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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)

1 AN ACT Relating to activities in which the office of public  
2 defense may engage without violating the prohibition on providing  
3 direct representation of clients; reenacting and amending RCW  
4 2.70.020; and adding a new section to chapter 2.70 RCW.

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

6 **Sec. 1.** RCW 2.70.020 and 2023 c 261 s 2 and 2023 c 120 s 2 are  
7 each reenacted and amended to read as follows:

8 The director shall:

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

11 (a) Trial court criminal indigent defense, as provided in chapter  
12 10.101 RCW;

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

15 (c) Representation of indigent parents qualified for appointed  
16 counsel in dependency and termination cases, as provided in RCW  
17 13.34.090 and 13.34.092;

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

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

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

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

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

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

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

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

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

36 (8) Recommend criteria and standards for determining and  
37 verifying indigency. In recommending criteria for determining  
38 indigency, the director shall compile and review the indigency  
39 standards used by other state agencies and shall periodically submit

1 the compilation and report to the legislature on the appropriateness  
2 and consistency of such standards;

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

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

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

11 NEW SECTION. **Sec. 2.** A new section is added to chapter 2.70 RCW  
12 to read as follows:

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

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

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

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

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

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

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

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