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ENGROSSED SUBSTITUTE SENATE BILL 5020

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State of Washington

63rd Legislature

2014 Regular Session

By Senate Law & Justice (originally sponsored by Senators Sheldon and Carrell)

READ FIRST TIME 02/06/14.

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 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~~) six  
18 thousand 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:

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

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

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

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

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

1       **Sec. 2.** RCW 10.101.020 and 1997 c 41 s 5 are each amended to read  
2 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 to  
7 counsel attaches. The court or its designee shall determine whether  
8 the person is indigent or indigent and able to contribute pursuant to  
9 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 court  
15 which are relevant to the issue of indigency. The appointment of  
16 counsel shall not be denied to the person because the person's friends  
17 or relatives, other than a spouse who was not the victim of any offense  
18 or offenses allegedly committed by the person, have resources adequate  
19 to retain counsel, or because the person has posted or is capable of  
20 posting bond.

21       (3) The determination (~~(of indigency)~~) that a person is indigent or  
22 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 under  
26 this (~~(section or sections)~~) chapter shall be confidential and shall  
27 not be available for use by the prosecution in the pending case.

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

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

37       (6) All persons determined to be indigent and able to contribute,  
38 shall be required to execute a promissory note at the time counsel is

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

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

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

19 (1) The director shall:

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

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

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

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

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

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

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

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

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

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

7       ~~((+5))~~ (e) Recommend criteria and standards for determining and  
8 verifying indigency. In recommending criteria for determining  
9 indigency, the director shall compile and review the indigency  
10 standards used by other state agencies and shall periodically submit  
11 the compilation and report to the legislature on the appropriateness  
12 and consistency of such standards. The office of public defense shall  
13 periodically (i) offer training for the offices and individuals  
14 designated by the courts as responsible for determining indigency  
15 pursuant to RCW 10.101.020. To maximize efficiencies and statewide  
16 participation the office of public defense is encouraged to utilize  
17 distance learning technologies to deliver the training required by this  
18 section; and (ii) survey attorneys' fees statewide and publish the  
19 results to assist courts and their designees in identifying the usual  
20 and customary charges for retaining private counsel as provided in RCW  
21 10.101.020(2);

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

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

28       (2) The office of public defense shall not provide direct  
29 representation of clients.

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