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SENATE BILL 5020

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State of Washington

63rd Legislature

2013 Regular Session

By Senators Sheldon and Carrell

Read first time 01/14/13. Referred to Committee on Law & Justice .

1 AN ACT Relating to indigent defense; amending RCW 10.101.020; and  
2 reenacting and amending RCW 10.101.010.

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

4 **Sec. 1.** RCW 10.101.010 and 2011 1st sp.s. c 36 s 12 are each  
5 reenacted and amended to read as follows:

6 The following definitions shall be applied in connection with this  
7 chapter:

8 (1) "Anticipated cost of counsel" means the cost of retaining  
9 private counsel for representation on the matter before the court.

10 (2) "Available funds" means liquid assets and disposable net  
11 monthly income calculated after provision is made for bail obligations.  
12 For the purpose of determining available funds, the following  
13 definitions shall apply:

14 (a) "Liquid assets" means cash, savings accounts, bank accounts,  
15 stocks, bonds, certificates of deposit, equity in real estate, and  
16 equity in motor vehicles. A motor vehicle necessary to maintain  
17 employment and having a market value not greater than three thousand  
18 dollars shall not be considered a liquid asset.

1 (b) "Income" means salary, wages, interest, dividends, and other  
2 earnings which are reportable for federal income tax purposes, and cash  
3 payments such as reimbursements received from pensions, annuities,  
4 social security, and public assistance programs. It includes any  
5 contribution received from any family member or other person who is  
6 domiciled in the same residence as the defendant and who is helping to  
7 defray the defendant's basic living costs.

8 (c) "Disposable net monthly income" means the income remaining each  
9 month after deducting federal, state, or local income taxes, social  
10 security taxes, contributory retirement, union dues, and basic living  
11 costs.

12 (d) "Basic living costs" means the average monthly amount spent by  
13 the defendant for reasonable payments toward living costs, such as  
14 shelter, food, utilities, health care, transportation, clothing, loan  
15 payments, support payments, and court-imposed obligations.

16 (3) "Indigent" means a person who, at any stage of a court  
17 proceeding, is unable to pay the anticipated cost of counsel for the  
18 matter before the court because his or her available funds are  
19 insufficient to pay any amount for the retention of counsel. In  
20 determining whether a person is indigent or indigent and able to  
21 contribute, the court may consider whether the person is:

22 (a) Receiving one of the following types of public assistance:  
23 Temporary assistance for needy families, aged, blind, or disabled  
24 assistance benefits, medical care services under RCW 74.09.035,  
25 pregnant women assistance benefits, poverty-related veterans' benefits,  
26 food stamps or food stamp benefits transferred electronically, refugee  
27 resettlement benefits, medicaid, or supplemental security income; or

28 (b) Involuntarily committed to a public mental health facility; or

29 (c) Receiving an annual income, after taxes, of one hundred twenty-  
30 five percent or less of the current federally established poverty  
31 level(~~or~~

32 ~~(d) Unable to pay the anticipated cost of counsel for the matter~~  
33 ~~before the court because his or her available funds are insufficient to~~  
34 ~~pay any amount for the retention of counsel)).~~

35 (4) "Indigent and able to contribute" means a person who, at any  
36 stage of a court proceeding, is unable to pay the anticipated cost of  
37 counsel for the matter before the court because his or her available

1 funds are less than the anticipated cost of counsel but sufficient for  
2 the person to pay a portion of that cost.

3 **Sec. 2.** RCW 10.101.020 and 1997 c 41 s 5 are each amended to read  
4 as follows:

5 (1) A determination (~~((of indigency))~~) that a person is indigent or  
6 indigent and able to contribute shall be made for all persons wishing  
7 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 or indigent and able to contribute pursuant to  
11 the standards set forth in this chapter.

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

23 (3) The determination (~~((of indigency))~~) that a person is indigent or  
24 indigent and able to contribute shall be made upon the defendant's  
25 initial contact with the court or at the earliest time circumstances  
26 permit. The court or its designee shall keep a written record of the  
27 determination of indigency. Any information given by the accused under  
28 this (~~((section or sections))~~) chapter shall be confidential and shall  
29 not be available for use by the prosecution in the pending case.

30 (4) If a determination of eligibility cannot be made before the  
31 time when the first services are to be rendered, the court shall  
32 appoint an attorney on a provisional basis. If the court subsequently  
33 determines that the person receiving the services is ineligible, the  
34 court shall notify the person of the termination of services, subject  
35 to court-ordered reinstatement.

36 (5) All persons determined to be indigent and able to contribute,  
37 shall be required to contribute all of their available funds for the

1 retention of counsel and execute a promissory note for that amount at  
2 the time counsel is appointed. The person shall be informed whether  
3 payment shall be made in the form of a lump sum payment or periodic  
4 payments. The payment and payment schedule must be set forth in  
5 writing. The person receiving the appointment of counsel shall also  
6 sign an affidavit swearing under penalty of perjury that all income and  
7 assets reported are complete and accurate. In addition, the person  
8 must swear in the affidavit to immediately report any change in  
9 financial status to the court.

10 (6) The office or individual charged by the court to make the  
11 determination (~~(of indigency)~~) that a person is indigent or indigent  
12 and able to contribute shall provide a written report and opinion as to  
13 indigency on a form prescribed by the office of public defense, based  
14 on information obtained from the defendant and subject to verification.  
15 The form shall include information necessary to provide a basis for  
16 making a determination with respect to indigency as provided by this  
17 chapter.

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