
SUBSTITUTE SENATE BILL 5020

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. In addition, the
37 person must swear in the affidavit to immediately report any change in
38 financial status to the court.

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

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

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

21 (1) The director shall:
22 ~~((1))~~ (a) Administer all state-funded services in the following
23 program areas:

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

26 ~~((b))~~ (ii) Appellate indigent defense, as provided in this
27 chapter;

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

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

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

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

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

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

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

9 ~~((+5))~~ (e) Recommend criteria and standards for determining and
10 verifying indigency. In recommending criteria for determining
11 indigency, the director shall compile and review the indigency
12 standards used by other state agencies and shall periodically submit
13 the compilation and report to the legislature on the appropriateness
14 and consistency of such standards. The office of public defense shall
15 periodically (i) offer training for the offices and individuals
16 designated by the courts as responsible for determining indigency
17 pursuant to RCW 10.101.020. To maximize efficiencies and statewide
18 participation the office of public defense is encouraged to utilize
19 distance learning technologies to deliver the training required by this
20 section; and (ii) survey attorneys' fees statewide and publish the
21 results to assist courts and their designees in identifying the usual
22 and customary charges for retaining private counsel as provided in RCW
23 10.101.020(2);

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

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

30 (2) The office of public defense shall not provide direct
31 representation of clients.

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