec. 3. This act takes effect January 1, 2023.

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