
HOUSE BILL 1050

State of Washington

54th Legislature

1995 Regular Session

By Representatives Padden, Goldsmith, Delvin, Schoesler and Robertson

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1 AN ACT Relating to the representation of indigent persons in
2 criminal proceedings; amending RCW 13.40.145; and adding new sections
3 to chapter 10.73 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 10.73 RCW
6 to read as follows:

7 The legislature is aware that the constitutional requirements of
8 equal protection and due process require that counsel be provided for
9 indigent persons and persons who are indigent and able to contribute
10 for the first appeal as a matter of right from a judgment and sentence
11 in a criminal case, and no further. There is no constitutional right
12 to the appointment of counsel at public expense to collaterally attack
13 a judgment and sentence in a criminal matter or to seek discretionary
14 review of a lower appellate court decision.

15 The legislature finds that it is appropriate to extend the right to
16 counsel at state expense to persons who are indigent and persons who
17 are indigent and able to contribute as those terms are defined in RCW
18 10.101.010 in the following instances:

1 (1) For indigent persons filing a direct appeal as a matter of
2 right from a judgment and sentence in a criminal case;

3 (2) For indigent persons responding to a direct appeal filed as a
4 matter of right or who are responding to a motion for discretionary
5 review or petition for review filed by the state in a criminal case;

6 (3) For indigent persons under a sentence of death, counsel shall
7 be provided, upon request, for the purpose of filing and prosecution of
8 a motion or petition for collateral attack, except that counsel may not
9 be provided at public expense for the filing or prosecution of a second
10 or subsequent collateral attack on the same judgment and sentence;

11 (4) For indigent persons not under a sentence of death to prosecute
12 a collateral attack after the chief judge has determined that the
13 issues raised by the petition are not frivolous in accordance with the
14 procedure contained in rules of appellate procedure 16.11, except that
15 counsel shall not be provided at public expense for the filing or
16 prosecution of a second or subsequent collateral attack on the same
17 judgment and sentence;

18 (5) For indigent persons who are responding to a collateral attack
19 filed by the state or who are responding to or prosecuting an appeal
20 from a collateral attack that was filed by the state;

21 (6) For indigent persons to prosecute an appeal after the supreme
22 court or court of appeals has accepted discretionary review of a
23 decision of a court of limited jurisdiction;

24 (7) For indigent persons to prosecute an appeal after the supreme
25 court has accepted discretionary review of a court of appeals decision.

26 NEW SECTION. **Sec. 2.** A new section is added to chapter 10.73 RCW
27 to read as follows:

28 (1) The court of appeals, supreme court, and superior courts may
29 require an adult or a juvenile convicted of a crime or the parents or
30 another person legally obligated to support a juvenile offender to pay
31 appellate costs.

32 (2) Appellate costs are limited to expenses specifically incurred
33 by the state in prosecuting or defending an appeal or collateral attack
34 from a criminal conviction or sentence. Appellate costs shall not
35 include expenditures in connection with the maintenance and operation
36 of government agencies that must be made irrespective of specific
37 violations of the law. Expenses incurred for producing a verbatim

1 report of proceedings and clerk's papers may be included in costs the
2 court may require a convicted defendant or juvenile offender to pay.

3 (3) Costs, including recoupment of fees for court appointed
4 counsel, shall be requested in accordance with the procedures contained
5 in Title 14 of the rules of appellate procedure and in Title 9 of the
6 rules for appeal of decisions of courts of limited jurisdiction, as now
7 or hereafter amended. An award of costs shall become part of the trial
8 court judgment and sentence. An award of costs in juvenile cases shall
9 also become part of any order previously entered in the trial court
10 pursuant to RCW 13.40.145.

11 (4) A defendant or juvenile offender who has been sentenced to pay
12 costs and who is not in contumacious default in the payment thereof may
13 at any time petition the court that sentenced the defendant or juvenile
14 offender for remission of the payment of costs or of any unpaid portion
15 thereof. If it appears to the satisfaction of the sentencing court
16 that payment of the amount due will impose manifest hardship on the
17 defendant, the defendant's immediate family, or the juvenile offender,
18 the sentencing court may remit all or part of the amount due in costs,
19 or modify the method of payment under RCW 10.01.170.

20 (5) The parents or another person legally obligated to support a
21 juvenile offender who has been ordered to pay appellate costs pursuant
22 to RCW 13.40.145 and who is not in contumacious default in the payment
23 thereof may at any time petition the court that sentenced the juvenile
24 offender for remission of the payment of costs or of any unpaid portion
25 thereof. If it appears to the satisfaction of the sentencing court
26 that payment of the amount due will impose manifest hardship on the
27 parents or another person legally obligated to support a juvenile
28 offender or on their immediate families, the sentencing court may remit
29 all or part of the amount due in costs, or may modify the method of
30 payment.

31 **Sec. 3.** RCW 13.40.145 and 1984 c 86 s 1 are each amended to read
32 as follows:

33 Upon disposition or at the time of a modification or at the time an
34 appellate court remands the case to the trial court following a ruling
35 in favor of the state the court may order the juvenile or a parent or
36 another person legally obligated to support the juvenile to appear, and
37 the court may inquire into the ability of those persons to pay a
38 reasonable sum representing in whole or in part the fees for legal

1 services provided by publicly funded counsel and the costs incurred by
2 the public in producing a verbatim report of proceedings and clerk's
3 papers for use in the appellate courts.

4 If, after hearing, the court finds the juvenile, parent, or other
5 legally obligated person able to pay part or all of the attorney's fees
6 and costs incurred on appeal, the court may enter such order or decree
7 as is equitable and may enforce the order or decree by execution, or in
8 any way in which a court of equity may enforce its decrees.

9 In no event may the court order an amount to be paid for attorneys'
10 fees that exceeds the average per case fee allocation for juvenile
11 proceedings in the county where the services have been provided or the
12 average per case fee allocation for juvenile appeals established by the
13 Washington supreme court.

14 In any case in which there is no compliance with an order or decree
15 of the court requiring a juvenile, parent, or other person legally
16 obligated to support the juvenile to pay for legal services provided by
17 publicly funded counsel, the court may, upon such person or persons
18 being properly summoned or voluntarily appearing, proceed to inquire
19 into the amount due upon the order or decree and enter judgment for
20 that amount against the defaulting party or parties. Judgment shall be
21 docketed in the same manner as are other judgments for the payment of
22 money.

23 The county in which such judgments are entered shall be denominated
24 the judgment creditor, and the judgments may be enforced by the
25 prosecuting attorney of that county. Any moneys recovered thereon
26 shall be paid into the registry of the court and shall be disbursed to
27 such person, persons, agency, or governmental entity as the court finds
28 entitled thereto.

29 Such judgments shall remain valid and enforceable for a period of
30 ten years subsequent to entry.

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