

SENATE BILL REPORT

SB 5232

As Reported by Senate Committee On:
Law & Justice, February 5, 2015

Title: An act relating to indigent defense.

Brief Description: Modifying indigent defense provisions.

Sponsors: Senators Sheldon, Padden, Dansel, Schoesler and Honeyford.

Brief History:

Committee Activity: Law & Justice: 1/22/15, 2/05/15 [DP, DNP].

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pearson and Roach.

Minority Report: Do not pass.

Signed by Senators Pedersen, Ranking Minority Member; Darneille and Kohl-Welles.

Staff: Melissa Burke-Cain (786-7755)

Background: The courts must provide legal assistance to anyone who cannot afford to hire a lawyer to defend them in criminal, juvenile, involuntary commitment, and dependency cases. A defendant who requests a court-paid lawyer must disclose all income, assets, and living costs in a sworn statement. Local courts decide if the defendant qualifies for a court-paid lawyer based on the sworn statement, typical local defense attorney costs, and the difficulty of the case. If the defendant has enough available funds, they must pay some of the defense costs. The state's Office of Public Defense provides administrative services and state funds to local courts to improve the quality of local public defense services.

Summary of Bill: The local courts must determine if a defendant is either indigent or indigent and able to contribute to defense costs based on the defendant's financial information. The defendant provides financial information in a sworn statement of income, assets, and living costs. The court must keep the defendant's financial information confidential.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

When the defendant is indigent and able to contribute, the court tells the defendant the amount they must pay and the payment terms. The defendant must sign a promissory note guaranteeing payment.

The Office of Public Defense must provide periodic statewide training. The office must use distance learning technology. The office must complete an attorneys' fees survey for right to counsel cases. The survey results must be publicly available.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: Indigent defense is one of the fastest rising costs for Washington's counties. For example in 2013, 92 percent of Mason County's Superior Court defendants and 82 percent of its district court defendants qualified as indigent and entitled to appointed counsel. When courts decide a defendant is indigent, and entitled to appointed counsel, the financial means inquiry is generally limited to asking if the defendant is eligible for public benefits or assistance. Counties don't want to deny assistance to defendants who need help. The rights of the accused must be protected; but judges should be able to ask defendants about their available assets. County staff should be able to verify that the defendant's financial information is accurate. Some defendants are gaming the system and hiding assets.

CON: Counties are trying to avoid paying defense costs for persons who have a right to an attorney, but cannot afford one because they are indigent. Anyone who receives public assistance like food stamps or other public programs has met tests for inadequate income and assets. These persons should be deemed indigent for assigned counsel purposes. This bill goes too far. When judges question defendants about their assets it can be prejudicial to their defense.

Persons Testifying: PRO: Senator Sheldon, prime sponsor; Randy Neatherlin, Mason County; Todd Mielke, WA State Assn. of Counties; Susan Sergiojan, Mason County Public Defender.

CON: Bob Cooper, WA Defender Assn., WA Assn. of Criminal Defense Lawyers; Arthur West, citizen.