

SENATE BILL REPORT

SB 5291

As Reported By Senate Committee On:
Law & Justice, February 17, 1997

Title: An act relating to indigent defense services.

Brief Description: Requiring all defendants to be responsible for indigent defense service costs unless waived for sufficient cause.

Sponsors: Senators McCaslin and Haugen.

Brief History:

Committee Activity: Law & Justice: 2/3/97, 2/17/97 [DPS, DNPS].

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5291 be substituted therefor, and the substitute bill do pass.

Signed by Senators Roach, Chair; Johnson, Vice Chair; Fairley, Goings, Hargrove, Haugen, Long, McCaslin, Stevens and Zarelli.

Minority Report: Do not pass substitute.

Signed by Senator Kline.

Staff: Martin Lovinger (786-7443)

Background: Current law requires that effective legal representation should be provided for indigent persons and persons who are indigent and able to contribute, consistent with the constitutional requirements of fairness, equal protection, and due process in all cases where the right to counsel attaches.— Nothing in legislative intent or law prohibits requiring a convicted defendant who can afford to pay all or the part of the cost of his or her publicly provided defense from being ordered to do so.

The cost of providing public defender services increases nearly every year. In some counties, the cost of providing indigent defense almost equals the whole budget for the county prosecutor, even though the prosecutor's office handles many other legal issues, in addition to prosecuting all criminal cases, not just the ones with public defenders.

It is felt that the present process of determining the eligibility for a public defender at the beginning of criminal proceedings often overlooks the changed financial circumstances of defendants at the final disposition of the criminal matter. It is also felt that some defendants who are unable to pay the cost of their defense at the time of trial, will be able in the future to repay the cost of their defense after conviction.

Summary of Substitute Bill: Courts must determine at the final disposition of a criminal matter if a convicted defendant has or is likely to have the ability to repay the cost of a

publicly provided defense. The court must order the defendant to pay all or a portion of the cost of counsel if it finds the defendant has or will have the ability to pay. In making the determination of the defendant's ability to pay cost of counsel, the court must consider the current and future financial resources of the defendant, as well as the impact on the defendant of imposing costs.

If the court imposes cost of counsel on the defendant, the imposition constitutes a civil judgment against the defendant, subject to all collection procedures and time limits for civil judgments. The imposition of cost of counsel is also a condition of the defendant's sentence, but only the intentional refusal to obey the order or the intentional failure to make a good faith effort to make repayment is a violation of the conditions of sentence.

The court may allow a defendant to perform community service in lieu of all or a portion of the cost of counsel.

Substitute Bill Compared to Original Bill: The substitute clarifies that the court may allow, instead of order, a defendant to perform community service in lieu of some or all of the costs imposed under this provision.

Appropriation: None.

Fiscal Note: Available.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: None.

Testimony Against: This bill mandates procedures that will probably result in increased costs and the fiscal note should reflect that. Current law provides latitude to do what this bill requires and it works reasonably well.

Testified: Judge Gordon Godfrey, Superior Court Judges Association (con).