
SENATE BILL 5376

State of Washington 65th Legislature 2017 Regular Session

By Senators Sheldon and Padden

Read first time 01/20/17. Referred to Committee on Law & Justice.

1 AN ACT Relating to indigent defense; amending RCW 10.101.020 and
2 2.70.020; and 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
7 this 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
12 obligations. For the purpose of determining available funds, the
13 following 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)) six
18 thousand dollars shall not be considered a liquid asset.

19 (b) "Income" means salary, wages, interest, dividends, and other
20 earnings which are reportable for federal income tax purposes, and
21 cash payments such as reimbursements received from pensions,

1 annuities, social security, and public assistance programs. It
2 includes any contribution received from any family member or other
3 person who is domiciled in the same residence as the defendant and
4 who is helping to defray the defendant's basic living costs.

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

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

13 (3) "Indigent" means a person who, at any stage of a court
14 proceeding, is:

15 (a) Receiving one of the following types of public assistance:
16 Temporary assistance for needy families, aged, blind, or disabled
17 assistance benefits, medical care services under RCW 74.09.035,
18 pregnant women assistance benefits, poverty-related veterans'
19 benefits, food stamps or food stamp benefits transferred
20 electronically, refugee resettlement benefits, medicaid, or
21 supplemental security income; or

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

24 (c) Receiving an annual income, after taxes, of one hundred
25 twenty-five percent or less of the current federally established
26 poverty level; or

27 (d) Unable to pay the anticipated cost of counsel for the matter
28 before the court because his or her available funds are insufficient
29 to pay any amount for the retention of counsel.

30 (4) "Indigent and able to contribute" means a person who, at any
31 stage of a court proceeding, (~~is unable to pay the anticipated cost~~
32 ~~of counsel for the matter before the court because his or her~~
33 ~~available funds are less than the anticipated cost of counsel but~~
34 ~~sufficient for the person~~) satisfies the criteria of subsection (3)
35 of this section and who, under the standards identified in RCW
36 10.101.020, is found to also have available funds to pay a portion of
37 ((that)) the anticipated cost of counsel for the matter before the
38 court.

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

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

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

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

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

35 (5) A person receiving the appointment of counsel shall sign an
36 affidavit swearing under penalty of perjury that all income, assets,
37 and living costs reported are complete and accurate.

38 (6) All persons determined to be indigent and able to contribute,
39 shall be required to execute a promissory note at the time counsel is
40 appointed. The person shall be informed of the costs for which he or

1 she is responsible and whether payment shall be made in the form of a
2 lump sum payment or periodic payments. The payment and payment
3 schedule must be set forth in writing. (~~The person receiving the~~
4 ~~appointment of counsel shall also sign an affidavit swearing under~~
5 ~~penalty of perjury that all income and assets reported are complete~~
6 ~~and accurate. In addition, the person must swear in the affidavit to~~
7 ~~immediately report any change in financial status to the court.~~

8 ~~(6))~~ (7) The office or individual charged by the court to make
9 the determination (~~of indigency~~) that a person is indigent or
10 indigent and able to contribute shall provide a written report and
11 opinion as to indigency on a form prescribed by the office of public
12 defense, based on information obtained from the defendant and subject
13 to verification. The form shall include information necessary to
14 provide a basis for making a determination with respect to indigency
15 as provided by this chapter.

16 **Sec. 3.** RCW 2.70.020 and 2012 c 257 s 1 are each amended to read
17 as follows:

18 (1) The director shall:

19 ~~((1))~~ (a) Administer all state-funded services in the following
20 program areas:

21 ~~((a))~~ (i) Trial court criminal indigent defense, as provided in
22 chapter 10.101 RCW;

23 ~~((b))~~ (ii) Appellate indigent defense, as provided in this
24 chapter;

25 ~~((c))~~ (iii) Representation of indigent parents qualified for
26 appointed counsel in dependency and termination cases, as provided in
27 RCW 13.34.090 and 13.34.092;

28 ~~((d))~~ (iv) Extraordinary criminal justice cost petitions, as
29 provided in RCW 43.330.190;

30 ~~((e))~~ (v) Compilation of copies of DNA test requests by persons
31 convicted of felonies, as provided in RCW 10.73.170;

32 ~~((f))~~ (vi) Representation of indigent respondents qualified for
33 appointed counsel in sexually violent predator civil commitment
34 cases, as provided in chapter 71.09 RCW;

35 ~~((2))~~ (b) Submit a biennial budget for all costs related to the
36 office's program areas;

37 ~~((3))~~ (c) Establish administrative procedures, standards, and
38 guidelines for the office's program areas, including cost-efficient
39 systems that provide for authorized recovery of costs;

1 (~~(+4)~~) (d) Provide oversight and technical assistance to ensure
2 the effective and efficient delivery of services in the office's
3 program areas;

4 (~~(+5)~~) (e) Recommend criteria and standards for determining and
5 verifying indigency. In recommending criteria for determining
6 indigency, the director shall compile and review the indigency
7 standards used by other state agencies and shall periodically submit
8 the compilation and report to the legislature on the appropriateness
9 and consistency of such standards. The office of public defense shall
10 periodically (i) offer training for the offices and individuals
11 designated by the courts as responsible for determining indigency
12 pursuant to RCW 10.101.020. To maximize efficiencies and statewide
13 participation the office of public defense is encouraged to utilize
14 distance learning technologies to deliver the training required by
15 this section; and (ii) survey attorneys' fees statewide and publish
16 the results to assist courts and their designees in identifying the
17 usual and customary charges for retaining private counsel as provided
18 in RCW 10.101.020(2);

19 (~~(+6)~~) (f) Collect information regarding indigent defense
20 services funded by the state and report annually to the advisory
21 committee, the legislature, and the supreme court;

22 (~~(+7)~~) (g) Coordinate with the supreme court and the judges of
23 each division of the court of appeals to determine how appellate
24 attorney services should be provided.

25 (2) The office of public defense shall not provide direct
26 representation of clients.

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