



WASHINGTON STATE
OFFICE OF PUBLIC DEFENSE

Larry Jefferson, Director

(360) 586-3164
FAX (360) 586-8165

Email: opd@opd.wa.gov

SB 5772 – POST-CONVICTION ACCESS TO COUNSEL

The Washington State Office of Public Defense endorses SB 5772.

SB 5772 ensures meaningful and timely access to legal counsel to challenge unjust convictions and when the Legislature or courts authorize resentencing.

- **SB 5772 aligns with existing Court rules**, including CrR 3.1, which addresses the right to and assignment of a lawyer, and CrR 7.8, which defines relief from a judgment or order.
- **SB 5772 provides economic equity**. Current law does not allow appointment of counsel until after a convicted person files a petition *pro se* and the court grants review. The petition process is complex, which is why wealthy people hire attorneys to file petitions on their behalf. **Indigent people should have legal assistance at this stage, too.**
- **Having lawyers draft petitions will assist courts**, which generally prefer litigants to be represented by counsel.
- **At least six other states provide access to counsel to prepare post-conviction petitions**. Alaska, Connecticut, Maryland, Rhode Island, Vermont, and Wisconsin statutes provide access to counsel similar to that proposed in SB 5772.
- **Successful post-conviction collateral attacks make our justice system more fair**. Appointment of counsel for post-conviction relief helps courts examine unfair sentences, newly discovered proof of innocence, and where due process was denied at a person's trial. Recent cases include: *Monschke*, 197 Wash.2d 305 (2021) (state constitution prohibits mandatory life sentences for youth); *Glasmann*, 175 Wash. 2d 696 (2012) (prosecutor's statements and conduct denied the right to a fair trial); *Williams*, 198 Wash. 2d 342 (2021) (court found inhumane prison conditions where a 77-year-old stroke survivor in a wheelchair was housed with no immediate access to water or bathroom).
- **SB 5772 provides geographic equity for resentencing**. Currently, in counties without public defender agencies, no one is responsible to reach out to eligible persons to help them pursue a right to resentencing. This bill advances timely appointment of counsel, no matter where the case originated.
- **SB 5772 directs the state Office of Public Defense to provide counsel in these cases**. OPD would provide counsel through contracts with qualified attorneys around the state. OPD is experienced in administering client services contracts and has done so effectively and efficiently for more than 20 years. OPD currently provides counsel in indigent appeals, for parents in dependency cases, and for persons facing indefinite civil commitment under RCW 71.09.

For more information, contact: *Sophia Byrd McSherry, Deputy Director*
Sophia.byrdmcscherry@opd.wa.gov or 360-878-0550

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711 Capitol Way South • Suite 106 • P.O. Box 40957 • Olympia, Washington 98504-0957