



Washington State
**Office of
Public
Defense**

**PROVIDING COUNSEL FOR POST-CONVICTION REVIEW
OPD'S IMPLEMENTATION OF SB 5046**

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A Message from the Director

A heartfelt thank you to the Legislature for believing in justice. A special thank you to Senator Rebecca Saldaña for reaching out to OPD about Senate Bill 5046. We greatly appreciate you.

No one is above or below the law. The law must apply equally to everyone. In order for the law to apply equally, everyone must have access.

Freedom is an inalienable right to all persons no matter one's financial resources or where one might currently reside. Whether at home or in a correctional facility, everyone needs access to the law. For most people, the ability to effectively access the law depends on having access to a lawyer.

I believe that the courts can be a bastion of truth and freedom. However, the truth cannot be told and freedom cannot be obtained if there is no way to access to the courts. Justice cannot prevail if the path to be heard is filled with roadblocks.

SB 5046 affords an up-close view of the post-conviction legal landscape in Washington State. Implementing this bill provides an opportunity to listen and learn from people struggling to be heard, and OPD is finding the experience to be rewarding and educational. Stories of our work to implement SB 5046 and the voices of people fighting for their freedom are included in this Report.

I am proud of the work OPD has done so far to help the people we could under SB 5046 and saddened by those we had to leave behind due to persistent roadblocks in the law. Shining a light into areas not usually seen has opened eyes, prompted ideas for change, and inspired our commitment to reach more people lost in the criminal legal system.

A handwritten signature in black ink, appearing to read "Larry Jefferson". The signature is fluid and cursive, with a long horizontal flourish at the end.

Larry Jefferson, Director
Washington State Office of Public Defense

Acknowledgements

In preparing this report, the Office of Public Defense (OPD) consulted with numerous stakeholders and appreciates their availability and responsiveness. In particular, OPD thanks its contracted SB 5046 Program attorneys; Just Us Solutions LLC; the Seattle Clemency Project (SCP); numerous trial and appellate attorneys; judicial officers; prosecutors; the Department of Corrections (DOC) and the Administrative Office of the Courts (AOC). Their contributions of time, data, and candid opinions were invaluable to informing OPD's analysis and recommendations.

To the incarcerated people and their families who reached out, OPD appreciates you and recognizes it is not easy to share your personal stories with strangers. A big thank you to the Legislature for asking to hear, and listening to, their voices.

A special note of gratitude goes to the messengers inside the Department of Corrections. The initial success of the SB 5046 Post-Conviction Program is owed in great part to their efforts in announcing the program throughout Washington's correctional facilities, as well as educating and assisting others incarcerated inside DOC.

Thank you especially to **Brian Matthews** and **Melvin Xavier**. Your efforts, voices, and compassion are invaluable. Thank you as well to **Jeremiah Bourgeois**, who brought forward an idea rooted in justice, which eventually blossomed into Senate Bill 5046.

OPD looks forward to continuing to provide critical legal services under SB 5046 as well as possible future legislative reforms that support post-conviction review and relief.

*Ann Joyce, SB 5046 contracted paralegal
and report author*

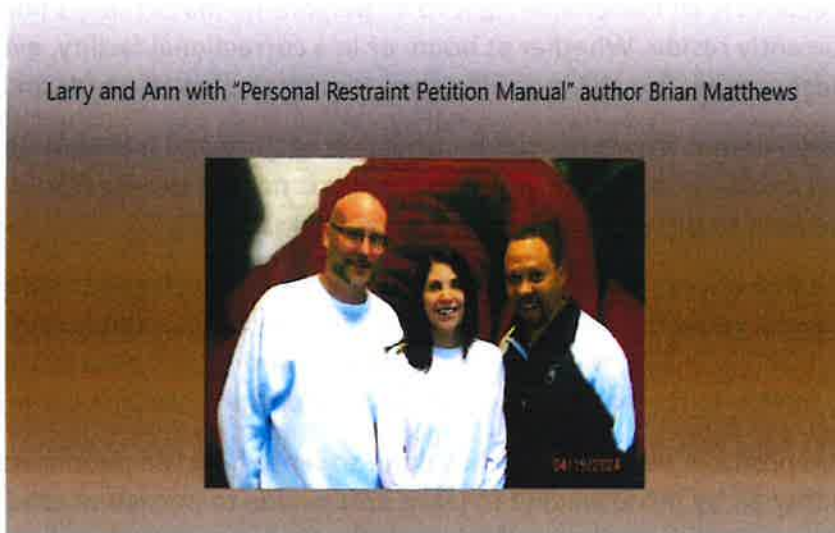


Photo credit: DOC Staff

Executive Summary

Following an unsuccessful criminal appeal, persons may seek further post-conviction review in Washington courts. The Washington Constitution guarantees the right to habeas corpus, which is implemented through the personal restraint petition (PRP) process.

A PRP can be a critical tool to remedy a wrongful conviction or unjust sentence. Historically the state has not offered legal counsel to an indigent person until after they filed their own PRP *pro se* and the Washington Court of Appeals granted review – a significant procedural hurdle. But the 2023 Legislature reformed this process and approved Senate Bill 5046, which authorizes the Office of Public Defense (OPD) to provide an attorney up-front to help an indigent incarcerated person file a first, timely PRP.

SB 5046 became effective January 1, 2024, and over the next 10 months OPD received 435 applications for appointment of counsel to file a PRP. OPD observed that incarcerated people face a number of barriers to accessing counsel through SB 5046. For example, in the time period covered by this report, fewer than 10 percent of applicants were able to satisfy the statutory criteria to have counsel assigned. Petitioners also encounter additional barriers to filing a PRP *pro se*, without counsel.

This report examines and evaluates the barriers along with perspectives shared by post-conviction stakeholders, including defense counsel, prosecutors, courts, and convicted persons and their families. The report also identifies resources and recommends reforms to improve access to justice through the PRP process.

Barriers include:

- **A one-year time bar** imposed by RCW 10.73.090. The time bar blocks post-conviction claims that would otherwise be valid.
- **Limited exceptions to the time bar** allowed by RCW 10.73.100. Exceptions to the time bar are very limited, and courts apply them narrowly, declining to consider claims that would otherwise be valid.
- **Procedural and substantive complexities** in the statutes, court rules, and case law. *Pro se* petitioners typically lack the technical legal knowledge, funds, and basic discovery tools necessary to develop an effective PRP. Failure to precisely comply with procedural requirements often dooms a PRP to summary dismissal.
- **Limited library resources** at adult prisons and juvenile rehabilitation facilities. Inadequate materials and research tools limit the possibility that a *pro se* petitioner can comply with the time bar or the exceptions to the time bar.
- **Poor access to legal records** needed to file a PRP. *Pro se* petitioners face significant delays in obtaining the court records and discovery necessary to file a PRP. They often must request critical

documents through a public records request, which can take months to complete and can produce records that are heavily redacted.

To address these barriers, OPD recommends the following reforms:

- **Amend statutes to extend the time bar and expand exceptions.** Increase the statutory time bar to three years and increase the number of exceptions to the time bar, particularly allowing ineffective assistance of counsel as an exception.
- **Amend court rules** and statutes to ensure timely access to records. This includes amending the discovery rules to apply to PRPs, and clarifying the duty of prior counsel to cooperate in post-conviction investigations.
- **Clarify the “mixed petition rule”** and allow a court to identify the acceptable claim(s) presented in a mixed petition.
- **Update technology and library resources** at DOC and JRA facilities to support incarcerated *pro se* petitioners. This includes developing tools provide court records to incarcerated persons through a direct and secure electronic portal.
- **Sustain and improve resources for the SB 5046 Post-Conviction Program** to allow appointment of counsel to help more incarcerated petitioners with legitimate claims file a personal restraint petition.

Post-Conviction Review and Relief in Washington State

The Washington State Constitution,¹ guarantees the right of all persons to appeal a criminal conviction. If a person cannot afford to hire an attorney to represent them on appeal, the state will appoint counsel for the appeal. However, the constitutional right to counsel at public expense ends at the conclusion of the direct appeal, and people without financial means typically must seek further post-conviction review by representing themselves *pro se*.

Washington statutes authorize post-conviction review and relief through collateral attack on a judgement and sentence.² This encompasses a variety of legal actions, including a personal restraint petition (PRP), which is available only after exhausting all forms of direct appeal. PRPs must be filed within one year after a judgment becomes final, unless the petition is based solely on certain limited circumstances, such as newly discovered evidence or significant changes in the law. The one-year filing deadline is typically referred to as the “time bar.”³

Washington does not guarantee post-conviction counsel in most instances of collateral challenge,⁴ even though post-conviction actions are a critical legal tool to expose serious substantive and procedural issues that exist beyond the scope of review on a direct appeal. For example, PRPs allow appellate courts to review evidence of unjust sentences, newly discovered proof of innocence, and constitutional violations such as a denial of due process or ineffective assistance of counsel. Recent Washington Supreme Court decisions include: *In re PRP of Monschke*, 197 Wash.2d 305 (2021) (state constitution prohibits mandatory life sentences for youth); *In re PRP of Glasmann*, 175 Wash. 2d 696 (2012) (prosecutor’s statements and conduct denied the right to a fair trial); *In re PRP of 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).

The court will grant relief on a personal restraint petition if the convicted person shows they are under some form of “restraint” and the restraint is unlawful for one or more of the reasons specified in the Rules of Appellate Procedure (RAP).⁵ These include that the conviction was obtained or the sentence was imposed in violation of state law, the U.S. or state Constitution; material facts exist which have not been previously presented and, which in the interest of justice require vacating the

¹ Wash. Const. Art. I, Sec. 22. “ ... the accused shall have the right to appear and defend in person, or by counsel ... and the right to appeal in all cases. ...” Complete text available at [4 WA Constitution.mif](#).

² See Chapter [10.73 RCW](#).

³ See [RCW 10.73.090: Collateral attack—One year time limit](#).

⁴ See RCW 10.73.150. For example, counsel is provided at state expense when an indigent petitioner requests counsel to prosecute a collateral attack if the chief judge determines the issues raised by the petition are not frivolous; or to respond to a collateral attack or respond to or prosecute an appeal from a collateral attack filed by the state; or to prosecute a motion or petition for review after the Supreme Court has accepted discretionary review of a court of appeals decision.

⁵ See RAP Title 16, available at [Washington State Courts - Court Rules](#).

conviction, sentence, or other order in a criminal proceeding; or there has been a significant change in the law.

Current laws and procedures create often-insurmountable obstacles to seeking post-conviction relief without a law degree, let alone under the additional constraints of imprisonment. Many incarcerated people experience mental illness, developmental disabilities, old age, poor health, and the effects of a traumatized life. Many have not graduated high school. Most have no financial or family resources.

The Legislature approved SB 5046 to allow appointment of public defense counsel to file one timely personal restraint petition for incarcerated individuals who have no other access to counsel and are unlikely to be able to represent themselves effectively.

Senate Bill 5046 – Overview

State Senator Rebecca Saldaña introduced SB 5046 to create a viable path to the courts for indigent incarcerated persons who may have legitimate post-conviction claims and who need legal counsel to help them pursue relief.

Section 1 of SB 5046 presents legislative findings, including that Washington’s criminal legal system perpetuates and exacerbates disparate impacts on poor persons and persons of color, and declares that indigent incarcerated persons would benefit from access to public defense counsel to advise, initiate, and execute certain post-conviction procedures.

Section 2 (1) directs OPD to provide access to counsel for indigent persons incarcerated in a juvenile rehabilitation or adult correctional facility to file and prosecute a first, timely personal restraint petition. OPD must establish eligibility criteria that prioritize counsel for: youth under age 25; youth or adults with sentences in excess of 120 months; youth or adults with disabilities; and youth or adults with limited English proficiency. In addition, subject to funding, Section 2(2) directs OPD to appoint counsel if a future Legislature authorizes opportunities for resentencing or if a future final decision of an appellate court creates an ability to challenge a conviction or sentence.

Section 3 of the bill requires OPD to examine and evaluate barriers to providing post-conviction counsel to file and prosecute a collateral attack, and identify resources and reforms to overcome the barriers. OPD must report these findings and recommendations to the appropriate fiscal and policy committees of the Legislature by December 1, 2024.

SB 5046 passed 30-19 in the Senate and 58-40 in the House of Representatives, and is codified at RCW 2.70.020(2)⁶. The Legislature appropriated funding to OPD in the 2023-2025 biennial budget to administer counsel for personal restraint petitions as prioritized in Section 2 of the bill.

⁶ See [RCW 2.70.020 \(2\)](#).

Senate Bill 5046 – Implementation

Creating a new statewide right-to-counsel program presents challenges. It also presents an opportunity to design a service platform with fresh ideas and unique perspectives centered on the needs of incarcerated clients. In implementing SB 5046, OPD is building bridges to connect directly with the incarcerated people the office serves and to provide a meaningful, albeit narrow, pathway to post-conviction review.

In establishing the SB 5046 Post-Conviction Program, OPD took the following steps to ensure optimal outreach, assessment, and assistance.

I. Expert Consultation

OPD consulted with the nonprofit Seattle Clemency Project (SCP)⁷ for guidance in developing critical program elements, including application forms and review processes that are accessible to incarcerated people and their families. SCP had previously implemented a similar process to match volunteer lawyers with clients pursuing claims of commutation and clemency. Learning from SCP's experience helped OPD staff understand what to expect with various aspects of the application process, and provided a solid example of a successful program.

II. SB 5046 Program Team

Between July and December 2023, OPD assembled a small team of employees and contractors with specialized skill sets, including people with lived experience who previously had secured post-conviction relief. The SB 5046 Program team consists of two OPD employees (a managing attorney and a paralegal), as well as a contracted paralegal, two contracted case reviewers, and five contracted attorneys experienced in representing clients at all stages of the personal restraint petition process. The attorneys assume various PRP caseloads, as negotiated in their contracts.

During the 2023 legislative process, some stakeholders expressed concern about whether a new right-to-counsel program might exacerbate a shortage of public defenders in the trial courts. However, these concerns were not borne out. OPD's Request for Proposals (RFP)⁸ for SB 5046 contract attorneys required advanced practice qualifications, distinct from the skills and experience necessary to represent clients at trial. In response to the RFP, the Office received nine proposals to fill five contract attorney positions.

⁷See [Seattle Clemency Project](#). SCP relies on volunteer lawyers to represent clients in post-conviction matters that typically do not qualify for OPD's SB 5046 Program.

⁸ OPD issued RFP 00-28 in October 2023, available at [RFP-0028 Postconviction Program Contract Attorneys v2.pdf](#)

III. Client Application Process

OPD created an application⁹ for appointment of PRP counsel and provided the application form to all Department of Corrections (DOC) and Juvenile Rehabilitation Administration (JRA) facilities, as well as to attorneys representing clients on direct appeal. The application is available on the electronic tablets that DOC issues to incarcerated people. Unfortunately, it can't be printed from the tablets or submitted electronically. The application also is available on the OPD website as a fillable PDF form in both English and Spanish. A hard copy is provided upon request, and SB 5046 Program team members can assist incarcerated people and their families in completing the application.

SB 5046 enumerates criteria to qualify for appointment of counsel, including:

- The filing must be a client's first PRP.
- The PRP must be timely (within the one-year statutory time bar), and sufficient time must be available for assigned counsel to prepare the petition.
- Special consideration is given to people with disabilities, youth, non-English speaking persons, and those serving sentences that exceed 120 months.

OPD developed a matrix formula to score and prioritize each application based on these statutory criteria. A comprehensive spreadsheet tracks applicants and Program data.

IV. Applications Reviewed for Eligibility

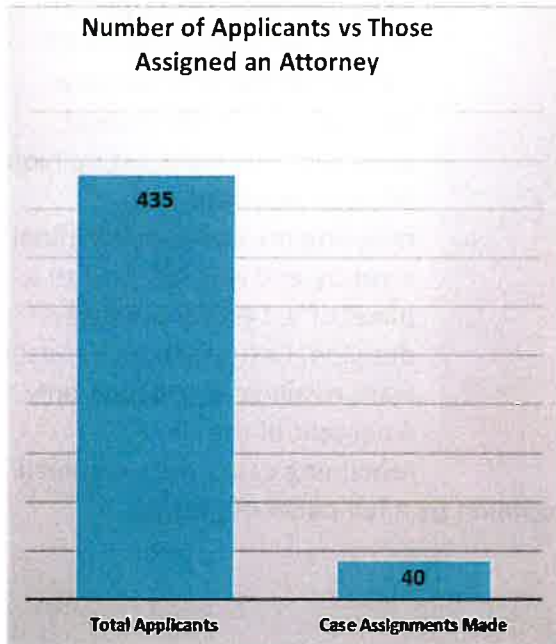
To determine eligibility for counsel, the SB 5046 Program team reviews each application according to the statutory criteria, and assigns points based on the formal scoring matrix. In addition, applying a more holistic lens, the team also reviews an applicant's underlying criminal case to gain an understanding of the charges, potential legal or procedural issues with the judgment and sentence, and other issues that the applicant may bring to their attention.

The team also reviews the underlying cases of applicants who appear to not be qualified for counsel under SB 5046. If an applicant is not eligible for counsel under SB 5046, but a potential legal error is identified in their underlying case, they are referred to outside resources for appropriate assistance.

⁹ A program overview along with application forms and instructions are available in English and Spanish on the OPD website at [Personal Restraint Petition Representation | Office of Public Defense](#). The form also is available at Appendix B.

V. Counsel Assigned to Eligible Clients

The SB 5046 Program team convenes monthly to assign OPD-contracted counsel. Each eligible applicant is appointed an attorney to file a PRP in the Washington Court of Appeals. OPD also provides access to independent investigators and forensic or other experts to assist the attorneys, as may be needed in a particular case.



From January through October 2024 (the timeframe covered by this report), OPD reviewed approximately 435 applications requesting PRP counsel, averaging 33 applications per month. OPD received no applications from current Juvenile Rehabilitation Administration (JRA) residents, but did receive a number of applications from young people who were prosecuted as adults for offenses committed under the age of 18.

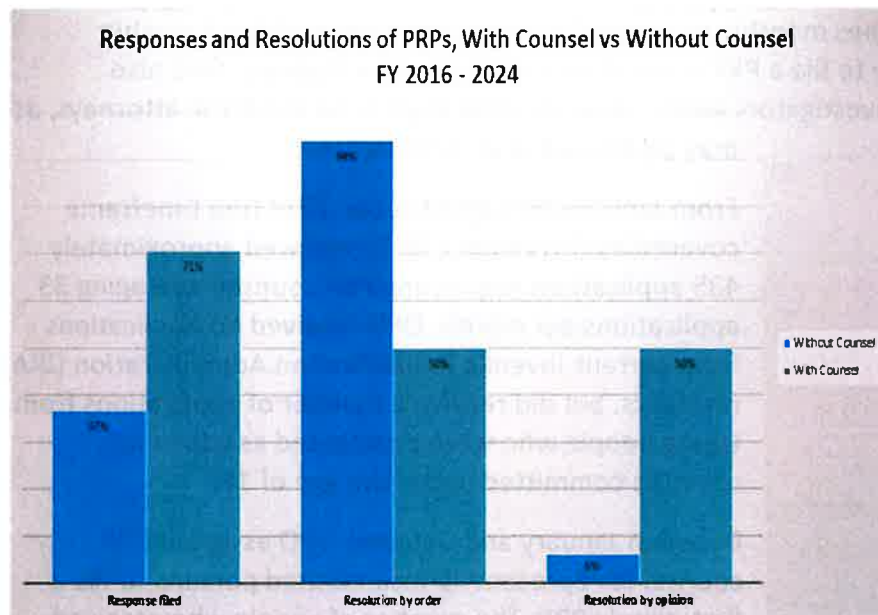
Between January and October, OPD assigned PRP counsel to represent 40 incarcerated persons to file a first, timely PRP. The number of people who received counsel to file a PRP varied by month, depending on the number of qualified applicants and availability of the contracted attorneys.

During the SB 5046 Program's first year, fewer than 10 percent of applicants could satisfy the statutory criteria to qualify for an attorney, largely due to the one-year time bar discussed in the "Barriers" section below. OPD is hopeful that, over time, incarcerated persons will learn about the SB 5046 Program with adequate time to apply for and receive appointed counsel before they are time-barred.

VI. What Happens When a PRP is Filed?

It's too soon to know final outcomes in the PRPs assigned to counsel under the SB 5046 Program. However, court data since 2016 show that PRPs with counsel typically proceed further in the review process and are significantly more likely to be resolved with an appellate court opinion than PRPs filed *pro se*.

Using data from the appellate courts' ACORDS database, combined with OPD data on assignment of counsel in PRPs, OPD can compare PRPs without counsel to those with counsel.



Prosecutors filed a response to PRPs with counsel 71 percent of the time, compared to 39 percent of the time without counsel. PRPs with counsel were resolved via court opinion 50 percent of the time, meaning the case passed initial scrutiny and was referred to a panel of judges for a written decision. Cases without counsel were resolved by opinion only 6 percent of the time. The remaining cases were resolved

by an order or ruling terminating review, without a written opinion by a full panel of judges.

Senate Bill 5046 – Report Required

The Legislature directed OPD to report about the implementation of SB 5046, with particular attention to:

- Examine and evaluate barriers to providing post-conviction counsel to file and prosecute a collateral attack. Barriers to be examined and evaluated include issues related to statutes, state and local court rules and practices, availability of qualified attorneys, and any other issues that may come to the attention of the office of public defense;
- Engage in outreach to post-conviction stakeholders, and include input from prosecutors, defense counsel, and convicted persons and their families; and
- Identify resources and reforms to overcome the barriers.

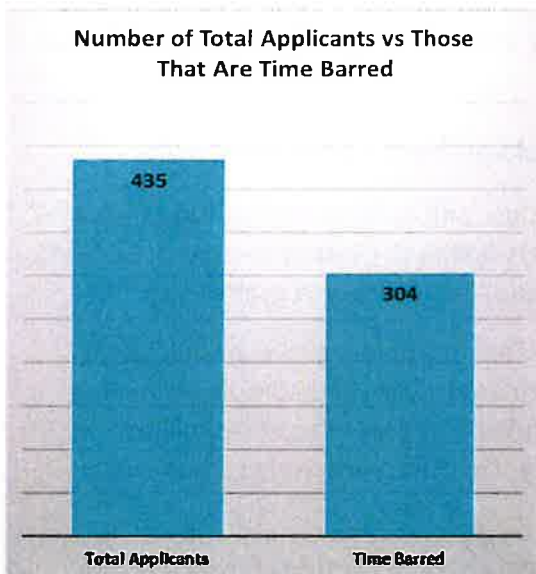
The following sections of this report address barriers, outreach, resources, and recommendations for reforms.

Barriers to Seeking Post-Conviction Relief

Implementation of SB 5046 reveals significant barriers for incarcerated persons seeking post-conviction relief through the personal restraint petition (PRP) process. Some of the following barriers specifically disqualify applicants from receiving OPD counsel under SB 5046. All of the identified barriers can block incarcerated persons from developing and presenting meritorious claims *pro se* and thus can leave them to serve unjust sentences.

I. Statutory Time Bar

For persons seeking PRP counsel under the SB 5046 Program at OPD, the biggest barrier to qualifying for appointment of counsel is the strict one-year time bar required by RCW 10.73.090.¹⁰ The statute establishes a deadline of one year following final judgment to file a PRP or other collateral challenge.



This deadline is often impenetrable. Between January and October 2024, nearly 70 percent of applicants to the SB 5046 Program had already exceeded (or were very near) the one-year deadline and, therefore, OPD could not assign them an attorney.

RCW 10.73.100¹¹ authorizes certain exceptions to the time bar, but these are difficult to demonstrate. For example, *In re Pers. Restraint of Light-Roth*, 191 Wash. 2d 328, 422 P.3d 444 (2018), illustrates the high standard. In his PRP, Mr. Light-Roth argued that *State v. O'Dell*, 183 Wash. 2d 680, 358 P.3d 359 (2015) presented a significant change in

the law with retroactive application to him and, as such, his PRP was exempt from the one-year time bar. (The *O'Dell* decision analyzed the changes recognized in law surrounding the brain science of adolescence and acknowledged the need to consider mitigating factors in youth sentencing.)

Court of Appeals Division I agreed and granted Mr. Light-Roth's PRP; however, the Washington Supreme Court reversed Division I, holding that *O'Dell* was not a significant change in the law sufficient to satisfy the time bar exception.

¹⁰ RCW 10.73.090: Collateral attack—One year time limit.

¹¹ RCW 10.73.100: Collateral attack—When one year limit not applicable. The statute lists seven time bar exceptions that may form the basis for a PRP. These are: newly discovered evidence; unconstitutional statute; conviction barred by double jeopardy; evidence at trial was insufficient to support a conviction; the sentence was in excess of the court's jurisdiction; a motion to modify conditions of community custody; or a significant change in the law that is to be applied retroactively. Interestingly, the statute does not allow a claim of ineffective assistance of counsel as an exception to the time bar, although the right to effective counsel is guaranteed by the 6th Amendment to the U.S. Constitution and Article 1 Section 22 of the Washington Constitution.

Even a pandemic brought little relief from the time bar. In mid-April 2020, more than a month into the COVID-19 emergency, Washington Governor Jay Inslee issued a proclamation suspending the PRP time bar.¹² But the courts applied the suspension only if a petitioner's time had not already run out, and stopped the clock just until the Governor's order expired.

As evidenced by the large percentage of untimely applications submitted to the SB 5046 Program, one year to seek post-conviction review does not appear to be an adequate timeframe. Incarcerated people do not have enough time to apply for counsel before the deadline. The time bar also prevents *pro se* petitioners from bringing potentially valid claims to the court. Their PRPs may be meritorious, but they will never be heard.

Prior to OPD's implementation of SB 5046 the Washington Court of Appeals dismissed a majority of PRPs outright for untimeliness. OPD is hopeful that, over time, early notice will increase the number of persons qualified to receive counsel to file a timely PRP.

II. PRPs are Highly Complex and Inaccessible to Many Incarcerated People

Most incarcerated individuals enter prison with limited education, and many have not obtained a high school diploma.¹³ The Legislature took special notice of this fact in the intent section of SB 5046, which states: "Up to 70 percent of persons in prison cannot read above a fourth-grade level."¹⁴

Navigating the PRP process is challenging, even for those educated in the law and experienced in appellate practice. Applicable Washington statutes and court rules are vast and complex, weaving across multiple sections of the Revised Code of Washington (RCW) and the Rules of Appellate Procedure (RAP). Volumes of case law further expand the maze. Failure to precisely comply with these requirements often dooms a PRP to summary dismissal.

In re Personal Restraint of Rice, 118 Wn. 2d 876, 886 (1992) highlights the burdens facing a *pro se* petitioner who lacks legal knowledge, funds, or discovery tools. For example, he cannot note a deposition or serve a subpoena. A response to his public records request can take months and often arrives heavily redacted.

The "threshold burden" is a significant barrier

If a PRP is properly filed within the one-year deadline, the Court of Appeals will review the merits of the petition only if it meets their "threshold burden" of showing either a (1) constitutional error, or (2) a non-constitutional error. *In re Pers. Restraint of Cook*, 114 Wn.2d 802, 814, 792 P.2d 506 (1990). Each of these errors carries its own standard, depending on the underlying claim being presented.

¹² Proclamation 20-47, issued April 14, 2020, suspended RCW 10.73.090 through midnight May 14, 2020. The proclamation is available at [20-47 - COVID-19 Criminal Justice Limitation of Actions.pdf](#)

¹³ [Highlights from the U.S. PIAAC Survey of Incarcerated Adults: Their Skills, Work Experience, Education, and Training, Program for the International Assessment of Adult competencies, November 2016. See also Education and Correctional Populations | Bureau of Justice Statistics and Educational Characteristics of Prisoners: Data from the ACS](#)

¹⁴ Laws of 2023 chapter 261, §1, available at [5046-S2.SL.pdf](#). Full text reprinted at Appendix A.

For claims of **constitutional error**, a petitioner must show actual and substantial prejudice. *In re Pers. Restraint of Light-Roth*, 191 Wn.2d 328, 333, 42 P.3d 444 (2018). To show prejudice, a petitioner must show some practical effect caused by the claimed error. *State v. Buckman*, 190 Wn.2d 51, 61, 409 P.3d 193 (2018). A constitutional error must be combined with some "practical effect" to constitute prejudice on collateral review. *Id.* at 64 (citing *In re Pers. Restraint of Yates*, 180 Wn.2d 33, 41, 321 P.3d 1195 (2014)). Actual prejudice requires a defect of substance, not simply of procedure. *Id.* at 68.

Non-constitutional error requires an even higher standard above the showing of prejudice. Reviewing courts "will consider non-constitutional error only when 'the claimed error constitutes a fundamental defect which inherently results in a complete miscarriage of justice.'" *In re Pers. Restraint of Davis*, 152 Wash. 2d 647, 672, 101 P.3d 1 (2004) (quoting *Cook*, 114 Wn.2d at 812). The petitioner must meet this standard by a preponderance of the evidence. *In re Pers. Restraint of Sylvester*, 24 Wash. App. 2d 769, 777, 520 P.3d 1123 (2022). The fundamental defect standard can occur when a court misinterprets or misapplies applicable statutes to the petitioner's detriment. *In re Pers. Restraint of Mulholland*, 161 Wash. 2d 322, 332-33, 166 P.3d 677 (2007).

A correct application of these standards requires detailed knowledge and deep understanding of statutes, rules, case law, and legal principles, including Chapter 9.94A RCW, Chapter 10.73 RCW, and RAP Title 16, among others.

The "mixed petition" rule presents an additional barrier

A PRP filed after the one-year deadline still may be considered if it satisfies certain statutory exceptions to the time bar, as identified in RCW 10.73.100.¹⁵ However, under the "mixed petition" rule, the court must dismiss a PRP if at least one of the grounds asserted in the petition fails to satisfy the statutory exceptions. *In re Pers. Restraint of Stoudmire*, 141 Wash.2d at 345-46, 349, 5 P.3d 1240 (2000). For example, in a PRP filed after the one-year time bar, where one or more of the grounds asserted for relief falls within the exceptions in RCW 10.73.100 and one or more does not, the petition is "mixed" and the issues sought to be raised under an exception listed in RCW 10.73.100 must be dismissed. Further the court does not identify which issues are within the allowed exceptions and which are not. A *pro se* petitioner is on their own to identify which issue(s) must be removed in order for the petition to advance. This can result in filing multiple petitions – a time-consuming, costly, and frustrating process for petitioners and the courts.

Wendell Clark, incarcerated at Stafford Creek Corrections Center.

"The legal library has been gutted here at Stafford Creek and that may be the same through the prisons. By gutted, I mean all law books, legal forms, and accessories such as whiteout, carbon paper, typing paper, etc., have been removed. Our brief bank has also been removed. The brief bank was important because it held examples of what an acceptable brief to the Court looks like. Had it not been for my community (the incarcerated) who explained what a PRP is, I likely would have missed the one-year time limit. All I can remember my direct appeal attorney telling me is that if my conviction was affirmed, I would have to initiate any further legal challenges on my own."

¹⁵ RCW 10.73.100 allows seven exceptions to the one-year time bar.

III. Obtaining Records

On a direct appeal, the record for review is well-established and limited in scope. It consists only of the trial transcript, exhibits, and court file of the Superior Court. Nothing outside of this official record can be considered on direct appeal. A PRP, however, is the vehicle for bringing important matters before the appellate court *outside* of the official trial court record.

A cogent PRP relies on the petitioner's ability to thoroughly review all potentially relevant records, including but not limited to the trial and appellate attorney files, discovery, email communication (e.g. related to plea negotiations), interview notes and recordings, and criminal history documents. Identifying, collecting, and examining these records in order to file a meaningful and thorough PRP can easily take longer than a year.

For an incarcerated person, collecting such records can be burdensome and time-consuming. Modern records of all types generally are maintained electronically, but they typically can't be electronically transmitted to an incarcerated person. Printing and sending records by postal mail often imposes fees, which indigent persons cannot pay. Indigent fee waivers may be available but can take time.

In addition to obtaining relevant records, incarcerated persons must seek information to supplement and contextualize what the records tell them. This often requires them to speak with their prior trial and appellate attorneys. However, no specific rule requires attorneys to cooperate with prior clients as they investigate grounds for filing a PRP. Some attorneys may be disincentivized to speak with former clients for this purpose from fear that the attorneys will be criticized as having performed ineffectively and may be subject to malpractice or disciplinary actions.

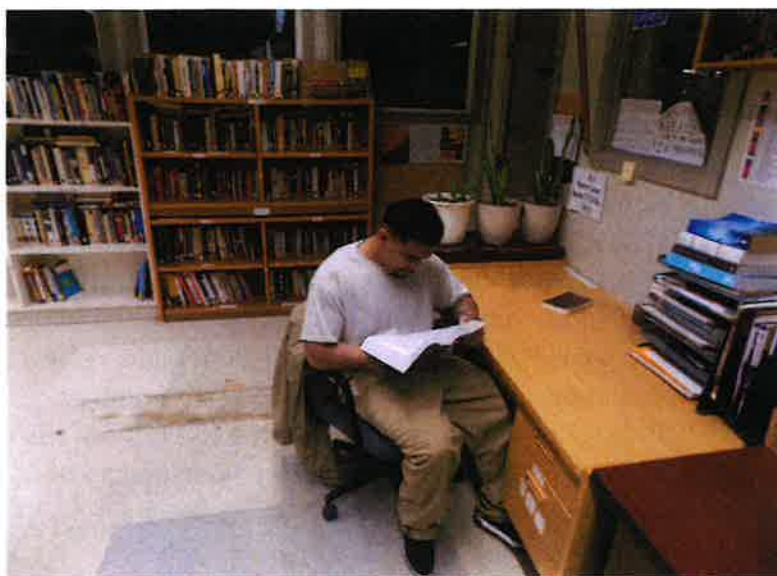
Further, DOC policies and varied practices among the different DOC facilities can delay or impede an incarcerated person's access to the records they need to file a PRP. Although DOC maintains a Central File for each incarcerated person, the means to access one's file can be uncertain and unreliable. Documents outside of the Central File are provided only by filing a Public Requests Request form, and the turnaround time to receive all records can extend for months.

IV. Limited Resources in State Facilities

DOC Policy 590.500¹⁶ strives to meet the requirements of *Bounds v Smith*, 430 US 817, 97 S. Ct. 1491, 52 L. Ed. 2d 72 (1977), in which the United States Supreme Court held that incarcerated persons must have “meaningful access to the courts.” However, vague language in the policy and its varied application across different DOC facilities can make it difficult for incarcerated persons to learn about and submit a timely application for counsel under the SB 5046 Program, as well as to file their own timely PRP *pro se*.

Law libraries lack materials and staff

DOC’s main prisons are required to include law libraries on-site. Smaller, minimum security facilities that house people serving shorter sentences (commonly referred to as camps) provide “resource rooms.”



Resource room, Cedar Creek Corrections Center. *Photo credit:* DOC Staff

JRA facilities generally do not provide law libraries or law librarians, though the nonprofit TeamChild provides some legal services to JRA residents and is working to create a library at Green Hill School.¹⁷ TeamChild reports that electronic research tools are not available at JRA facilities.

The SB 5046 Program team observed that the quantity and quality of resources vary widely, even among the large DOC institutions. Most are not regularly staffed with credentialed librarians or other legal professionals, and typically are supervised only by a DOC officer. Little individualized assistance is available for library users.

Law books are being replaced by computer stations that appear to lack resources crucial for post-conviction research. Brief banks also are being removed from the libraries -- a significant loss for *pro se* petitioners who rely on examples of properly filed PRPs.

Incarcerated clients report that the library is only available for two hours a week during the initial intake process at DOC – a classification process that can take up to three months or longer to complete. Once someone is transferred to their final DOC facility, many variables can impact access to the law library or resource room. These include intermittent and unannounced closures due to

¹⁶ See DOC Policy 590.500, [Legal Access for Incarcerated Individuals](#)

¹⁷ See [TeamChild Partners with Green Hill School to Begin Law Library for Youth - TeamChild](#)

staffing shortages. During the COVID-19 pandemic DOC law libraries closed for extended periods without warning.

If an incarcerated person has a verifiable court filing deadline within 45 days they may be granted “priority access” use of the library. Otherwise they typically are limited to 10 hours per week in the law library. Library privileges can be taken away as a disciplinary consequence, which can only be overcome by being on the “priority access” list. These limitations can delay an individual’s access to the SB 5046 Program application, and they have an incredibly negative impact on a *pro se* petitioner trying to meet the one-year deadline to file a timely PRP.

The legal research tool LexisNexis is available on the electronic tablets that DOC issues to incarcerated people. A teach-yourself manual is included but has limited utility for many users because of its complexity. Additionally, the general law library access provided on the tablets does not allow review of federal circuit cases in order to identify relevant holdings. OPD’s SB 5046 Program team observed that the tablets also seem prone to breakdown. An incarcerated person can be without a tablet for several months while awaiting a replacement device.

Available tools are inadequate to prepare a petition

Many *pro se* litigants have to rely on pen and paper to draft post-conviction petitions. However, a handwritten PRP is arduous to prepare, and a challenge to read. It lacks the professional appearance desirable for an official legal document, and legibility issues can hinder review by the appellate courts and prosecutors.

The DOC-issued electronic tablets contain a basic word processing program, but documents can’t be transferred from the tablets. A petition created on a tablet can’t be forwarded to a facility law library or printed. OPD asked about creating a secure transfer portal from a tablet to a DOC library, but DOC cited security concerns and a lack of funding.

Typewriters also are not available for use in the law libraries. Individuals may purchase typewriters, but only from a DOC-approved vendor, and the cost is prohibitive for most: \$410 for a standard typewriter without any memory and \$460 for a machine with memory equal to only about 13 double-spaced pages. For people already found to be indigent, this expense can be insurmountable.

A period of adjustment and grief

Entering total incarceration in a state prison can be an extremely traumatic experience, whether coming from the relative freedom of pre-trial release in the community or after a period of detention at a county jail or juvenile facility.

Melvin Xavier entered DOC in the spring of 2020.

“From the time I was arrested, until the time I was sentenced everything was a blur. I was still processing the traumatic event I put my victim through, the trauma I caused my family, the trauma I caused my community and the negative impact my choices had upon everyone.

I was originally sentenced to 236 months. When entering DOC at Washington Corrections Center (WCC), the entire facility was under COVID protocol. The protocols didn’t allow incarcerated persons to attend the law library. Honestly, even if there was access to the law library, I was absent mentally and emotionally from the reality that the next 20 years of my life would be spent incarcerated.”

DOC facilities are typically located in remote settings, far from population centers. The loss of legal liberty is compounded by the emotional loss of family ties, friends, and the feeling of being valued as a human being. Many people begin to understand and mourn the harm they inflicted on others. Grief can be overwhelming, and can contribute to depression, anxiety, and other health problems.

Newly incarcerated people also must adjust to prison rules that are vast and not intuitive. Rules – official and unofficial – govern every aspect of an incarcerated person’s life. Not understanding the rules can have grave consequences.

Amid the grief and adjustment, an individual often does not have the frame of mind to undertake the complex task of learning about post-conviction review, let alone preparing and filing a PRP within one year.

Outreach -- Gathering Perspectives

I. Interviews and Personal Stories

Throughout the SB 5046 Program roll-out in 2024, OPD interviewed numerous stakeholders engaged in various aspects of post-conviction work.

OPD met with incarcerated petitioners and family members, some of who submitted personal stories in their own words, collected at Appendix C. OPD also met with appellate defense counsel, trial defense counsel, prosecuting attorneys, law clerks, and OPD-contracted PRP attorneys. Their interviews are collected at Appendix D.

People who applied for appointment of counsel under the SB 5046 Program shared their struggles and anguish – as well as their gratitude for the Program and the care shown to them. Those interviewed presented a common theme that the justice system is challenged when a petitioner does not have assistance of counsel.

Courts and attorneys drew attention to the considerable time and effort they must spend to adequately review *pro se* petitions due to illegibility, difficulty in identifying the legal relief sought, and managing successive petitions. They agreed that a counseled petition with properly framed issues helps prosecutors and the courts do their jobs in the post-conviction process. Interviews with the appellate courts¹⁸ in particular revealed the complexity inherent in the PRP process.

The majority of interviews with incarcerated people occurred with *pro se* petitioners who had previously tried and failed to obtain post-conviction relief on their own. They expressed frustration about their lack of knowledge and the procedural barriers that caused courts to dismiss their PRPs without ever examining the substantive claims. In particular, they described an inability to meet the time bar due to constraints and limited resources within DOC.

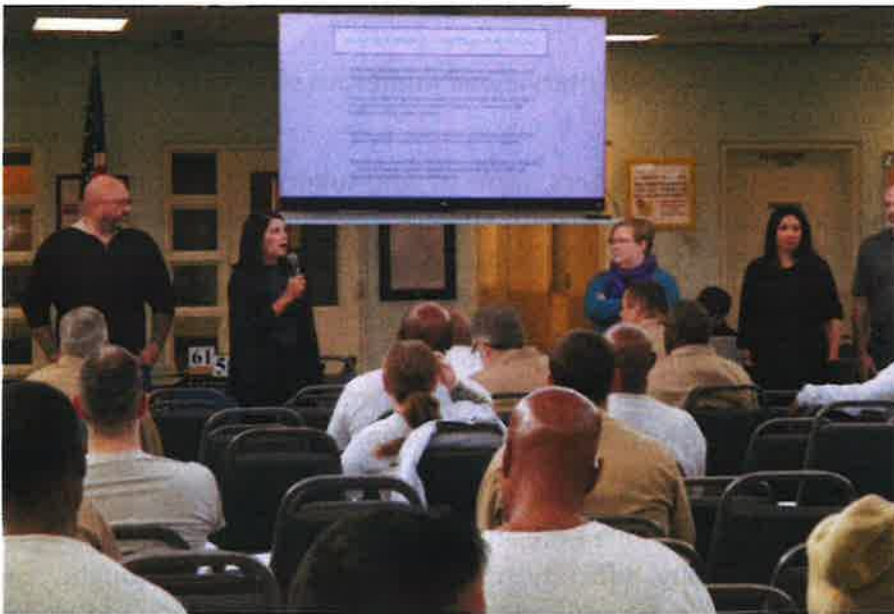
¹⁸ Court of Appeals Division II information is not available for this report. The court opted to answer the 5046 Program interview questions in writing, and their input was not available prior to publication.

OPD also heard from several families of incarcerated people. The families reported struggling to understand the PRP process, not knowing where to turn for help, and feeling helpless and hopeless at the closed doors they encountered.

During these interviews, new ideas came to light, positions were clarified, and important connections were made. Insight gained from the interviews is helping OPD improve the SB 5046 Program to provide counsel to as many applicants as possible. The interviews also strongly influenced OPD's recommendations for additional reforms to the PRP process.

II. Prison Workshops

Understanding the value of personal presence and connection, the SB 5046 Program team is committed to visiting DOC and JRA facilities to bring post-conviction workshops directly to incarcerated people.



OPD Workshop at Stafford Creek.

Photo credit: DOC staff

OPD engages in this outreach pursuant to an Interagency Agreement with DOC to educate incarcerated people about post-conviction representation available in the SB 5046 Program as well as about the post-conviction process in general.

Workshop topics include background and overview of the SB 5046 Program, how to access and complete an application form, eligibility criteria to receive appointment of counsel to file a PRP, and basic information

on other possible methods to pursue post-conviction relief if found ineligible for the SB 5046 Program.

During 2024, members of OPD's SB 5046 Program team visited the Stafford Creek Corrections Center, Cedar Creek Corrections Center, Washington Corrections Center, Washington Corrections for Women, and Washington State Penitentiary, and is scheduled to visit the Monroe Correctional Complex in December. OPD also met with youth and young men at JRA's Green Hill School, which includes residents prosecuted and sentenced as adults for offenses committed under age 18.

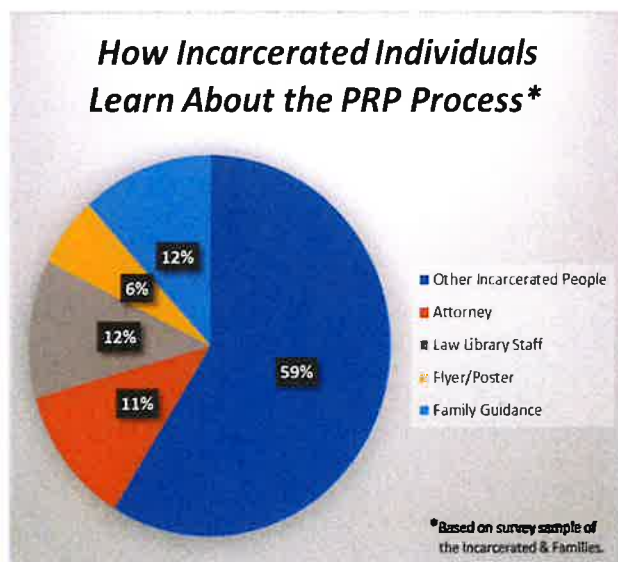
OPD is completing its first round of workshops at the remaining DOC facilities and will extend outreach with JRA in 2025, understanding that hands-on assistance is particularly important to help youth learn about the Program and how to request counsel. Over time, OPD hopes to expand the

workshop curriculum to include legal research training, principles of appellate law, and other topics to assist petitioners who are engaging *pro se* in the post-conviction process.

While incarcerated people and DOC and JRA staff generally welcome the SB 5046 Program workshops, OPD occasionally experiences logistical challenges in scheduling visits. For example, each DOC and JRA facility implements different visiting policies, and some facilities summarily deny entry to SB 5046 Program team members who are formerly incarcerated. This is unfortunate because their presence can have a significant positive impact. A presenter with lived experience uniquely understands the circumstances of the incarcerated workshop participants, and that can make all the difference to establish credibility for the SB 5046 Program. It is also a strong motivator for incarcerated adults and youth to see formerly incarcerated persons achieve professional success and positive engagement in the community.

III. Surveys

The SB 5046 Program developed and circulated a survey tool in an attempt to quantify the experiences of incarcerated persons and their loved ones navigating the post-conviction process.



Unfortunately, responses were quite limited with just 18 submitted by incarcerated individuals and family members or other support persons.

Among the respondents, 59 percent reported that they learned about the PRP process from fellow incarcerated people. Twelve percent learned about it from their families and law library staff. Only 11 percent said their trial or appellate attorney told them about the opportunity to pursue post-conviction relief following a direct appeal.

The responses indicate limited official channels for communication about the SB 5046 Program. The SB 5046 Program team observed that inconsistent distribution of the actual survey tool may have

contributed to the low response rate. A number of incarcerated people submitted handwritten comments that referenced the survey but did not correspond to the survey questions.

***Pro se* petitioners welcomed OPD's outreach**

Incarcerated persons warmly welcomed the 5046 Program team's outreach. Only a limited number of people were able to return the official survey tool, but many provided feedback to OPD through other means, including letters. Their comments centered largely on themes related to the time bar, a lack of resources, a lack of knowledge and education about the PRP process, obstacles within DOC, barriers inside the courts that result in dismissal of meritorious petitions, and feeling isolated in the post-conviction legal process.

For the most part, *pro se* petitioners reported that the only legal assistance they receive is from each other. Some dedicate their lives to helping others pursue post-conviction relief, even when there is no means to achieving their own. The SB 5046 Program team observed frustration, hopelessness, and despair. They also found that incarcerated *pro se* petitioners were not deterred from sharing ideas, teaching, and offering to help each other.

Families are impacted by a loved one's incarceration

OPD distributed the surveys through community advocates and used social media in an attempt to engage with families of incarcerated people. Unfortunately, few family members and other support persons responded to the survey. OPD realizes that it needs to do more work to establish trust and connection with families of incarcerated people.

Based on the limited survey responses and other family feedback, the SB 5046 Program team observed that families suffer significant impacts when a loved one is incarcerated, particularly in caring for children and elders. The burdens of single parenthood and making ends meet with one income are heavy.

**Brian Matthews, incarcerated at Stafford Creek Corrections Center,
and author of the “Personal Restraint Petition Manual.”**

“It is extremely difficult for laymen to file PRPs and 7.8 Motions. The technicalities of collateral attacks are a significant hurdle for pro se prisoners to overcome. All of the requirements that have to be met are often overlooked in the zealotry of the prisoner attempting to convey their underlying claim, and oftentimes the procedural requisites of the collateral attacks are overlooked. Then there are the intricacies of identifying the correct issues and adequately framing them. Prisoners are not formally trained to be able to identify the correct issues, or to properly format their petitions in the technical writing style used with the courts, and many fail for just these reasons. DOC has taken all the books out of the law library and our law librarian here is basically unapproachable. A 10-day notice to e-file our pleadings is required, which deters prisoners from filing their pleadings electronically. It is NOT a simple task to file a collateral attack in the first place, even for professionals. For the average, untrained prisoner, it is a daunting, if not impossible task.”



Photo credit: DOC Staff
SB 5046 Program team members Jacob Schmitt and Lucy Burke visit Stafford Creek Corrections Center.

Who is Helped by SB 5046?

Once filed, PRPs can require many months to proceed through the court process. As of the date of this report, no cases assigned under the SB 5046 Program had achieved a final outcome. Following are snapshots of several persons who requested counsel and the types of issues they present.

R.S.

Mr. S is 92 years old. He has cancer, uses a wheelchair, and is severely disabled. He is currently serving a sentence of 504 months. OPD assigned PRP attorney Sean Devlin to represent Mr. S. After four months of administrative delay, Mr. S was approved to be released to an adult care facility in Puyallup as part of an extraordinary medical placement. The approval came at the end of August. On September 28, DOC notified Mr. S they had reversed the placement decision. An attempt to appeal the reversal administratively was without success. **A PRP raising this issue, along with ineffective assistance of counsel (IAC) at resentencing, is being filed soon.**

A.D-L.

Ms. D-L's *pro se* motion to withdraw a guilty plea was based on ineffective assistance of counsel (IAC) and not understanding the consequences of appeal, as evidenced by the transcript she attached. **Her PRP is now time-barred and her IAC claim is not an exception to the time bar.**

T.C.

Mr. C is intent on filing a PRP. Although he is time-barred and does not qualify for SB 5046 counsel, he believes strongly that his claims will be found meritorious. Mr. C, however, has been detained in mental health facilities after being found incompetent to stand trial on a new charge and **is now at Western State Hospital, which does not have resources to support him in filing a petition *pro se*.**

W.B.

Mr. B, an older client with some cognitive difficulties and little understanding of the criminal court system, is serving a *de facto* life sentence. OPD post-conviction counsel reviewed his case history with him in full and investigated several issues. Mr. B would not have been able to do the investigation on his own. **The attorney filed a PRP alleging instructional error and is helping Mr. B reinstate a direct appeal from a resentencing ordered at the conclusion of the original direct appeal process.**

Attorney Jeff Ellis contracts with the SB 5046 Program.

My clients all had stated goals that can only be achieved by non-obvious legal maneuvers -- for example, avoiding the time bar, attacking a related case in order to create the ability to obtain relief in the current case.

Most attorneys, even those who sometimes do post-conviction work, are likely unaware of these strategies. So, to leave it up to the incarcerated person would be a certain denial on procedural grounds of claims that are viable, if not meritorious.

While it is too early to measure outcomes, in each case I feel like we have been able to position our clients so that they at least have a fighting chance of relief.

I appreciate the opportunity to work for these individuals.

J.L.

Mr. L is serving a lengthy DOC sentence. Through extensive Public Records Act (PRA) requests and work with cooperative trial counsel, OPD post-conviction counsel was able to establish that the jury was misled and misinformed, due to evidentiary violations and ineffective assistance of counsel errors. **Post-conviction investigation also showed new material evidence, and a PRP with all these claims has been filed.**

F.G.M.

Diligent direct appellate counsel referred non-English speaker serving murder sentence to the SB 5046 Program. Mr. M appears to be eligible to argue for relief based on a change in the law which came about after his direct appeal was initiated. **Youthful and lacking in education and English language skills, Mr. M would not have been able to discover or develop this claim on his own from prison.**

PRP Attorney Concerns and Recommendations

OPD contracts with five experienced attorneys to represent clients who qualify for post-conviction counsel to file a PRP under SB 5046. The PRP attorneys experience frustration with various procedural complications, all the more concerning in light of the time bar. In particular, they describe significant difficulties obtaining records needed to support a PRP, including:

- **Limited discovery.** The existing discovery rule, Criminal Rule 4.7¹⁹, does not apply to PRPs, leaving attorneys to rely largely on public records requests, which can be slow, costly, and often result in documents too redacted to be useful.
- **Uncooperative prior counsel.** PRP attorneys face inconsistent cooperation from trial and appellate attorneys who may be reluctant or unable to provide case files or other records.
- **Digital records access.** The shift to digital records creates further barriers for incarcerated individuals who lack the resources to obtain and review electronic files.

To improve timely access to records, the PRP attorneys recommend the following reforms:

- I. **Amend applicable court rules:**
 - Amend rules governing discovery to extend to PRPs, potentially mirroring CrR 4.7.
 - Amend rules to , .
 - Amend rules to clarify that the State or prosecuting authority has the burden of producing the trial court record, including a transcript of material proceedings, along with its response. For example, in a federal habeas corpus proceeding, the State has the obligation of producing the state court record.
- II. **Legislative action to grant limited subpoena power to attorneys representing clients in the PRP process.** The attorneys also support amending the Public Records Act to expedite government responses to PRP-related records requests.
- III. **Coordinate AOC and DOC practices and provide court records to incarcerated persons through a direct and secure electronic portal.**
- IV. **Notify individuals about post-conviction options and connect them with PRP counsel during their direct appeal, in order to preserve records and help them understand possible next steps.**
- V. **Clarify retention duties for case files** to ensure that documents are retained for post-conviction review. Trial attorneys should be obligated to keep and not destroy their case files until at least the end of a first timely filed PRP or when the time to file such a proceeding has expired, whichever is later. Where a transcript of proceedings has been created, an electronic copy should be filed in the trial court (either at the time of creation of the transcript or at the time of the direct appeal mandate) and should be stored in that file in perpetuity.

¹⁹ See CrR 4.7, available at [Washington State Courts - Court Rules](#)

OPD Recommendations

OPD endorses the PRP attorneys' recommendations listed above. In addition, based on the agency's observations and lessons learned to date in the course of implementing SB 5046, OPD recommends the following reforms to improve access to justice through the personal restraint petition (PRP) process in Washington:

- I. **Modify the time bar** to allow meaningful access to the courts. Amend RCW 10.73.090 to allow up to three years to file a PRP or other collateral challenge. Amend court rules to authorize extensions for good cause.
- II. **Expand exceptions to the time bar.** Amend RCW 10.73.100 to allow additional exceptions to the time bar, in particular a claim of ineffective assistance of counsel.
- III. **Simplify procedural requirements** and amend court rules to clarify the "mixed petition rule" and allow a court to identify the acceptable claim(s) presented in a mixed petition.
- IV. **Update technology and resources at DOC facilities** to better support incarcerated *pro se* petitioners in crafting a quality PRP. Specific suggestions include:
 - Work with AOC to establish a secure portal to provide records electronically to persons at DOC.
 - Allow word processing on all electronic tablets so that *pro se* petitioners can prepare professional looking documents.
 - Establish a secure portal between tablets and the facility's law library so that word processed PRPs can be filed electronically with the courts. Alternatively, find a secure way to print documents directly from tablets.
 - Provide typewriters or word processors at DOC law libraries and resource rooms.
 - Make personal restraint petitions available to provide examples of well-structured arguments and document formatting for *pro se* petitioners to reference. This would partially address the issue created by the decline in brief banks.
 - Allow incarcerated persons who are trained as paralegals to staff DOC law libraries.
- V. **Expand educational opportunities** for incarcerated persons to learn how to use legal research tools available to them, including Lexis Nexis.
- VI. **Improve PRP-related data collection and tracking by the courts**, including whether and at what stage of the proceeding counsel is appointed. Compile case data to track results of PRPs
- VII. **Sustain and improve resources for OPD's SB 5046 Post-Conviction Program** to provide PRP counsel for a greater number of incarcerated persons. This includes expanding capacity to thoroughly review applications and assign counsel as quickly as possible.

APPENDIX A

Session Law

Senate Bill 5046

CERTIFICATION OF ENROLLMENT
SECOND SUBSTITUTE SENATE BILL 5046

Chapter 261, Laws of 2023

68th Legislature
2023 Regular Session

INDIGENT DEFENSE—POSTCONVICTION ACCESS

EFFECTIVE DATE: January 1, 2024

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

DENNY HECK

President of the Senate

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

LAURIE JINKINS

**Speaker of the House of
Representatives**

Approved May 4, 2023 10:36 AM

JAY INSLEE
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.

SARAH BANNISTER

Secretary

FILED

May 4, 2023

**Secretary of State
State of Washington**

SECOND SUBSTITUTE SENATE BILL 5046

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.

21

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 ^{P-2} RCW; (~~and~~

2SSB 5046.SL

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^{or 3} annually to the advisory **2SSB 5046.SL**
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.

Passed by the Senate March 3, 2023.

Passed by the House April 10, 2023.

Approved by the Governor May 4, 2023.

Filed in Office of Secretary of State May 4, 2023.

APPENDIX B

OPD Application to Request Counsel



**Washington State
Office of
Public Defense**

**Postconviction Program
Personal Restraint Petition
Application Form**

Applicant Date: _____

Applicant's Full Legal Name: _____

Preferred Name (Optional): _____

Mailing Address: _____

List Applicant's full mailing address and Contact Person (if any). _____

Applicant's Current Age: _____ *List the number of years.*

DOC or Jail Number: _____ *Must be in confinement to apply.*

Court of Appeals Case Number: _____

Trial Court Case Number: _____

County of Conviction: _____

Length of sentence (months): _____ *For this specific Trial Case Number.*

The applicant:

(Answer Yes or No. A disability diagnosis is not needed. If additional space is need, add a separate page.)

- Has a disability which:
 - Physically impairs the applicant's quality of life? _____ YES _____ NO
 - Substantially interferes with ability to read? _____ YES _____ NO
 - Substantially interferes with ability to understand or remember legal information? _____ YES _____ NO
 - Substantially interferes with ability to write or type? _____ YES _____ NO
- Used an interpreter to communicate at trial? _____ YES _____ NO
- Used an interpreter to communicate with attorneys? _____ YES _____ NO
- Has an active appeal or other post-conviction review? _____ YES _____ NO
If yes, what is the nature of the proceeding? _____
- filed a 6164 with county of conviction? _____ YES _____ NO
If not, why? _____
- filed for clemency before? _____ YES _____ NO
If not, why? _____

Optional Applicant Information (check all that apply)

Gender: _____

- _____ Hispanic or Latino
- _____ American Indian or Alaska Native
- _____ Black or African American
- _____ White
- _____ Native Hawaiian or Other Pacific Islander
- _____ Other: _____

Have you identified any issues that you believe would be appropriate to raise a Personal Restraint Petition? If so, please explain below or add additional pages, as necessary.

Do you believe that you have identified any issues that are an exception to the time bar? If it is different from the issue stated above, please explain below, or attach additional pages, as necessary.

Applications must be signed

I declare to the best of my knowledge that the foregoing is true and correct.

Date (mm/dd/yyyy): _____ Signature _____
Typed signatures accepted

Did you prepare this form for someone else? If yes,

list your name: _____

list your relationship to the applicant: _____

Send applications and questions to:

Email: postconviction@opd.wa.gov

Mail: PO Box 40957, Olympia, WA 98504-0957

Phone: 360-586-3164, request extension 186

Disclaimer: This application does not guarantee that you will have an attorney assigned to your case.

APPENDIX C

Personal Stories Incarcerated People

Melvin Xavier

My name is Melvin Xavier. I have been incarcerated since May 2020. I am projected to transition into the community as early as November 2026. From the time I was arrested, until the time I was sentenced everything was a blur. I was still processing the traumatic event I put my victim through, the trauma I caused my family, the trauma I caused my community and the negative impact my choices had upon everyone. I was originally sentenced to 236 months. When entering DOC at Washington Corrections Center, the entire facility was under COVID protocol as the world was suffering from the pandemic. The protocols in place didn't allow for incarcerated persons to attend the law library. Honestly, even if there was access to the law library, I was absent mentally and emotionally from the reality that the next 20 years of my life would be spent incarcerated.

After a few months of being sentenced and sitting in WCC, I was transferred to Coyote Ridge Corrections Center. As most of you know, Washington State, has a statute, 10.73.090 RCW which limits appellants to a one year time frame to file a collateral attack on their case. This "Time Bar" limitation has a negative effect upon the uneducated or unlearned individuals wishing to address discrepancies within her/his case. By the time I arrived at CRCC, I was already 3 months into the one year time structure allotted to file a collateral attack. The institution was operating under a modified COVID protocols which allowed incarcerated persons to attend programming such as the law library.

For most new admittance into DOC, whichever institution we arrive at, it takes a few weeks for the ball to get rolling under normal operations. With COVID protocols in place, and no cross cohort existence between medium and minimum offenders, things within CRCC moved even slower, and getting signed up for the law library was one of them. It was late November, now only 8 months remaining on my one year time limit, and I still haven't broken ground with the beginning stages of appealing my case. In fact, due to departmental policies, I was not allowed to have my basic legal documents (i.e., Judgement and Sentence) on person while housed at WCC's Reception Diagnostic Center. DOC's narrative is borderline unconstitutional and unsubstantiated given the fact, that violence within the reception center has not been reduced since the implementation of such policy, due to incarcerated personal getting assaulted for unacceptable crimes according to the prison social construct. Understanding this is a caveat, and gosh could I go on a tangent, although I spare the readers this. The point I'm making is, without my paperwork from the county, to WCC, and to my main institution my one year time limitation is dwindling rapidly.

It should be noted that an unlearned, inexperienced, and uneducated in general let alone in the field of legal studies, research, and litigation is an enormous hurdle to jump over when trying to obtain legal documents in preparation for legal research and litigation. Another brief point regarding legal documents I might add is, acquiring these documents. In my experience, acquiring my legal documents was a challenge. It took forever! In fact, I didn't even know what I needed, therefore I didn't know what to ask for. So, eliminating the process of elimination I asked for everything, and I mean everything. And it was expensive, shucks I didn't even have money to pay for the documents. Who would've thought I'd have to pay for my own documents..? But I did.

Michael Elmore

I, Michael E. Elmore, authorize Office of Public Defense to use my writings below as part of its annual reports to the Legislature.

In 2018 I filed a 7.8 motion around "youth". The trial Court sent it up as a PRP to the COA claiming I was time barred. In the end, the COA agreed, I then filed a Discretionary Review. The whole time I was fighting this I was continued to check the law library computers to see if I was citing good current and correct case law, this turned out to not be true. I was told the case law I was citing was no longer retro-active or a significant change in the law. Even then, I continued to check the computers which still showed Odell being retro-active and a significant change in the law. Come to find out, the prison law library had not been updated in months. This was the only issue the judge/commissioner denied me on.

The biggest hurdle for a pro se litigator is the "time bar". For some, legal language is almost like speaking another language. The lack of knowledge or understanding of the issues also prove to be difficult. If inmates had better access to lawyers who can help, this process would be easier.

Larry Blackwell

My name is Larry DeWayne Blackwell, and I am 48 years mature. I say mature because I am an only child and my mother Lenora blackwell did her best to give me manners but for the life of me I could not grasp the concept of responsibly. I think it was a process my dad Larry Jordan was suppose to explain to me, but with him only being a shadow in my lif it was hard for him to give me the example that was needed.

I was born in Trenton New Jersey 1975 and by the 80's a crack epidemic was in full swing. My mother as hard a worker as she was being emotionally detached, didn't possess the tools it took to raise a young boy during this crisis. My father having more love for drugs then compassion for any of his kids by five different mothers. Lead to me yearning for attention and having a dislike for authority.

Even thou it was to hard focus, I did decent in school but my days were filled with fighting and trying to find a dollar. My housing projects was rough, me being an only child at times I'd have to fight the brother then the older sister. It was like me against the world. When my grandmother asked me to moved to Florida I jumped on it. I played football and ran track, but the iack of discipline showed its head again an lead to me dropping out in the 11th grade. Then already being behind a year I moved to Tacoma Washington.

I didn't get my GED until the age of 30 in 2008 at Washington state penitentiary ^{even} with that accomplishment. I was battling dyslexia and the detox of a serious meth addiction and the emotional weight of being sentenced to 31 years in prison.

I give you this sample size of my painful novel, to highlight that there are similar stories like this all thru the prison system. Lack of education, addiction problems, learning disabilities from men and women littered all thru out prison.

A lawyer is a person who has accomplished a feat most don't dare try. This is the reason why a lawyer is paid so well, even the worst attorney's gamer good to great wages. An attorney had to finish high school with good marks to ^{even} get accepted in college. They had to finish with a high enough GPA to get into law school then past the bar which is one helluva task that most can't claim to have accompanied.

This means to become a lawyer, there is four years of high school then eight years of post schooling that goes on. Riddle me this how can a person with no law degree and in most cases no formal law training, or education expect to be able to comprehend the maze of brief writing and legal errors. Only having one year after his conviction becomes final before his case becomes time Barred? Its almost impossible!

RCW 10.73.090 states no petition or motion for collateral attack on judgment and sentence in a criminal case may be filed more than one year after the judgment and sentence becomes final. Washington state's legal definitions can be found in the black laws dictionary. Not the normal Webster's most people use, the black laws dictionary has legal terms and some are Latin. This means a man or woman must not only learn how to format a brief but also learn Latin or at least figure out that you can't use the regular dictionary for legal work because the terms are different. If it were easy to do and understand law then everybody would do it and be good at it. The time perimeter provided to pro se litigants does not give

enough credit to who and what lawyers are. What goes in a charging document? What are jury instructions and how should they read? What are essential elements? Who knows these things? Not drop outs, not recovering addicts!! How do the people who live the lowest of life get one year and a lawyer gets eight?

In my early attempts to fight my case, me being in prison I got hustled by legal sharks or inmates trying to play on young ignorant, desperate guys like myself looking for relief. I missed opportunities and deadlines also costing my family money they really didn't have. This is sad because me being a lawman to law its said that I'm not supposed to held to the same standard but if that is the case why is the bar so high. I was told upon filing my last brief I used the wrong forms by the court of appeals. Do the forms matter or the content? When it all boils down to it, its both and me as someone who does not know law I missed a window. I was also told that this appeal exceeds the scope of my appeal and I should have file this on my original brief.

10.73.090 was enacted in 1989 and there has been no changes to it. If a lawyer has to go thru eight years of training to be able to practice. A person who is green to the landscape of law should at least have half that. Would it bog down the system and slow down justice? Justice only comes with the right opportunity. Why not give the playing field a little more footing since one side is playing for their life and not for a paycheck.

It is time for 10.73.090 to be repealed and amended and give it a wider birth to give a chance to people who are already playing behind the eight ball. How many individuals have good issues and only found them later on after they learn how to research or what to actually look for? How many times has the Appeals court ruled time barred?

I had just got resentenced because of Blake and my paid attorney went missing so not to miss my direct appeal I filed a 7.8 motion myself, the courts said I was to late and turned it into a PrP. Then my lawyer contacts me right after the courts ruled. He says he was sorry he was dealing with a family issue and the courts gave him a pass and allowed him to file a direct appeal for me.

A lawyer has more leeway than an then a pro se litigant. why not open the gate and give the issues that deserve to be heard a real chance. If the case has merit, it has merit. A life is st:11 a life and justice is supposed to be blind or not just punitive?

Sincerely
 Harry D. Blackwell

Doc# 850259

Patrick Cloud

I, Patrick Cloud, authorize Office of Public Defense to use my writings below as part of its annual reports to the Legislature.

The process of Filing motions Comes off as rigorous & overly complex. Personally I wish there was a more understandable & comprehensive process for Filing stuff in the courts

James Grantham


I have been incarcerated since July of 1994. Within the last ten years, I have filed at least two prose post-conviction collateral attacks, which originated as a CrR 7.8 motion with the Pierce County Superior Court under Cause No. 94-1-04206-0.

The challenges I faced regarding said motions were the time bar issue under RW

10.73.090. Even though I believe the claimed errors I raised were of constitutional magnitude, to the courts, my motion was time barred. Briefly, the first motion involved a substantive charging deficiency matter in that I was convicted of two counts of a crime under the same criminal statute, yet the information on record that was provided to me and my lawyer at trial and on direct appeal, was the original information that only charged one count. As such, I challenged that my J&S was facially invalid as I was not officially charged with a second count. I submitted evidence demonstrating that the State never officially filed an amended information, and the Court Clerk at the time-Kevin Stock-agreed that no amended information was filed with his office and that the Docket Sheet in the case indicated as much. Because I was not in the position to afford a lawyer, I proceeded pro se and may have given the State and the Court a way out of the constitutional error that as a pro se litigant I did not or could not anticipate. The COAs time barred the matter stating I did not show that my J&S was facially invalid.

As a result of the COAs accepting an unproven amended information some 18 years later, which was not provided to me or counsel at trial or my direct appeal, I filed another motion challenging the amended information and related probable cause documents as being non official court records, and as such, could not be relied upon. I directed the courts attention to four occurrences that demonstrated that the said documents were not part of the court's official records. First, I pointed out that there was no proceeding that occurred in the record that showed and amended information was sought and filed by the State, much less approved by the court. Second, I once again submitted a then updated Docket Sheet related to the case that showed no amended information was filed or listed as being filed. Third, I provided an official letter from Kevin Stock, Court Clerk, where he stated that no amended information in the case was filed in his office or existed in his records, yet the COAs accepted a copy proffered by the State found outside of the record. Lastly, I drew the court's attention to the fact that the documents offered by the State were just photo copies and did not have the Official Seal of the Court nor of the Court Clerk's Office. Sadly, the COAs once again time barred the matter.

I believe wholeheartedly that this constitutional error occurred in my case, but as a pro se litigant, my articulation of the argument may have fallen short in the court's view. Time barring my claim effectively allowed the State to have an unofficial amended information accepted as filed some 18 years down the line.

-0
James Grantham #703436

Jose E. Garcia Pena

Jose E. Garcia Pena authorize Office of Public Defense to use my writings below as part of its annual reports to the Legislature.

I went to trial on my case because I am actually innocent. During trial the state ~~was~~ lied, cheated, and manipulated the evidence in order to get a conviction. I appealed my conviction and my appellate attorney did not allow me to provide input for my appeal, and I lost my appeal. I submitted a 504b application and even attached a PRP that I had written to the application. your office denied my application.

I did not have a fair trial, I did not have a fair appeal. So I turned to your agency as my last hope to get some type of relief in my case - I EVEN WROTE THE PRP FOR YOU. all I needed was an attorney to put their name on the PRP and file it.

your agency has now treated me unfairly just like every other state agency in my case.

my truth has not get been heard. my PRP is NOT - time-barrred, yet your agency refuses to STEP in and help me get justice.

these are my experiences with collateral attacks.

Travis Gillihan

Travis Gillihan, authorize Office of Public Defense to use my writings below as part of its annual reports to the Legislature.

I filed a PRP due to a miscalculated offender score. It was denied initially due to an anti-merger statute the state said, I countered this saying it had no bearing and was told that I was ~~as~~ time barred. My experience with the state is that they do what they wish in this so called democracy and justice. Being in prison this long (16yrs) is alot and I'm not allowed to do much because of my crimes.

At times this place seems hopeless and the courts don't act in the interest of justice and whats right were just numbers to be moved around and not rehabilitated when we do go home so well end up coming right back I've seen this happen so much. Its really sad that we dont get taught the skills we need to make it upon our release.

Maurice Van Thrower

I, Maurice Van Thrower, authorize Office of Public Defense to use my writings below as part of its annual reports to the Legislature.

My direct appeal was done by a court appointed attorney, once I was issued the Certificate of Finality I was left on my own. At this point the average person don't even know what has happened to them, but one is expected to be a top notch appeal attorney with no college education, no law school, or paralegal studies. In Washington state a individual is forced to learn the law, and be able to find errors in ones case, and apply the correct case law, learn how to write effective legal briefs all in one year (RCW 10.73.090). When the whole legal community knows it takes atleast 8 years of law school to become somewhat effective in the legal profession. As for PRP's or CrR 7.6's are any collateral attack by a incarcerated person, we are to match legal wits with individuals that are on Professor levels which is the equivalent of fighting a person with a sword with a twig. Also the Court of Appeals, The Supreme Court of Washington Commissioner, and the Justices must give credence to issues that pro se litigants has taken the time and hours to perfect, and are meritious which warrant relief, but are just rubber stamped, or ignored altogether. But if a officer of the court was presenting these issues the Courts would have to give them attention. The Appellate System in this state for Pro se litigants is "Time Bar", "Ignore the issue", "Recharacterize or Obfuscate the issue", or just "Rubber stamp" some decision the Court of Appeals has chosen that is different from the issue raised. There need to be a right to counsel as long as a individual can raise meritious issues, and RCW 10.73.090 is very harmful to the citizens of Washington. Finality should not run roughshod over the constitutional requirements of the State and federal governments. These attorneys must be willing to take these issues seriously and fight for individuals or this whole Appellate system is a sham to employ the legal professionals to keep issues that warrant relief from being presented to the Appeals Courts. Also the abuse of the CrR 7.6 motions by courts is of epidemic portions, we need lawyers to stop these abuses upon a vulnerable people.


Print Name

RV/icek

Eugene Andrew Young

I, Eugene Andrew Young, authorize Office of Public Defense to use my writings below as part of its annual reports to the Legislature.

I had a direct appeal which wasn't taken seriously. The end result was I was unable to file discretionary review. The law that I know now comes from years of studying it. But to only have one year, or not being informed of that one year deadline is an egregious error. So I became time barred. I went to the district court and that is where I learned I had merit yet there was nothing they could do because I ~~felt~~ felt to go discretionary review and exhaust all of my remedies. So here I am stuck in prison!

(attach additional pages, if necessary)

Date: 1-23-2024



Print Name: Eugene Andrew Young

SCCC, Unit H-3, DOC # 328903

191 Constantine Way

Aberdeen, WA 98520

Rey Davis Bell

1. AS an appellant the trouble I had filing 7.8 motions and PRP's, is have immediat communication's with the COURT AND COURT CLERK's the cnability to call or e-mail directly with the COURT AND COURT CLERK prevents us/me from recieveing notification on what stage my 7.8 /PRP's are in. Recently I filed a 7.8 in KING COUNTY SUPERIOR COURT I ACTUALLY file two, and twice they ~~were~~ were assigned to a judge that judge recused himself, it was assigned to another judge then sent up as PRP's all without me having any knowledge of those things or even knowing if recieved by the CLERK.
2. The prison staff and policies of having to sign up trouble to another building just to get copie's is slowing down our/my ability to be as timely as possible, also them not allowing us to have as many copie's of our MOTIONS on hand that we pay for. THE cost and debt we get in for copie's.
3. THE inability to be able to find a list of active appellate lawyer's and their BAR ASSOCIATION INFO.
4. HAVING THE ABILITY TO HAVE MORE COMPREHENSIVE OUTLINE'S on how to file and write MOTIONS so that the COURT'S DONT USE CLERICAL ERRORS as reason's to deny. ALSO the ability to have more fairness in the timeline in regards to when the prosecutors must respond, the Court's give them extension's without request but are strict with us/me who is not versed in law nor do I have unlimited resources or Budget to have motion's done as quickly.

Davis

Justin Bacani

Justin Matthew Gray BACANI
 follow as part of its annual reports to the Legis

Since Sept. 2021, i've been set to be re-sentenced. In 2017 I was sentenced to LWOP due to a Murder 02 conviction being my third strike. However, in Sept 2021 Rob 02 was no longer a strike so I was suppose to get resentenced to my Murder 02 conviction. I'm currently going on my 5th Public Defender and still have not been resentenced. It's been well over 2yrs, waiting. D.P.D. has been negligent in providing sufficient counsel. I've been tied to, hung up on, and not reached out to by the current one for over 3 months, until I asked his supervisor to file a motion to dismiss him, then he finally reached out to my counselor here @ Stafford Creek Corr. Center w/ a number to reach him. All the details are on the record as I was granted them being discharged. If more details from me is what you need then just reach out to me.

2

Justin Matthew Gray Bacani
 MATTHEW BACANI

SCCC, Unit 6A-C24, DOC # 804802

JoJo

I, JOJO DEJONGA, Authorize Office of Public Defense to use my writings below as part of its annual reports to the Legislature.

My experience with the Collateral Attack Process hasn't been pleasant. Specifically the application of R. 10-27.090 and 100 (time bar) beyond the procedural challenges, judicial inabilities, or lack of interest in examining, or revisiting their previous decisions or rulings regardless of whether the said decisions or rulings were plain/obviously erroneous, is an issue, or should to say the most important cause of the collateral process.

My other concern is, 'what/where subject to review on collateral attack. I believe the six exceptions set forth in R.C. 10.23.090/100 are arbitrary, and vague. ~~And~~ And the three time bar limit makes it impossible for largely discovered injustice to be addressed.

I also believe that Attorneys (Public Defenders) are subjected to extreme high level of caseloads, but understaffed, which most likely results to them not doing a great job of exercise due diligence when investigating a client case, or reviewing issues for collateral review.

In Conclusion, the time bar (R.C. 10.23 & 100) must go.

JOJO D. DEJONGA

36 37

Sterling Jarnagin

I filed a 7.8 motion pro se while in solitary confinement at Washington state penitentiary in 2020 asking for a resentencing hearing in referring to the Monschke case.

Once filed the motion, the superior court transferred it to Division 3 Court of Appeals without ruling on the merits. I appealed and the Division 3 court ruled in my favor stating I had significant entitlement to relief. (The superior court was trying to have me file a PRP) and returned the 7.8 to the Superior court in Yakima. They did nothing for a couple months...then Paul Kelly head of assigned counsel, helped me get a hearing where I was assigned counsel... Mr Aaron F. Dalan... it took about two years before I was given a resentencing hearing ...I was re sentenced to 453 months in 2024...this process was the most stressful and frustrating situation I've ever been through...simply getting the court to assign counsel was extremely difficult. Without Mr. Kelly making the court hear my 7.8 motion it would have sat in the clerks file for months. I do not know the law and court rules and procedures ... without counsel I'd not have been able to litigate this 7.8 motion to the successful outcome ... on top of being a layman to the law simply accessing the legal material... case law ...copies documents ... forms etc. is almost impossible especially if you don't know where to even start looking.

I Sterling T Jarnagin (#983750) located at the Stafford Creek Correctional Center Aberdeen Washington grant my permission with any entity to share my written experiences with filing my 7.8 motion in regards to my resentencing experience(s) with the Office of Public Defense of Washington state or any other public/private/government offices in Washington state.

Sincerely,

Sterling Jarnagin

DARYL ROGERS

My name is Daryl Rogers. On November 2, 2018, after a week long trial, I was convicted in Clark County of three counts of Rape of a Child in the First Degree and one count of Child Molestation in the First Degree. On January 23, 2019 I was sentenced to 277 months to life, due to sentencing under RCW 9A.04A.007.

At the time of my conviction I did not have a high school diploma or GED equivalency. I have since earned my GED equivalency while in prison, but due to my current time structure I am unable to attend any meaningful educational opportunities as the Department of Corrections only allows individuals with less than 7 years remaining on their sentence to participate in higher educational opportunities.

I filed multiple CrR 7.3 motions. Most of these motions came prior to the final decision in my direct appeal, although I did file at least six motions after my direct appeal became final. Each of the motions filed prior to my direct appeal becoming final was turned into PRP's by my trial judge without getting a fair determination on the merits. I do not believe I received a fair determination on the merits of my post conviction motions and PRP's due to not being represented by an attorney. The issues were good and the law in my favor, yet the rulings went against me, most of the time using caselaw ~~presented~~ overruled or further classified by the controlling law that I was citing.

Of the at least six motions filed after my direct appeal became final, ^{four} ~~two~~ of these motions were struck from the record by my trial judge, and the final two were deemed time barred, even though the issues fell within one of the exceptions of RCW 10.73.100 and the issues ~~presented~~ presented were the same issues that had been previously struck from the record in the other motions. My trial judge used legal maneuvering to

prevent me from receiving meaningful review of my issues. These maneuvers included, but was not limited to, striking motions and holding my motions until they were time barred. And upon the COA getting an opportunity to review the actions of my trial judge these unfair, biased practices were upheld and the Washington State Supreme Court just refused to review the issues outright.

The issues that I've presented on post conviction motion and PRP's is 1) challenging my sentence under RCW 9A.4A.507 for violating *Atkeyne v. United States*, 570 U.S. 49, 133 S. Ct. 2151, 186 L. Ed. 2d 314 (2013); 2) insufficient evidence to support the special verdict convictions; 3) incorrect offender score; and 4) a Brady violation (this Brady violation is currently being resubmitted as a CrR 7.8 motion, without attorney representation, because it was never heard on its merits).

I believe that the criminal legal system places defendants at significant disadvantages. This is only enhanced once a defendant has been convicted. It seems very unreasonable to force an individual who has not obtained their high school diploma or GED equivalency and is adjusting to and/or dealing with a life in incarceration to file a post conviction motion that will be opposed by a trained attorney with more than 10 years of university level educational and on the job experience in law. This unreasonableness is exacerbated in my particular case due to my legal blindness as determined by an Administrative Law Judge (ALJ).

The unreasonable imbalance is made even more pronounced by two facts. First, the standard of review essentially turns a reviewing judge into another opposing attorney. And second, due to the one-year time bar a defendant lacking basic education, and ~~and~~ dealing with a life in incarceration, now has to get a basic understanding of the

law; find issues in their case, research the law on those issues, and write a post conviction motion or PRP within one-year. This does not include the significant hardships and challenges they face upon entering the prison system.

To conclude, my experiences with filing post conviction motions and/or PRP's has been stressful at best. Due to the adversarial nature of these filings I believe that even during post conviction every individual should be represented by an attorney. Further, I believe the one-year criminal time bar of RCub 10.73.090 should be extended to give individuals a more reasonable opportunity to properly file a post conviction motion or PRP.

DARYL ROGERS

Daryl Rogers

10/12/2024

Date

Personal Stories Families

Melissa Pruneda

November 15, 2024

To whom this may concern,

My name is Melissa Pruneda, and I am writing this letter to bring awareness to the struggles that inmates and their loved ones face at one point or another during incarceration. First I would like to thank Ann Joyce and the other OPD advocates that are fighting every day to insure our loved ones who are incarcerated is a fair shot at justice.

I myself have had one son and two very close friends that are all still currently incarcerated. Nestor Ovidio-Mejia (Majia) #343949 & (AHCC) Julian Rangel #738190 WSP.

Let me begin with Nestor Ovidio-Mejia. Nestor was 21 years old when he was sentenced to sixty-three years in prison and has been incarcerated for 15 years. Nestor was sentenced solely to be a co-defendant turned state witness, and Accomplice liability act 1st degree Murder, 3 counts of 2nd degree attempted murder, and gun enhancement. Nestor had no criminal record and didn't know his way in the Washington state court system. He had no clue after the sentence was handed down year he only had one year to file a direct appeal nor did he have the money to hire an attorney. Eventually, he would have a fellow person receiving mental health treatment attempt to get his appeal submitted. That appeal was time-barred. Nestor would have any "legal a legal" if he came into contact with go over his case, and eventually he would have at least four PRP submitted, one making it as far as the Supreme court, but also would eventually get shut down. He did everything pro se, was never offered any sort of assistance. He did receive assigned counsel with the PRP that would make it to the Supreme court. His court-appointed attorney did not ever reach out to him & was not updated on anything. The 5046 bill has the potential to help incarcerated people of Washington state get action on their cases with attorneys that are not overloaded with cases & can truly put time and effort into the PRP or PCR. But unfortunately, the program falls short due to not having enough financial support from the state.

Next I will tell you how a seventeen-year-old was sentenced to 93 years in Washington state prison for a nonhomicide crime. Julian was sentenced to 93 years for a gang-related shooting in 1994. Julian went into prison & truly, at 17 years old, had no clue what the next step was other than to adjust to his forever home in hell. Julian was told absolutely nothing about a direct appeal & filed his first PRP in 1997. He did this PRP on his own and was told he was time-barred. Julian was assigned an appellate attorney who would eventually offer pro bono assistance. She was ready to retire and didn't have much time. I mean she was volunteering her time. Julian would go onto filing TWO more PRP and, with the third PRP & final, Jeffrey Ellis would step in to get Yakima County to agree to resentence Julian based off of the new juvenile resentencing laws. Again, Jeffery Ellis is very respected and deserves to be paid for the job he does and, unfortunately, Yakima County wasn't willing to pay Ellis to be assigned counsel for Julian. Julian has been incarcerated for 30 years and now,

almost four years later Julian has yet to be resentenced and has had continuance after continuance in his case. The assigned counsel, although we appreciate him, just keeps telling the family that he has too many cases & simply doesn't have time to schedule a meeting with the prosecutor to discuss an agreement for Julian to be released.

My belief is everyone deserves a second chance in life and 5046 is one way that incarcerated individuals have a fighting chance at coming home to their families who also endure the roller coaster of emotions when attempting to do PRP & PCR. If the 5046 had more funds to assist more families, they could complete the daunting task correctly and hopefully reduce the amount of time our courts spend on PRP OR PCR that will never advance due to not having the proper knowledge to file these motions to the courts.

Thank you for your time again. We all truly appreciate everything you all have done & will do.

Melissa Pruneda

APPENDIX D

Interviews

Greg Link – Director, Washington Appellate Project

Greg joined the nonprofit Washington Appellate Project in 1995 and became its director in 2016. He has argued more than 50 cases before the Washington Supreme Court, resulting in impactful changes in the law. Greg has also served on state boards and commissions, including the Washington Sentencing Guidelines Commission.

OPD asked Greg the following questions:

1. What has been the experience of PRP appointments at the Washington Appellate Project historically?

The Washington Appellate Project was rarely appointed as counsel for PRPs until a few years ago. Initially, the majority of PRP appointments regarded DOC administrative disciplinary actions. Currently, the vast majority of PRP appointments regard criminal convictions.

2. What concerns do you have about the PRP process?

- a. The inconsistency in the courts, both trial and appellate, is concerning. (i.e., some counties appoint counsel on 7.8 motions and some don't. Some counties will entertain the motion in the trial court and issue an order that is then appealable.) Justice by geography is not justice.*
- b. Clear distinctions need to be made between direct reviews and PRPs. They are vastly different. The time and record-gathering required in preparing a PRP is immense.*
- c. The time bar prevents obtaining the facts to support a PRP.*
- d. Judges commonly don't contemplate mitigating factors in the sentences they impose – despite having the power and freedom to do so –*
- e. More PRPs need to be filed seeking review of the process of the Indeterminate Sentence Review Board (ISRB). Currently, these hearings are held in the dark, without sufficient oversight, and without a judge. The DOC polygraph and drug testing policies must be addressed.*

3. What ideas do you have to improve PRP practice in Washington state?

- a. To support the PRP process, we need to support appellate work. Appellate work is the beacon for PRP success. Solid appellate representation means less need for post-conviction relief.*
- a. Build a deeper partnership between appellate and PRP work to provide continuity in representation and raise solid issues with the Court of Appeals.*
- b. Create training resources for the PRP practice.*
- c. Provide sufficient funding for social workers, investigators, and mitigation specialist.*

Aaron Bartlett – Clark County Deputy Prosecuting Attorney

Aaron is a senior deputy prosecutor in the appellate division and has worked 10 years for Clark County. Aaron is the team leader of the appellate unit and runs the office's sentence review committee.

OPD asked Aaron the following questions:

1. Does your appellate division have a separate department for PRPs?

No. We have three attorneys in our appellate division. We are appointed as respondents in various appeal types, including responding to PRPs and CrR 7.8 Motions.

2. What has been your experience with the Court of Appeals appointing counsel for pro se PRPs.

The appointment of counsel for pro se PRPs has declined in Clark County in the last few years. The Court of Appeals - Division II has been consistently and appropriately applying RAP 16.8.1 to pro se personal restraint petitions. The application of RAP 16.8.1 has resulted in less appointments of counsel as more petitions are dismissed or are determined to not warrant a response.

3. What are your thoughts on the effort required to respond to a pro se PRP as opposed to one filed by counsel?

Our office responds to all PRPs in the same manner, regardless of whether the petition was filed by a pro se petitioner or by counsel. That said, it is more challenging to respond to pro se PRPs that are hand-written due to issues with legibility. Generally, more effort is also required to determine the real issues being raised in pro se PRPs due to the frequent conflation of claims and either extremely general or exceedingly detailed complaints.

4. Are you seeing a distinguishable difference in the quality of writing between a pro se and counsel-led PRP?

Yes. Assigned appellate counsel generally produce briefs in which the writing is high-quality. Sometimes the quality of writing by a pro se petitioner is sufficient or even quite high. But there is often still a noticeable gulf between the quality of writing when compared to a brief authored by counsel.

5. Do you find it challenging to respond to pleadings filed by petitioners with diminished education levels?

Pro se petitioners, without legal background, are often not aware of the multiple procedural rules involved when filing a PRP. This can result in the filing of multiple petitions that require a response. A good example of this is the Mixed Petition Rule. Application of this rule may end up with multiple PRPs being filed until the claim with merit is found. Multiple petitions, responses, and judicial reviews for what amounts to one petition does not seem to be the best use of any of the participants' time.

Sometimes it can be challenging to determine the relief being sought by a pro se petitioner. I believe that when a petition has arguable merit the more efficient course is for petitioners to be represented by counsel in PRP proceedings. Having counsel assigned typically makes it easier for me and my staff to identify the issue(s) being raised, as well as to provide both sides the opportunity to adequately address procedural bars.

Bonnie Groller and Andrew Van Winkle – Court of Appeals, Division III

Bonnie has been a staff attorney at Division III since 2022. Prior to joining the Court of Appeals staff, she was a public defender in Spokane County. Andrew has been at Division III since 2019. Andrew previously worked as a deputy prosecuting attorney in Chelan County, and with the Washington Legislature. Bonnie and Andrew also serve as a pro-tempore judges in Spokane County District Court.

OPD asked Bonnie and Andrew to describe Division III's review process for *pro se* PRPs:

- *Check for Statement of Finances. It is not uncommon for a PRP to be filed without this document. This absence delays review by an average of 30 days.*
- *If a recent Order of Indigency was authorized, it works to attach a copy and a declaration stating your financial situation has not improved.*
- *PRPs are opened, on average, within 2 days of their filing. It is not unusual, however, to have to remedy a petition (i.e., obtain indigency status), before review can begin.*

There are 3 staff attorneys at Division III who review PRPs.

- *Review of PRPs is about 60 percent of their caseload.*
- *Each PRP is reviewed carefully. If the PRP is untimely, the case is reviewed to see if an exception to the time bar exists.*
- *Many PRPs must be dismissed by statute because of the untimeliness.*
- *Consideration is given to pro se petitioners, understanding the lack of knowledge and education. If a procedural issue could block getting to a meritorious issue, Division III will help (i.e., getting records needed for their review.)*

The interviewees briefly discussed the Indeterminate Review Sentencing Board (ISRB) and agreed that there is currently not enough guidance in the system. SB 5046 Program applicants and their respective hearings in front of the Board were provided as examples. The court regularly takes calls from pro se petitioners inside DOC to answer questions about seeking review from ISRB hearings and infractions.

Interviewees discussed the DOC libraries and the lack of legal assistance provided in them. Andrew suggested paralegals incarcerated within DOC could act as law librarians.

Interviewees discussed the time bar and the challenges faced by pro se incarcerated persons to meet the time bar. Andrew suggested looking for legislative resolution rather than in the courts.

Interviewees discussed the importance of enhancing education on post-conviction petitions. This is evident in the petitions seen at the court, including those filed by paid counsel.

Division III offers their help in an education program.

Jeremiah Bourgeois – Law Clerk, Washington Court of Appeals, Division III

Jeremiah is a journalist, legal scholar, formerly incarcerated person, and a graduate of Gonzaga Law School. While imprisoned, Jeremiah committed himself to higher education, earning a bachelor's degree in legal studies and criminology, graduating magna cum laude. He also tutored prisoners working to earn their GEDs and became an advisor to the University Beyond Bars, a non-profit that enables prisoners to obtain a college education at Washington State Reformatory. Jeremiah has used his writing and his voice to advocate for those that he left behind in prison.

The psychological toll of navigating the legal system without adequate representation is profound for incarcerated individuals. When a person must file a personal restraint petition without the assistance of a trained attorney, they face the overwhelming challenge of trying to comprehend complex legal procedures and terminologies with an untrained eye. This can be especially daunting for those who already struggle with limited education or legal knowledge. The stress and frustration of not understanding how to address their case and the fear of missing crucial legal nuances can exacerbate feelings of hopelessness, anxiety, and despair. These emotional struggles often distract from personal growth and rehabilitation, as the individual becomes consumed by their legal battles rather than focusing on their healing journey.

The need for professional oversight in legal matters is critical, as it ensures that cases are handled with the expertise required for fair outcomes. When incarcerated individuals are forced to become their own advocates, there is a significant risk that important legal issues will be overlooked simply due to lack of training. A qualified attorney has the skills to identify and address procedural errors, constitutional violations, or other significant factors that an untrained person may miss. By providing proper legal representation, the justice system can function more effectively, ensuring that cases are handled appropriately and that those who are incarcerated are given a fair chance to pursue relief.

The time spent in law libraries trying to resolve legal issues independently detracts from a person's ability to engage in other rehabilitative activities that promote healing and pro-social development. Hours devoted to studying legal materials take away from opportunities to participate in educational programs, counseling, vocational training, or group therapy. These activities are essential for personal transformation and preparing individuals for successful reintegration into society. The singular focus on legal matters, often out of sheer necessity, limits their ability to work on the very aspects of their lives that could help reduce recidivism and foster long-term positive change.

The lack of adequate legal support for incarcerated individuals also has broader implications for community safety. When people are released without having fully engaged in rehabilitative programs due to their focus on legal struggles, they are less equipped to reintegrate successfully. Effective legal representation not only addresses potential miscarriages of justice but also allows individuals to invest time in programs that improve their behavior and decision-making skills. Ultimately, ensuring access to qualified legal assistance is a crucial step toward achieving both public safety and individual healing, benefiting society as a whole.

Jim Whisman – King County Senior Deputy Prosecuting Attorney

Jim recently retired from the King County Prosecuting Attorney's Office after managing the appellate unit for more than 25 years. Jim has served on many boards and commissions, including the Washington Sentencing Guidelines Commission.

OPD asked Jim the following questions:

- 1. What was your experience with the Court of Appeals appointing counsel for PRPs, both historically and more recently?**

Jim discussed the increase, over the last six to seven years, in the number of PRPs where the prosecutor is appointed by the Court of Appeals as respondent. This is due in large part to significant changes in law that have occurred in Washington State. These changes require resentencing, vacating convictions, and/or other remedies. PRPs are filed to seek this relief.

Jim also pointed out the Supreme Court decision in PRP of Ruiz-Sanabria as also contributing to the increase of appointment of counsel for PRPs. In re Ruiz-Sanabria clarified the criteria a superior court must consider before transferring a post-conviction motion to the Court of Appeals to be considered as a PRP, and finds that if petitioner can identify existing court records that are significant to consideration of the PRP, the reviewing court must consider them in some manner, including, if appropriate, having the State address the allegation in its response.

- 2. What are your thoughts on the effort required to respond to a *pro se* PRP as opposed to one filed by counsel?**

A pro se PRP can be challenging to review. A hand-written 100-page document written by someone who doesn't understand the law is time-consuming. The Court of Appeals, unable to obtain trial court documents independently, relies on the prosecutor's office to obtain records needed to understand the case.

A PRP filed by counsel is easier to read and interpret. The record is already before the Court of Appeals. These PRPs, however, often supplement the claims brought in the original petition, requiring additional research of complex issues.

- 3. What are your general thoughts about SB 5046?**

King County issued a statement opposing the bill, arguing that the funding for the program could be used for more immediately impactful needs. The prosecutors remain concerned that their offices would not be receiving additional funding for the additional work resulting from the PRPs filed under the Bill.

Jim believes that attention needs to be paid to the cases and issues that matter the most. The appointment of counsel on PRPs that don't have merit jeopardize those that do warrant relief.

Jim believes that 5046 should have also discussed Criminal Rule 7.8 Motions. This practice has also increased substantially.

We spoke of prior appointments on PRPs, where the appellate court would identify the issue of focus. We agreed this was helpful to all and it is hoped the practice can be resumed.

Jim believes a good start to improving the PRP process in Washington is to simplify the statute and the rules of procedure.

4. What is the result of PRPs responded to by your office?

- **How many were dismissed due to the time bar?**
- **How many were granted review?**
- **Has the annual number changed much over the past 5-10 years?**

Jim provided PRP caseload data available on the Washington Courts website.

www.courts.wa.gov

PRP data:

https://www.courts.wa.gov/caseload/?fa=caseload.showReport&level=c&freq=a&tab=&file!D=t15_ctrend7

List of available data:

<https://www.courts.wa.gov/caseload/?fa=caseload.showIndex&level=c&freq=a>

Jessica Tsao – Staff Attorney, Court of Appeals, Division I

Lea Ennis -- Court Administrator/Clerk, Court of Appeals, Division I

Jessica has been a Staff Attorney at the Washington Court of Appeals Division I since 2021. She previously served as a judicial law clerk. Lea is the Court Administrator/Clerk at Division I. Prior to joining the Court of Appeals in 2021, she worked for King County Superior Court for 26 years where she served in several different positions, including Director of Juvenile Court Services, Director of Technology, and Director of Court Operations.

The meeting highlighted the shared commitment of both Division I and OPD to ensuring a fair and accessible PRP process for all petitioners.

Goals of Meeting

Understand Division I's procedures for handling PRPs, particularly those filed by pro se petitioners.

Discuss Ideas to Improve the PRP Process: Identify challenges faced by *pro se* petitioners and explore potential improvements to the process that will benefit all parties. Increase education and understanding (development of a PRP and CrR 7.8 Motion Guide).

Discussion

Challenges for Incarcerated *Pro Se* Petitioners in the Personal Restraint Process

- **Obtaining necessary documents is a significant obstacle for *pro se* petitioners.** *This leads to petitions being filed without the benefit of complete research and without supporting documents.*

Jessica responded that the court may not need supporting documents to screen a PRP if the facts alleged in the PRP are sufficient. RAP 16.7 provides a mechanism by which the court can, in appropriate cases, order that court documents be transferred.

- ***Pro se* petitions often lack legal expertise in identifying and articulating issues.** *This can make it difficult for the court and the prosecutor to understand the claims being made and the relief requested.*

Jessica responded that although every PRP is carefully reviewed by the Court whether hand-written, type-written, or professionally prepared, a counseled PRP may assist the Court in its framing of the issue(s) raised and identifying the relief being sought.

Lea stated that the Court is considering adding PRPs to their document portal. It was agreed that this would be helpful to provide petitioners examples of briefing and to assist in obtaining records needed for review.

- **Supporting documentation.**

While the absence of supporting documents doesn't automatically disqualify a petition, it can hinder the court's ability to fully assess the claims. Petitioners are encouraged to provide all relevant records, but can also file motions to supplement the petition later.

- **The unavailability of typewriters in prison law libraries presents a challenge for pro se petitioners.**

The court has technology to make scanned petitions text searchable if they are type-written. Hand-written petitions generally cannot be converted into text searchable files.

- **The lack of clarity regarding the appointment of counsel for CrR 7.8 motions that are transferred to the Court of Appeals as PRPs creates confusion and potential missed opportunities.**

When a 7.8 motion is transferred, the petitioner may have an application for counsel pending, but cannot be assigned counsel once the PRP is filed. This necessitates withdrawing the PRP and re-filing, adding complexity, inefficiency, and extra work from all sides to the process.

OPD asked Jessica and Lea to describe Division III's review process for pro se PRPs:

The pre-screening process for PRPs aims to filter out frivolous petitions so that only non-frivolous claims are reviewed by a panel of judges. Breakdown of the process is below:

- **Initial Screening:** *The Acting Chief Judge (ACJ), with staff attorney support, reviews the petition to determine if it's "clearly frivolous." This involves assessing whether the petition presents an arguable basis for relief given the constraints of the PRP vehicle. (Personal Restraint of Khan) There's no strict formula for this determination, but it considers the specific facts of the case and existing legal precedent.*
- *If the issues claimed in the petition are determined to be clearly frivolous, the court will dismiss the petition.*
- *If the petition is time barred, the court will dismiss the petition unless an exception to the time bar is evident.*
- **Request for Response:** *If the petition is not deemed clearly frivolous, a response is requested from the relevant party.*
- **Second Screening:** *After the response and any reply are filed, the ACJ, with staff attorney support, conducts a second screening.*
- **Acting Chief Judge (ACJ) Review:** *The ACJ makes the final determination as to whether the petition is frivolous. Non-frivolous petitions are referred to a panel of judges for a decision on the merits.*

Role of Counsel in the PRP process

- **Appointment of counsel:** *While not all petitions receive assigned counsel, Division I typically appoints counsel to cases deemed non-frivolous and referred to a panel of judges. Petitioners can request counsel using the court's standard form or through subsequent communication.*
- **Benefits of counseled petitions:** *Counseled petitions often present legal issues in a clearer and more organized manner, which can streamline the review process for the court and the responding party. A counseled petition can also help avoid procedural errors like filing mixed petitions.*

Ideas for Improvement

- **PRP Manual:** *OPD consultant outlined the development of a PRP manual for incarcerated individuals and sought Division I's feedback and input on the content. Staff attorneys would need to consult with the ACJ about potential involvement.*
- **Technology Improvements:** *Discussion centered on the possibility of a secure channel for transmitting legal documents and records from AOC to DOC as well as allowing word processed pleadings prepared on tablets to be securely sent to prison law libraries for e-filing.*
- **Typewriter Access:** *The lack of accessible typewriters in prison law libraries was highlighted as a significant barrier.*
- **PRP briefs.** *Division I staff expressed interest in making PRP briefs publicly available online through their document portal. It was noted that this would benefit both incarcerated individuals and legal professionals. Additionally, PRP counsel and others will be able to access PRP documents necessary for case review. Concerns were raised regarding the potential for disclosing confidential information contained in some petitions, but direct appeals contain such information as well.*

Requests

- *Division I requested that attorneys assigned under SB 5046 include a cover letter clearly identifying the case as such.*
- *Division I reminded OPD of the requirement that a separate and distinct verification of petitioner document be included with the PRP upon filing. See RAP 16.7(a)(7).*

Discussions revealed a discrepancy in notification procedures, with OPD currently sending notices upon counsel appointment rather than petition filing.