

CERTIFICATION OF ENROLLMENT  
**SECOND SUBSTITUTE SENATE BILL 5046**

68th Legislature  
2023 Regular Session

Passed by the Senate March 3, 2023  
Yeas 30 Nays 19

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**President of the Senate**

Passed by the House April 10, 2023  
Yeas 58 Nays 40

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**Speaker of the House of  
Representatives**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Sarah Bannister, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE SENATE BILL 5046** as passed by the Senate and the House of Representatives on the dates hereon set forth.

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**Secretary**

FILED

**Secretary of State  
State of Washington**

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**SECOND SUBSTITUTE SENATE BILL 5046**

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Passed Legislature - 2023 Regular Session

**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Saldaña, Nguyen, Trudeau, C. Wilson, Dhingra, Frame, Kuderer, Nobles, Pedersen, and Valdez)

READ FIRST TIME 02/16/23.

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

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

4           NEW SECTION.   **Sec. 1.** The legislature recognizes that Washington  
5   authorizes personal restraint petitions to challenge potentially  
6   unjust criminal judgments and sentences, a procedural safeguard  
7   dating back to medieval common law. The legislature further  
8   recognizes that recent statutory amendments and Washington supreme  
9   court decisions allow thousands of persons impacted by injustices in  
10  the criminal legal system to pursue resentencing.

11          The legislature observes that wealthy people retain attorneys to  
12  represent them in these complex, high-stakes postconviction legal  
13  proceedings. However, at least 80 percent of persons charged with  
14  felonies are indigent and cannot afford to hire a lawyer. In  
15  addition, nearly 40 percent of incarcerated persons have a cognitive  
16  or physical disability that would limit their capacity to access or  
17  understand critical legal documents, draft required petitions, or  
18  otherwise effectively represent themselves pro se in legal  
19  proceedings. Up to 70 percent of persons in prison cannot read above  
20  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 incarcerated  
10 persons would benefit from access to public defense counsel to  
11 advise, initiate, and execute certain postconviction procedures. In  
12 addition, the legislature finds that the state should fund and  
13 administer access to counsel for certain types of postconviction  
14 procedures through the Washington state office of public defense.  
15 This act is intended to: Authorize the office of public defense,  
16 within amounts appropriated for this purpose, to provide counsel for  
17 certain indigent adults and juveniles to file and prosecute one,  
18 timely personal restraint petition; petition a sentencing court when  
19 the legislature creates an opportunity to do so; and challenge a  
20 conviction or sentence if a final decision of an appellate court  
21 creates an opportunity to do so.

22 **Sec. 2.** RCW 2.70.020 and 2021 c 328 s 3 are each amended to read  
23 as follows:

24 The director shall:

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

27 (a) Trial court criminal indigent defense, as provided in chapter  
28 10.101 RCW;

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

31 (c) Representation of indigent parents qualified for appointed  
32 counsel in dependency and termination cases, as provided in RCW  
33 13.34.090 and 13.34.092;

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

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

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

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

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

25 ~~((2))~~ (5) Submit a biennial budget for all costs related to the  
26 office's program areas;

27 ~~((3))~~ (6) Establish administrative procedures, standards, and  
28 guidelines for the office's program areas, including cost-efficient  
29 systems that provide for authorized recovery of costs;

30 ~~((4))~~ (7) Provide oversight and technical assistance to ensure  
31 the effective and efficient delivery of services in the office's  
32 program areas;

33 ~~((5))~~ (8) Recommend criteria and standards for determining and  
34 verifying indigency. In recommending criteria for determining  
35 indigency, the director shall compile and review the indigency  
36 standards used by other state agencies and shall periodically submit  
37 the compilation and report to the legislature on the appropriateness  
38 and consistency of such standards;

1       (~~(6)~~) (9) Collect information regarding indigent defense  
2 services funded by the state and report annually to the advisory  
3 committee, the legislature, and the supreme court;

4       (~~(7)~~) (10) Coordinate with the supreme court and the judges of  
5 each division of the court of appeals to determine how appellate  
6 attorney services should be provided.

7       The office of public defense shall not provide direct  
8 representation of clients.

9       NEW SECTION. **Sec. 3.** The office of public defense shall:

10       (1) Examine and evaluate barriers to providing postconviction  
11 counsel to file and prosecute a collateral attack. Barriers to be  
12 examined and evaluated include issues related to statutes, state and  
13 local court rules and practices, availability of qualified attorneys,  
14 and any other issues that may come to the attention of the office of  
15 public defense;

16       (2) Engage in outreach to postconviction stakeholders, and  
17 include input from prosecutors, defense counsel, and convicted  
18 persons and their families;

19       (3) Identify resources and reforms to overcome the barriers;

20       (4) Report findings and recommendations to the appropriate fiscal  
21 and policy committees of the legislature not later than December 1,  
22 2024.

23       NEW SECTION. **Sec. 4.** This act takes effect January 1, 2024.

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