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## Judiciary Committee

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### ESSB 5020

**Title:** An act relating to indigent defense.

**Brief Description:** Modifying indigent defense provisions.

**Sponsors:** Senate Committee on Law & Justice (originally sponsored by Senators Sheldon and Carrell).

#### Brief Summary of Engrossed Substitute Bill

- Modifies the definition of indigent and able to contribute to include persons who meet any of the statutory grounds for indigency.
- Raises the maximum fair market value of a motor vehicle exempt from the calculation of available funds from \$3,000 to \$6,000.
- Requires the Office of Public Defense to periodically offer training for the offices and individuals responsible for determining indigency, and to publish statewide data regarding the customary charges for retaining private counsel.
- Makes various modifications to the statutory section addressing eligibility screening for for appointed counsel.

**Hearing Date:** 2/25/14

**Staff:** Omeara Harrington (786-7136).

#### **Background:**

##### Appointment of Counsel.

The federal and state constitutions, statutes, and court rules grant the right to counsel for persons involved in certain types of court proceedings, including criminal, juvenile, involuntary commitment, dependency proceedings, among others. When a person is entitled to counsel but is indigent, the government must appoint counsel on the person's behalf.

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*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.*

"Indigent" is defined in statute as a person who, at any stage of the proceedings, is: (1) receiving a type of public assistance listed in statute; (2) involuntarily committed to a public mental health facility; (3) receiving an annual income of less than 125 percent of the federal poverty level; or (4) unable to pay the anticipated cost of counsel because his or her funds are insufficient to pay any amount for the retention of counsel. "Indigent and able to contribute" means a person who, at any stage of the proceeding, is unable to pay the anticipated cost of counsel because his or her available funds are less than the anticipated cost of counsel but are sufficient to pay a portion of the cost. People who are determined to be indigent and able to contribute are obligated to execute a promissory note at the time counsel is appointed. Additionally, the person must sign an affidavit swearing under penalty of perjury that income and assets have been reported accurately and that any change in financial status will be immediately reported to the court.

In determining whether someone is indigent or indigent and able to contribute, the court or the court's designee conducts a review of the person's available funds and considers other relevant factors, including the customary charges for retention of a private attorney. Available funds include liquid assets and disposable net monthly income. Liquid assets include cash, bank and savings accounts, stocks and bonds, certificates of deposit, and equity in real estate and motor vehicles. A motor vehicle necessary to maintain employment with a fair market value of not more than \$3,000 is not considered a liquid asset.

#### The Office of Public Defense.

The OPD is responsible for administering state-funded services associated with indigent defense. In addition, the OPD is required to recommend standards for determining and verifying indigency, and, in doing so, it must compile standards used by other states and periodically report to the Legislature regarding these standards.

#### **Summary of Bill:**

The definition of "indigent and able to contribute" is modified. Rather than being defined as a person who, at any stage of the proceeding, has available funds that are less than the anticipated cost of counsel, but sufficient for the person to pay a portion of the cost; a person is indigent and able to contribute if, at any point in the proceeding, the person meets any of the statutory indigency criteria and is found through screening to have available funds to pay a portion of the anticipated cost. Additionally, the maximum fair market value of a motor vehicle necessary to maintain employment that is exempt from the definition of "liquid assets" is raised from \$3,000 to \$6,000.

Other modifications are made to the statutory section addressing eligibility screening for appointment of counsel. Language is added to expressly require that, any time the court makes a determination of indigency, the court must also make a determination of whether the person is indigent and able to contribute. A person who is determined to be indigent and able to contribute must be informed of the costs for which he or she is responsible. The current law requirement that a person who is indigent and able to contribute swear in an affidavit to immediately report any change in financial status to the court is removed.

Additional duties are assigned to the OPD. The OPD must periodically offer training to those responsible for screening for indigency, and is encouraged to utilize distance learning technologies to deliver the training. In addition, the OPD must survey attorneys' fees statewide

and publish the results to assist courts and their designees in identifying the usual and customary charges for retaining private counsel.

**Appropriation:** None.

**Fiscal Note:** Requested on February 21, 2014.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.