

February 14, 2023

Dear Chair Rolfes and Members of the Senate Ways and Means Committee,

We write in support of support of Senate Bill 5046, which would provide access to counsel in post-conviction personal restraint petitions, and endorse Senator Saldaña's Ways & Means amendment in order to reduce the fiscal impact to the state and prioritize counsel for the most disadvantaged clients.

Incarcerated individuals who seek a post-conviction remedy through a personal restraint petition (PRP) are among the most vulnerable and disadvantaged members of our community who seek judicial review of issues impacting their right to liberty. The bill attaches the right to counsel for a PRP petitioner at an earlier stage and promotes efficiency, accountability, and economic equality.

Senate Bill 5046 Ensures Constitutional Rights Are Met

Senate Bill 5046 guarantees the right to counsel at public expense during a critical stage in the legal proceeding where actual innocence and deprivation of constitutional rights are litigated.

The State constitution protects the right to directly appeal a criminal conviction and mandates the right to counsel to advocate for the direct appeal. The Washington constitution also guarantees the right to the writ of habeas corpus, which by statute is effectuated by way of a personal restraint petition.

Appointing counsel on petitions cases increases efficiency and access to justice. The Office of Public Defense (OPD) will create a system to screen petitions and appoint qualified appellate counsel for representation of nonfrivolous claims. OPD can contract with qualified appellate counsel without impacting the demand for trial lawyers to address the backlog of cases in trial courts.

Existing Challenges for petitioners

The petitioners of PRPs are often the least able to address legal or factual wrongs. Most lack the necessary funds to retain counsel. Petitioners do not have legal training and many lack a high school diploma or secondary education.

Some speak English only as a second language, often in a manner insufficient to draft legal pleadings. It is not clear if a court will accept a petition in any language other than English. Many who have a right to post conviction relief have a mental or physical condition that makes it difficult, or even impossible, to file a petition without the assistance of counsel.

Moreover, access to necessary case files or basic legal research resources is limited by DOC policies. This means that only people with the funds to hire an attorney to navigate this complex process truly have access to courts.

Our current PRP process disproportionately impacts BIPOC and indigent persons. Counsel can investigate claims and advocate for the most disadvantaged petitioners on claims that impact their freedom and right to be free from unlawful convictions.

Conclusion

Senate Bill 5046 clarifies the right to counsel on PRPs and provides a thoughtful process for OPD to implement a process to appoint counsel. In doing so, Senate Bill 5046 provides access to justice in cases in which innocence is litigated.

Assigning counsel legitimizes the legal process and in doing so instills confidence in the fairness of the proceedings. Senate Bill 5046 provides justice while engendering confidence in the legal system and access to justice.

The judicial system relies on the finality of its ruling, but not at the cost of justice. Please support Senate Bill 5046.

Sincerely,

ACLU of Washington

Civil Survival

Disability Rights of Washington

Korematsu Center for Law and Equality

Northwest Immigrant Rights Project

Public Defender Association

Seattle Clemency Project

The Defender Initiative

Washington Association of Criminal Defense Lawyers

Washington Defender Association