

Multiple Agency Fiscal Note Summary

Bill Number: 5046 2S SB	Title: Postconviction counsel
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Estimated Cash Receipts

NONE

Agency Name	2023-25		2025-27		2027-29	
	GF- State	Total	GF- State	Total	GF- State	Total
Local Gov. Courts						
Loc School dist-SPI						
Local Gov. Other	Fiscal note not available					
Local Gov. Total						

Estimated Operating Expenditures

Agency Name	2023-25				2025-27				2027-29			
	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total
Administrative Office of the Courts	4.5	1,527,900	1,527,900	1,527,900	6.0	1,998,800	1,998,800	1,998,800	6.0	1,998,800	1,998,800	1,998,800
Office of Public Defense	1.5	3,594,591	3,594,591	3,594,591	1.5	4,662,971	4,662,971	4,662,971	1.5	4,666,896	4,666,896	4,666,896
Total \$	6.0	5,122,491	5,122,491	5,122,491	7.5	6,661,771	6,661,771	6,661,771	7.5	6,665,696	6,665,696	6,665,696

Agency Name	2023-25			2025-27			2027-29		
	FTEs	GF-State	Total	FTEs	GF-State	Total	FTEs	GF-State	Total
Local Gov. Courts									
Loc School dist-SPI									
Local Gov. Other	Fiscal note not available								
Local Gov. Total									

Estimated Capital Budget Expenditures

Agency Name	2023-25			2025-27			2027-29		
	FTEs	Bonds	Total	FTEs	Bonds	Total	FTEs	Bonds	Total
Administrative Office of the Courts	.0	0	0	.0	0	0	.0	0	0
Office of Public Defense	.0	0	0	.0	0	0	.0	0	0
Total \$	0.0	0	0	0.0	0	0	0.0	0	0

Agency Name	2023-25			2025-27			2027-29		
	FTEs	GF-State	Total	FTEs	GF-State	Total	FTEs	GF-State	Total
Local Gov. Courts									
Loc School dist-SPI									
Local Gov. Other	Fiscal note not available								
Local Gov. Total									

Estimated Capital Budget Breakout

Prepared by: Gaius Horton, OFM	Phone: (360) 819-3112	Date Published: Preliminary 2/23/2023
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Judicial Impact Fiscal Note

Bill Number: 5046 2S SB	Title: Postconviction counsel	Agency: 055-Administrative Office of the Courts
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Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

NONE

Estimated Expenditures from:

STATE	FY 2024	FY 2025	2023-25	2025-27	2027-29
State FTE Staff Years	3.0	6.0	4.5	6.0	6.0
Account					
General Fund-State 001-1	528,500	999,400	1,527,900	1,998,800	1,998,800
State Subtotal \$	528,500	999,400	1,527,900	1,998,800	1,998,800
COUNTY	FY 2024	FY 2025	2023-25	2025-27	2027-29
County FTE Staff Years					
Account					
Local - Counties					
Counties Subtotal \$					
CITY	FY 2024	FY 2025	2023-25	2025-27	2027-29
City FTE Staff Years					
Account					
Local - Cities					
Cities Subtotal \$					

Estimated Capital Budget Impact:

NONE

The revenue and expenditure estimates on this page represent the most likely fiscal impact. Responsibility for expenditures may be subject to the provisions of RCW 43.135.060.

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note for Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.

Legislative Contact: Ryan Giannini	Phone: 3607867285	Date: 02/20/2023
Agency Preparation: Angie Wirkkala	Phone: 360-704-5528	Date: 02/22/2023
Agency Approval: Chris Stanley	Phone: 360-357-2406	Date: 02/22/2023
OFM Review: Gaius Horton	Phone: (360) 819-3112	Date: 02/23/2023

184,678.00

Request # 208-1

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact on the Courts

THIS JUDICIAL IMPACT NOTE IS FOR THE COURT OF APPEALS – AGENCY 048

The second substitute bill would not have a different fiscal impact than the previous versions of the bill.

Section 2:

This bill provides authority for the director of the Office of Public Defense (OPD) to administer state-funded services for appellate indigent defense for incarcerated adults and youths under RCW 10.73.150 and for postconviction indigent defense to file and prosecute a first, timely personal restraint petition (PRP) under certain sections of RCW 10.73.150.

Subject to availability of funds, OPD shall prioritize access to counsel for youth under age 25, persons with sentences in excess of 120 months, and persons with disabilities or limited English proficiency.

Subject to availability of funds, this bill provides indigent, incarcerated persons access to counsel for petitioning a sentencing court if the legislature creates an opportunity to do so and challenging a conviction or sentence if a final decision of an appellate court creates an opportunity to do so.

II. B - Cash Receipts Impact

None

II. C - Expenditures

COURT OF APPEALS IMPACT

IMPACT TO THE NUMBER OF HEARINGS OR TRIALS AND JUDICIAL OFFICER WORKLOAD - INDETERMINATE

The Court of Appeals cannot estimate at this stage the exact number of additional PRPs this will generate, but it is reasonable to predict that there will be a substantial increase in timely, non-frivolous, PRPs, depending on the amount of funding appropriated to OPD to fund PRPs. This bill could result in an increase to a total of 700 timely PRPs per year, in addition to the existing rate of untimely PRPs. About 15 percent of PRPs are currently set for panel consideration. That percentage may go up, but the Court of Appeals is unable to determine how much.

REASON FOR THE CHANGE

* If defense attorneys strategically split arguments between their direct appeal and their one timely PRP, then the Court of Appeals will likely have a very high rate of timely PRPs filed where convictions/sentences have been affirmed. The Court of Appeals estimates this could be as many as 90% of direct appeals where the conviction and sentence were affirmed.

* The Court of Appeals already receives a comparable number of criminal appeals and PRPs filed statewide in a year (about 1,000 each). But many PRPs are successive and even more are untimely.

* It would not be unreasonable to predict that the Court of Appeals will likely receive about 300 additional total PRPs filed statewide if 5046 is adopted.

* The percentage of total PRPs that are timely and nonfrivolous is likely to increase. The total number of timely PRPs could increase to 700 per year.

* Currently about 15% of the PRP cases end up going to 3-judge panels. That percentage would likely increase.

This bill would increase the workload for judges. However, the Court of Appeals is unable to estimate at this time whether the increase will create backlogs necessitating additional judicial officers.

IMPACT TO COURT OF APPEALS STAFF

184,678.00

Form FN (Rev 1/00)

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Request # 208-1

Bill # 5046 2S SB

This bill would increase the impact to Court of Appeals Staffing as follows.

Beginning January 1, 2024 and ongoing, the Court of Appeals would require salary, benefits, and associated standard costs for:

* Case Managers. Case Managers handle about 60-75 PRPs each per year. The Court of Appeals need 3.0 FTE additional case managers statewide when there is an expected return to pre-Covid levels of PRP filings, which will likely occur by the January 1, 2024 effective date.

* Staff Attorneys. Because there may be more timely PRPs, and many more will be non-frivolous, the Court of Appeals anticipates that staff attorneys would need to spend more time per PRP. Conservatively, there is a need to add at least 1.0 Staff Attorney per Court of Appeals division, for a total of 3.0 FTE.

STAFF IMPACTS INCLUDE STANDARD COSTS

Explanation of standard costs by object:

Salary estimates are current biennium actual rates at Step L.

Benefits are the agency average of 31.89% of salaries.

Goods and Services are the agency average of \$3,800 per direct program FTE.

Travel is the agency average of \$2,500 per direct program FTE.

One-time IT Equipment is \$4,800 for the first fiscal year per direct program FTE. Ongoing Equipment is the agency average of \$1,600 per direct program FTE.

Agency Indirect is calculated at a rate of 24.73% of direct program salaries and benefits.

Part III: Expenditure Detail

Part III: Expenditure Detail

III. A - Expenditure By Object or Purpose (State)

<i>State</i>	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	3.0	6.0	4.5	6.0	6.0
Salaries and Wages	289,300	578,700	868,000	1,157,400	1,157,400
Employee Benefits	92,300	184,500	276,800	369,000	369,000
Professional Service Contracts					
Goods and Other Services	11,400	22,800	34,200	45,600	45,600
Travel	7,600	15,000	22,600	30,000	30,000
Capital Outlays	33,600	9,600	43,200	19,200	19,200
Inter Agency/Fund Transfers					
Grants, Benefits & Client Services					
Debt Service					
Interagency Reimbursements					
Intra-Agency Reimbursements	94,300	188,800	283,100	377,600	377,600
Total \$	528,500	999,400	1,527,900	1,998,800	1,998,800

III. B - Expenditure By Object or Purpose (County)

NONE

III. C - Expenditure By Object or Purpose (City)

NONE

III. D - FTE Detail

Job Classification	Salary	FY 2024	FY 2025	2023-25	2025-27	2027-29
Case Manager	69,759	1.5	3.0	2.3	3.0	3.0
Staff Attorney	123,120	1.5	3.0	2.3	3.0	3.0
Total FTEs		3.0	6.0	4.5	6.0	6.0

III. E - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B1 - Expenditures by Object Or Purpose (State)

NONE

IV. B2 - Expenditures by Object Or Purpose (County)

NONE

IV. B3 - Expenditures by Object Or Purpose (City)

NONE

IV. C - Capital Budget Breakout

Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.

NONE

None

Individual State Agency Fiscal Note

Bill Number: 5046 2S SB	Title: Postconviction counsel	Agency: 056-Office of Public Defense
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Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	1.5	1.5	1.5	1.5	1.5
Account					
General Fund-State 001-1	1,264,494	2,330,097	3,594,591	4,662,971	4,666,896
Total \$	1,264,494	2,330,097	3,594,591	4,662,971	4,666,896

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.
- Requires new rule making, complete Part V.

Legislative Contact: Ryan Giannini	Phone: 3607867285	Date: 02/20/2023
Agency Preparation: Gideon Newmark	Phone: 360-586-3164 1	Date: 02/22/2023
Agency Approval: Sophia Byrd McSherry	Phone: 360-586-3164	Date: 02/22/2023
OFM Review: Gaius Horton	Phone: (360) 819-3112	Date: 02/23/2023

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.

2SSB 5046 would authorize the Office of Public Defense (OPD) to provide indigent persons with access to counsel at state expense for certain post-conviction legal actions, and would require a report.

Section 2(2): Amends RCW 2.70.020 and authorizes OPD, subject to available funds, to provide counsel for indigent persons incarcerated in a juvenile rehabilitation or adult correctional facility to file and prosecute a first, timely personal restraint petition. Section 2(2) requires OPD to establish eligibility criteria that prioritize access to counsel for youth under age 25, persons with sentences longer than 120 months, persons with disabilities, and persons with limited English proficiency.

Section 2(3): Amends RCW 2.70.020 and authorizes OPD, subject to available funds, to provide counsel to petition the sentencing court if the legislature creates an ability to petition the sentencing court, or to provide counsel to challenge a conviction or sentence if a final decision of an appellate court creates the ability to challenge a conviction or sentence.

Section 3: Adds a new section requiring OPD to examine barriers to providing postconviction counsel and report findings and recommendations to the Legislature by December 1, 2024.

II. B - Cash receipts Impact

Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.

II. C - Expenditures

Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.

The Office of Public Defense (OPD) assumes the following impacts from 2SSB 5046 Section 2(2) (providing counsel for indigent persons to file a first, timely personal restraint petition):

1. OPD's authority to provide counsel under Section 2(2) is subject to availability of funds. OPD assumes that the Legislature intends to appropriate some amount to implement Section 2(2) and is basing this fiscal note on the annual number of cases projected to align with the priorities identified in Section 2(2) of the bill. If less funding is available, OPD would scale back the provision of counsel to fit the available funding, prioritizing cases as identified in Section 2(2).
2. In order to be prepared for the January 1, 2024 effective date, OPD would hire 1.5 FTE agency staff positions (1 FTE managing attorney, .5 FTE legal assistant) in July 2023. These positions would establish eligibility criteria for prioritizing cases, develop practice standards and training for postconviction counsel, secure and oversee contracts for postconviction counsel, and screen and prioritize cases based on the priorities identified in the bill. In addition to staff salaries and benefits, OPD also would have one time start-up costs of \$5,000 for each position to cover office equipment, furnishings, subscriptions, software licensing, etc. OPD staff salaries and benefits are identified at Expenditure Object A (salaries) & B (benefits), and reflect step increases as currently provided in the state salary schedule. One-time new employee start-up costs are included among other costs in Expenditure Object E (goods & services).
3. Because of the January 1, 2024 effective date, OPD assumes 6 months of client services contracts for Fiscal Year 2024.
4. OPD assumes that up to 300 indigent personal restraint petitions per year could be eligible for counsel under the priorities established in the bill. To provide counsel for these cases, OPD would enter into full-time client services contracts with up

to 10 attorneys qualified to represent clients in postconviction matters. Client services contract costs are identified at Expenditure Object N (grants, benefits, & client services).

5. OPD assumes that providing legal representation for indigent personal restraint petitions would involve litigation costs for expert and investigative services in most cases and interpreter and translation costs in some cases. OPD assumes that trial court transcripts and other files would already have been made part of the appellate record and would not need to be re-created or re-translated. Litigation costs and interpreter/translation costs represent the bulk of costs identified at Expenditure Object E (goods & services).

6. OPD assumes contracted counsel would have travel expenses associated with preparing personal restraint petitions. OPD pays travel costs for contracted attorneys to visit incarcerated clients and for in-person appearances at court. Travel costs are identified at Expenditure Object G (travel).

OPD assumes the following impacts from 2SSB 5046 Section 2(3) (providing counsel if the Legislature or an appellate court creates an ability to petition the sentencing court or challenge a conviction or sentence):

1. OPD's authority to provide counsel under Section 2(3) is subject to availability of funds. Section 2(3) is prospective and is conditioned upon potential future action of the Legislature or appellate court. Costs associated with such future actions would be dependent on the nature and scope of the potential legislative or court action. As such, costs associated with Section 2(3) are indeterminate at this time.

2. OPD assumes that future legislation, as contemplated in Section 2(3), would include a fiscal note request specific to the legislation. OPD would estimate fiscal impacts specific to the new legislation at that time.

3. It is not possible to anticipate how many convictions or sentences might be invalidated by final appellate court action in the future, as contemplated in Section 2(3). OPD assumes that State v. Blake represents a high water mark for void convictions and sentences, and that future void convictions and sentences likely would impact significantly fewer cases than Blake. OPD also assumes that many void convictions and sentences for which counsel could be appointed under Section 2(3) would be challenged as personal restraint petitions, and as such are already included in the assumptions and cost estimates above for Section 2(2).

4. OPD assumes that if future appellate court actions invalidate convictions and sentences in such large numbers that they exceed OPD's ability to absorb the costs, OPD could develop budget decision packages and seek funding specifically to address the number of indigent cases involved. OPD assumes that it could be able to absorb the costs of some future court actions, depending on the scope.

OPD assumes the following impacts from 2SSB 5046 Section 3 (directing OPD to examine and report on barriers to providing counsel to file and prosecute a collateral attack):

1. OPD assumes that OPD's existing staff can engage with stakeholders and conduct the required study using publicly available data and cost-effective tools such as online surveys and virtual platforms for stakeholder meetings. OPD therefore assumes it will be able to absorb the costs of Section 3 within existing resources.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

Account	Account Title	Type	FY 2024	FY 2025	2023-25	2025-27	2027-29
001-1	General Fund	State	1,264,494	2,330,097	3,594,591	4,662,971	4,666,896
Total \$			1,264,494	2,330,097	3,594,591	4,662,971	4,666,896

III. B - Expenditures by Object Or Purpose

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	1.5	1.5	1.5	1.5	1.5
A-Salaries and Wages	144,702	145,296	289,998	292,494	295,182
B-Employee Benefits	38,963	39,236	78,199	79,347	80,584
C-Professional Service Contracts					
E-Goods and Other Services	263,493	506,986	770,479	1,013,972	1,013,972
G-Travel	700	1,306	2,006	2,612	2,612
J-Capital Outlays					
M-Inter Agency/Fund Transfers					
N-Grants, Benefits & Client Services	816,636	1,637,273	2,453,909	3,274,546	3,274,546
P-Debt Service					
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements					
9-					
Total \$	1,264,494	2,330,097	3,594,591	4,662,971	4,666,896

III. C - Operating FTE Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part I and Part IIIA*

Job Classification	Salary	FY 2024	FY 2025	2023-25	2025-27	2027-29
Legal Assistant	24,702	0.5	0.5	0.5	0.5	0.5
Managing Attorney	120,000	1.0	1.0	1.0	1.0	1.0
Total FTEs		1.5	1.5	1.5	1.5	1.5

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.

NONE

IV. D - Capital FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part IVB.*

NONE

Part V: New Rule Making Required

Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.