
SUBSTITUTE SENATE BILL 5291

State of Washington

55th Legislature

1997 Regular Session

By Senate Committee on Law & Justice (originally sponsored by Senators McCaslin and Haugen)

Read first time 02/19/97.

1 AN ACT Relating to indigent defense services; and amending RCW
2 10.101.020.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 10.101.020 and 1989 c 409 s 3 are each amended to read
5 as follows:

6 (1) A determination of indigency shall be made for all persons
7 wishing the appointment of counsel in criminal, juvenile, involuntary
8 commitment, and dependency cases, and any other case where the right to
9 counsel attaches. The court or its designee shall determine whether
10 the person is indigent pursuant to the standards set forth in this
11 chapter.

12 (2) In making the determination of indigency, the court shall also
13 consider the anticipated length and complexity of the proceedings and
14 the usual and customary charges of an attorney in the community for
15 rendering services, and any other circumstances presented to the court
16 which are relevant to the issue of indigency. The appointment of
17 counsel shall not be denied to the person because the person's friends
18 or relatives, other than a spouse who was not the victim of any offense
19 or offenses allegedly committed by the person, have resources adequate

1 to retain counsel, or because the person has posted or is capable of
2 posting bond.

3 (3) The determination of indigency shall be made upon the
4 defendant's initial contact with the court or at the earliest time
5 circumstances permit. The court or its designee shall keep a written
6 record of the determination of indigency. Any information given by the
7 accused under this section or sections shall be confidential and shall
8 not be available for use by the prosecution in the pending case.

9 (4) If a determination of eligibility cannot be made before the
10 time when the first services are to be rendered, the court shall
11 appoint an attorney on a provisional basis. If the court subsequently
12 determines that the person receiving the services is ineligible, the
13 court shall notify the person of the termination of services, subject
14 to court-ordered reinstatement.

15 (5) All persons determined to be indigent and able to contribute,
16 shall (~~be required to~~) execute a promissory note at the time counsel
17 is appointed. The person shall be informed whether payment shall be
18 made in the form of a lump sum payment or periodic payments. The
19 payment and payment schedule must be set forth in writing. The person
20 receiving the appointment of counsel shall also sign an affidavit
21 swearing under penalty of perjury that all income and assets reported
22 are complete and accurate. In addition, the person must swear in the
23 affidavit to immediately report any change in financial status to the
24 court.

25 (6) The office or individual charged by the court to make the
26 determination of indigency shall provide a written report and opinion
27 as to indigency on a form prescribed by the office of the administrator
28 for the courts, based on information obtained from the defendant and
29 subject to verification. The form shall include information necessary
30 to provide a basis for making a determination with respect to indigency
31 as provided by this chapter.

32 (7) Notwithstanding the determination of indigency made under this
33 section, the court shall require a defendant convicted of an offense to
34 pay all or a portion of the actual cost of counsel if at final
35 disposition the court determines that the defendant has or will have
36 the ability to pay. Costs imposed under this subsection constitute a
37 civil judgment against a defendant and also shall be considered a
38 condition of the sentence. Only the intentional refusal to obey the
39 court order or the intentional failure to make a good faith effort to

1 make repayment constitutes violation of the conditions of the sentence.
2 In determining the amount and method of payment of costs, the court
3 shall take into account the current and potential financial resources
4 of the defendant and the nature of the burden that payment of the cost
5 of counsel will impose. If a defendant is not able to pay such costs,
6 the court may allow the defendant to perform community service in lieu
7 of payment of all or a portion of the costs.

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