

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

SB 498 (Umberg)
Version: March 10, 2021
Hearing Date: March 23, 2021
Fiscal: No
Urgency: No
MEC

SUBJECT

Funds for the provision of legal services to indigent persons: disabled veterans

DIGEST

This bill increases access to free legal services for Californians with incomes at or below 200 percent of the Federal Poverty Level (FPL) and excludes specified veteran disability income from the calculation, thus further qualifying veterans for legal services.

EXECUTIVE SUMMARY

In 1963, the United States Supreme Court decided *Gideon v. Wainwright* (1963) 372 U.S. 335, in which it unanimously ruled that state courts are required under the Sixth Amendment of the Constitution to provide counsel in criminal cases for defendants unable to afford their own attorneys. Thus, in every criminal case which carries the possibility of imprisonment, the accused has the right to an appointed counsel when they cannot afford one. The U.S. Supreme Court, however, has declined to extend the right to counsel to indigents in civil proceedings. In *Lassiter v. Department of Social Services* (1981) 452 U.S. 18, the Court affirmed that an indigent litigant's right to an appointed counsel applies only when the litigant may be deprived of their personal liberty. Consequently, the United States mainly relies upon limited legal services and pro bono programs to provide representation in civil matters.

The Legislature has created programs to provide free legal services to the indigent. One such program is administered by the State Bar of California and is funded through the Interest On Lawyers' Trust Accounts (IOLTA) account interest. Legal services are also funded through the Equal Access Fund (EAF) program administered by the State Bar of California, an attorney volunteer donation program administered by the State Bar, and the Sargent Shriver Legal Counsel Act established in some courts.¹

¹ According to the State Bar, in 2019 the IOLTA revenues totaled \$55,086,218 and \$27,463,024 were distributed. In 2020 the IOLTA revenues totaled \$34,205,186 and \$55,294,144 were distributed. In 2021 the State Bar estimates that IOLTA revenues will total \$20,000,000 and \$23,951,697 will be distributed. According to the State Bar, in 2019 the

The Legislature has recognized the need to provide legal aid to our military service members and veterans and has recently created a program in the State Bar to provide targeted assistance. AB 360 (Muratsuchi, Ch. 401, Stats. 2017) requires the State Bar to administer a program to coordinate pro bono civil legal assistance to veterans and their families who otherwise cannot afford legal services. AB 558 (Petrie-Norris, Ch. 303, Stats. 2019) extended the provisions of AB 360 to apply to active duty service members and their families.

In line with California's public policy of providing free legal services to Californians in need and increasing access to veterans, this bill raises qualifying income to 200 percent FPL and excludes veteran disability income from the calculation of income, thus qualifying more veterans. SB 498 is sponsored by the Veterans Legal Institute and supported by Disability Rights California, the Legal Aid Association of California, the State Bar of California, and other organizations that support legal aid for the indigent. It has no known opposition. Should this bill pass out of this Committee, it will be heard by the Committee on Military and Veterans Affairs.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Requires an attorney or law firm receiving or disbursing trust funds to establish and maintain an Interest On Lawyers' Trust Accounts (IOLTA) account in which the attorney or law firm is required to deposit or invest all specified client deposits or funds. (Bus. & Prof. Code § 6211.)
- 2) Directs IOLTA account interest and dividends to be paid to the State Bar of California to be distributed for the provision of civil legal services to indigent persons, as specified. (Bus. & Prof. Code § 6212, § 6216.)
- 3) Defines "indigent person" as a person whose income is 125 percent or less of the current poverty threshold established by the United States Office of Management and Budget and requires that the income of a person who is disabled be determined after deducting the costs of medical and other disability-related special expenses. (Bus. & Prof. Code § 6213(d).)
- 4) Defines "indigent person" as a person who is eligible for Supplemental Security Income or free services under the Older Americans Act or Developmentally Disabled Assistance Act. (Bus. & Prof. Code § 6213(d).)

Equal Access Fund revenues totaled \$23,039,910 and \$22,923,100 were distributed. In 2020 the Equal Access Fund revenues totaled \$23,286,600 and \$23,399,148 were distributed. In 2021 the State Bar estimates that Equal Access Fund revenues will total \$23,286,600 and \$21,163,881 will be distributed. According to the State Bar, the amounts distributed for legal services through the voluntary lawyer licensing fee was \$6,0303,730 in 2019 and \$6,255,553 in 2020.

- 5) Provides that legal counsel are appointed to represent low income parties in civil matters involving critical issues affecting basic human needs, through the Sargent Shriver Civil Counsel Act, as specified, and provides that eligibility for representation is limited to clients whose household income falls at or below 200 percent of the federal poverty level. (Gov. Code §§ 68650-68651.)

This bill:

- 1) Expands the definition of “indigent person” to a person whose income is 200 percent or less of the current poverty threshold established by the United States Office of Management and Budget, and requires that the income of a veteran be determined after deducting disability compensation from the United States Veterans Administration that is paid to a veteran with a service-related disability.
- 2) Continues to require that the income of a person who is disabled be determined after deducting the costs of medical and other disability-related special expenses.

COMMENTS

1. Raising Income Eligibility to Qualify More Californians for Legal Services

Currently Californians must be at or below 125 percent of the Federal Poverty Level (FPL) in order to qualify for free legal services through the IOLTA program. One hundred and twenty-five percent of the FPL is \$16,100 for an individual and \$33,125 for a family of four.² In order to qualify more Californians for free legal services, this bill raises the qualifying income to 200 percent of the FPL. Accordingly, if this bill is enacted, qualifying income for an individual would increase to \$25,760 while qualifying income for a family of four would increase to \$53,000. Legal Aid Association of California (LAAC), a supporter of the bill, writes that this “is a long overdue change.” They note that our “state is one of the most expensive places in the country to live, and the FPL can often fail to sufficiently capture poverty in our state. They explain that leaving “the definition of indigent person at 125% disqualifies a significant number of people who, generally, are people who need the help of legal aid lawyers...” This bill will, according to LAAC, “fix this by increasing the threshold to 200% of FPL, expanding eligibility to people who are, in reality, low-income and in need of legal aid.”

Another legal services program, the Sargent Shriver Civil Counsel Act, was established in 2010 to provide legal representation to low-income Californians in civil matters involving critical issues affecting basic human needs. (Gov. Code §§ 68650-68651.) The Sargent Shriver Civil Counsel Act provides that eligibility for representation is limited to clients whose household income falls at or below 200 percent of the FPL (*Id.*). SB 498

² 2021 Poverty Guidelines, US Department of Health & Human Services Office of the Assistant Secretary for Planning and Evaluation, (Published Jan. 26, 2021), available at: <https://aspe.hhs.gov/2021-poverty-guidelines#guidelines> [as of 3/15/21].

raises the income eligibility threshold for IOLTA funded legal services programs to 200 percent.

2. Excluding Veteran Disability Benefits to Qualify More Veterans for Legal Services

According to the author:

George Washington, our nation's first Commander in Chief stated the following: "The willingness with which our young people are likely to serve in any war, no matter how justified, shall be directly proportional to how they perceive the veterans of earlier wars were treated and appreciated by their nation."

The Legislature has recognized the need to provide legal aid to our military service members and veterans and has recently created programs in the State Bar to provide targeted assistance. The Legislature recently required the State Bar to administer a program to coordinate pro bono civil legal assistance to active duty service members, veterans, and their families who otherwise cannot afford legal services. (AB 360 (Muratsuchi, Ch. 401, Stats. 2017); AB 558 (Petrie-Norris, Ch. 303, Stats. 2019.)

My bill provides further access to free legal services for veterans by raising the qualifying income for IOLTA funded programs to 200 percent of the FPL and excluding veteran disability income.

We have a moral obligation to treat our veterans with dignity because they are willing to make the ultimate sacrifice to defend our Constitution.

Disabled veterans may not be eligible for free legal services because their disability benefits may raise their income to beyond 200 percent of the FPL. Veterans Legal Institute, the sponsor of the bill, explains:

The present definition of "indigent persons" is highly detrimental to 100% disabled Veterans. A 100% disabled Veteran receives approximately \$3200 per month in service-connected compensation from the VA almost always rendering him or her too rich to qualify for legal services but (ironically) too poor to hire a private attorney and access the very justice they signed up to defend. They are essentially penalized due to collecting income for being disabled as a result of their service to our country. SB 498 remedies this inequity by raising the qualifying income for legal aid services to 200% of the Federal Poverty Level and excluding veteran disability compensation from the calculation of qualifying income.

Using a blanket federal standard for the State of California is like fitting a square peg in a round hole given its exponentially higher cost of living relative to its neighboring states. According to RentData.org, in 2019 California had the 5th highest rent in the country out of 56 states and territories. The same source indicates that the fair market monthly rent in California ranges from \$700 for a 2-bedroom apartment in Modoc County to \$2,809 for a 2-bedroom unit in San Francisco. Raising the Federal Poverty Level (FPL) qualification from 125% to 200% will rectify this issue and allow further access to those Californians who are truly low income per California's standard- including 100% disabled Veterans.

Veterans Legal Institute supports SB 498 because it is tailored to today's California and its high cost of living. More importantly, it brings equity and access to the most vulnerable populations- including our 100% disabled Veterans.

LAAC explains that "the veterans who receive the highest level of disability benefits may not be eligible for free legal services, even with the increase to 200%." Deducting disability compensation, from the United States Veterans Administration, that is paid to a veteran with a service-related disability from income to qualify for the 200 percent threshold will ensure that more veterans would be eligible for legal services.

SUPPORT

Veterans Legal Institute (sponsor)
Community Legal Services at McGeorge School of Law
Disability Rights California
Eviction Defense Collaborative
Family Violence Appellate Project
Justice in Aging
Legal Aid Association of California
OneJustice
San Luis Obispo Legal Assistance Foundation
State Bar of California
Worksafe

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: AB 325 (Irwin 2021) would, subject to an appropriation by the Legislature, require the establishment of the Veteran's Military Discharge Upgrade

Grant Program to help fund service providers who will educate veterans about discharge upgrades and assist veterans in filing discharge upgrade applications, as specified. This bill is awaiting hearing in the Assembly Committee on Military and Veterans Affairs.

Prior Legislation:

AB 558 (Petrie-Norris, Ch. 303, Stats. 2019) extended the provisions of AB 360 (Muratsuchi, Ch. 401, Stats. 2017) to apply to active duty service members and their families.

AB 360 (Muratsuchi, Ch. 401, Stats. 2017) requires the State Bar to administer a program to coordinate pro bono civil legal assistance to veterans and their families who otherwise cannot afford legal services.

AB 590 (Feuer, Ch. 457, Stats. 2009) enacted the Sargent Shriver Civil Counsel Act that provides that legal counsel be appointed to represent low income parties in civil matters involving critical issues affecting basic human needs in specified courts and provides that eligibility for representation is limited to clients whose household income falls at or below 200 percent of the federal poverty level.
