

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2021-2022 Regular Session**

AB 2520 (Gabriel)  
Version: April 21, 2022  
Hearing Date: June 21, 2022  
Fiscal: Yes  
Urgency: No  
TSG

**SUBJECT**

Department of Justice: Office of Access to Justice

**DIGEST**

This bill establishes an Office of Access to Justice within the California Department of Justice and tasks it with studying, fomenting, and facilitating the provision of civil legal aid services in the state.

**EXECUTIVE SUMMARY**

Should you find yourself facing accusations of criminal wrongdoing, the courts have long recognized you have a right to legal counsel throughout the process. Accordingly, if you cannot afford to hire a lawyer privately, the court will appoint a criminal defense attorney to represent you. Although the outcome of civil legal matters – things like custody of a child, loss of your home, or domestic violence, among other things – can impact your life in quite significant ways, you are not guaranteed legal representation. Instead, if you need a civil attorney and cannot afford one, your main hope is to be able to obtain assistance from a legal aid agency – non-profit organizations that provide free legal services to low-income people. Studies have consistently shown that the need for legal aid in California (and elsewhere) far outweighs the supply. This gap not only means that individuals are frequently unable to obtain justice; it also undermines the rule of law generally. As part of the effort to expand and improve legal aid services in California, this bill would establish an Office of Access to Justice housed in the Department of Justice and make it responsible for fomenting and facilitating the provision of legal aid and coordinating collaboration with state agencies through, among other things, formation of a Legal Aid Interagency Roundtable.

The bill is sponsored by the Legal Aid Association of California. Support comes from legal services agencies who believe that the proposed office would greatly improve the delivery of legal aid in the state. There is no known opposition. The bill passed off of the Assembly Floor by a vote of 62-5. If the bill passes out of this Committee, it will next be heard in the Senate Appropriations Committee.

**PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Guarantees a right to counsel in criminal proceedings (*Gideon v. Wainwright* (1963) 372 U.S. 335), but not generally in civil matters. (*Lassiter v. Dep't of Soc. Servs.* (1981) 452 U.S. 18).
- 2) Establishes the federal Legal Services Corporation (LSC) to provide and administer grant funding to nonprofits that provide civil legal assistance for eligible clients, subject to both statutory and regulatory restrictions. (42 U.S.C. Sections 2996-2996i; 45 C.F.R. Sections 1600-1644.)
- 3) Enacts the State Bar Act. (Business and Professions Code Sections 6000-6243.)
- 4) Finds that one of the purposes of the State Bar Act is to expand the availability and improve the quality of existing free legal services in civil matters to indigent persons. (Business and Professions Code Section 6210.)
- 5) Requires an attorney or law firm that receives or disburses trust funds to establish an interest-bearing account (IOLTA account) and to deposit in the account all client deposits that are nominal in amount or are on deposit or invested for a short period of time. (Business and Professions Code Section 6211 (a).)
- 6) Specifies that the interest and dividends earned on all IOLTA accounts shall be paid to the State Bar to be used to fund civil legal services for indigent persons. (Business and Professions Code Sections 6211 (a), 6216 (a).)
- 7) Defines which nonprofit entities are presumed to be eligible for IOLTA funding. (Business and Professions Code Sections 6213 (a), 6213 (b), 6214, 6214.5, 6215.)
- 8) Requires, pursuant to the Sargent Shriver Civil Counsel Act, that legal counsel be appointed to represent low-income parties in civil matters involving critical issues that affect basic human needs in courts selected by the Judicial Council for that purpose. (Government Code Sections 68650, 68651.)

This bill:

- 1) Requires the California Department of Justice (Department) to establish an Office of Access to Justice (Office) no later than January 1, 2024. States that the Office shall promote access to justice for low-income and other underrepresented people in the California criminal and civil justice systems.

- 2) Requires the Department to provide sufficient personnel and funds to establish and operate the Office, but permits the Department to use an existing branch or division to serve as the Office for purposes of implementing this measure.
- 3) Provides that the Office shall promote access to justice within the Department by:
  - a) advising the Attorney General on access to justice issues;
  - b) developing policy recommendations for the Attorney General;
  - c) coordinating with all divisions and bureaus within the Department to ensure each is considering access to justice in policy, enforcement, and funding decisions; and
  - d) submitting statements of interest or amicus briefs in legal cases that implicate access to justice concerns.
- 4) Provides that the Office shall promote access to justice within California's executive branch by establishing a Legal Aid Interagency Roundtable, which shall do all of the following:
  - a) invite representatives of state agencies and departments with programs that help the vulnerable and underserved to convene in order to advise them on incorporating access to justice principles and, where appropriate, including legal services among the range of supportive services a program provides, so that those programs are more efficient and produce improved outcomes; and
  - b) facilitate strategic partnerships with and between state agencies, legal aid nonprofits, and other relevant groups to promote access to civil legal aid and to improve the efficiency and outcomes of state programs.
- 5) Provides that the Office shall promote access to justice statewide by:
  - a) identifying emerging legal issues among low-income Californians by communicating regularly with local legal aid organizations and community groups, as well as divisions and bureaus within the Department;
  - b) improving the state's understanding of access to justice by evaluating existing data and advancing evidence-based research and data collection regarding civil legal aid needs and services; and
  - c) communicating findings to state agencies and departments, social service providers, and the Legislature via consolidated reports and updates, as approved by the Attorney General.
- 6) Requires the Office to submit a report by January 1, 2025, and annually thereafter, describing its activities.

## COMMENTS

### 1. Statistical evidence revealing a shortage of legal aid services in California

As summarized by the author, the 2019 California Justice Gap Study revealed that 60 percent of low-income California households confront at least one civil legal problem each year and almost a quarter deal with six or more. The study also found that, consistent with national findings, in the overwhelming majority of those situations – 85 percent of the time – low-income Californians received inadequate or no legal help trying to address the legal issue.

On average, there is only one civil legal aid attorney available per 5,500 low-income Californians, though in rural areas that disparity is much larger.

From this data, the author concludes that: “[t]he state of California is currently facing a very serious legal aid access crisis.”

### 2. Creation of a state government Office of Access to Justice

To try to help boost the availability of legal services and address the justice gap, this bill proposes the establishment of a state Office of Access to Justice. The new office would be housed within the Department of Justice (CADOJ). Its mission would consist of three primary tasks. First, the office would promote access to justice within the CADOJ itself. This would involve providing policy advice to the Attorney General, coordinating the inclusion of access to justice goals across CADOJ divisions, and submitting legal filings in support of access to justice efforts. Second, the office would promote access to justice within the executive branch more generally, principally through the formation of a Legal Aid Interagency Roundtable meant to facilitate collaboration between legal aid providers and government agencies. Finally, the office would promote access to justice on a statewide level by facilitating communication, analyzing data, and issuing reports intended to identify emerging legal issues confronting legal aid consumers and to improve the state’s overall understanding of low-income Californian’s legal needs.

Beyond these primary tasks, the office would have authority to weigh in on legislative proposals impacting the provision of legal aid services. The bill also requires the office to provide an annual report on its activities to the Legislature.

### 3. Modeled off of a federal program

This bill’s concept for a state Office of Access to Justice comes from a similar program at the federal level. As described by the U.S. Department of Justice (USDOJ), the federal Office for Access to Justice was established:

to address the access-to-justice crisis in the criminal and civil justice system. ATJ's mission is to help the justice system efficiently deliver outcomes that are fair and accessible to all, irrespective of wealth and status. ATJ staff works within the Department of Justice, across federal agencies, and with state, local, and tribal justice system stakeholders to increase access to counsel and legal assistance and to improve the justice delivery systems that serve people who are unable to afford lawyers.<sup>1</sup>

According to the USDOJ, throughout the Obama Administration, the federal Office for Access to Justice took on a variety of projects. The Office filed statements of interest and amicus briefs in cases safeguarding the constitutional guarantee of effective assistance of counsel and eliminating the criminalization of poverty.<sup>2</sup> It formed the Legal Aid Interagency Roundtable (later renamed the White House Legal Aid Interagency Roundtable) to raise awareness within federal agencies of how civil legal aid could advance a range of federal objectives. The Office also issued a letter to state and local courts regarding their legal obligations to avoid criminalization of poverty when enforcing court fines and fees. Finally, the Office acted as hub for information sharing and as authority on access to justice, both within the federal government and in connection with collaborative initiatives abroad.<sup>3</sup> The bill before the Committee takes many of these federal accomplishments and utilizes them as a roadmap to guide the mission of proposed state analog.

The Trump Administration subsequently shuttered the Office for Access to Justice, but it has been revived under the Biden Administration.<sup>4</sup>

#### 4. Legal aid's mission and collaboration with government agencies

The proponents of this measure contend that closing the justice gap is critical and that establishment of an official Office of Access to Justice within state government will help to achieve that end. Government has a clear role in the provision of legal aid: it is a key source of funding and a necessary point of interaction. While there are arguably many benefits to increased collaboration between legal aid agencies and the government, it may still be worth sounding one policy note of caution.

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<sup>1</sup> *Office for Access to Justice: Mission*. U.S. Department of Justice <https://www.justice.gov/archives/atj> (as of Jun. 10, 2022).

<sup>2</sup> *See Court Filings in Support of Access to Justice*. U.S. Dept. of Justice <https://www.justice.gov/archives/atj/court-filings-support-access-justice> (as of Jun. 10, 2022).

<sup>3</sup> *See, generally, Access to Justice 2010-2018: Accomplishments*. U.S. Dept. of Justice <https://www.justice.gov/archives/atj/accomplishments> (as of Jun. 10, 2022).

<sup>4</sup> Executive Office of the President, Restoring the Department of Justice's Access-to-Justice Function and Reinvigorating the White House Legal Aid Interagency Roundtable, 86 Fed. Reg. 27793 (May 21, 2021).

This bill presupposes that the state government and legal aid agencies are, in essence, on the same team. In many instances, that is accurate. However, it may not always be the case. Historically, different administrations have shown significantly different attitudes towards legal aid, ranging everywhere between embrace and contempt. Additionally, the nature of the work means that legal aid attorneys represent clients in legal proceedings before – and sometimes even against – state government agencies. Even in civil matters between private parties, legal aid attorneys often operate in state courts where judges and administrators occasionally bristle at legal strategies, such as seeking the substitution of a judge for bias or requesting a trial by jury which those judges and administrators perceive as further straining court resources. Yet, like all other attorneys, legal aid providers are ethically bound to represent their clients zealously.

The more reliant legal aid services are on collaboration and funding from government sources or the courts, the more leverage government has to influence the policies and practices of legal aid agencies. Historically, for example, the federal government has used this leverage to restrict federally-funded agencies' ability to undertake class actions, advocate for legislative policy changes, and represent undocumented individuals. If this bill is enacted, it will be important for the new Office of Access to Justice to recognize, respect, and support the operational independence of legal aid agencies even as it pursues initiatives in collaboration with them.

#### 5. Arguments in support of the bill

According to the author:

There can be no equal justice without equal access to justice. And because we do not yet have equal access to justice in America, the task before us is urgent. Californians are in desperate need of better services and meaningful access to legal aid—a central body that can improve legal services in state agencies, develop policy recommendations on access to justice issues, and triage statewide legal capacity and legal needs will meet the moment of this legal aid crisis and help hundreds of thousands of families, communities, and individuals in need achieve the justice that they deserve across the state.

As sponsor of the bill, the Legal Aid Association of California writes:

Californians are in desperate need of better services and meaningful access to legal aid—a central body that can work together with state agencies to improve state programs, facilitate collaboration with legal aid providers, identify and triage legal issues statewide, and develop policy recommendations on access to

justice issues will meet the moment of this legal aid crisis. It will help hundreds of thousands of families, communities, and individuals in need achieve the justice that they deserve across the state. And it will make the state of California a true partner in the mission for equal access to justice for all.

**SUPPORT**

Legal Aid Association of California (sponsor)  
Bet Tzedek Legal Services  
California Immigrant Policy Center  
California Rural Legal Assistance, Inc.  
Central Valley Immigrant Integration Collaborative  
Community Legal Aid SoCal  
Council on American-Islamic Relations, California  
Disability Rights California  
Eric Garcetti, Mayor, City of Los Angeles  
Legal Aid at Work  
Neighborhood Legal Services of Los Angeles County  
OneJustice  
Watsonville Law Center  
Worksafe

**OPPOSITION**

None known

**RELATED LEGISLATION**

Pending Legislation: None known.

Prior Legislation: None known.

**PRIOR VOTES:**

Assembly Floor (Ayes 62, Noes 5)  
Assembly Appropriations Committee (Ayes 13, Noes 1)  
Assembly Judiciary Committee (Ayes 8, Noes 1)

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