
HOUSE BILL 1237

State of Washington

54th Legislature

1995 Regular Session

By Representatives Padden, Foreman, Honeyford, Chandler, Mielke, Johnson, Blanton, Goldsmith, Clements, Hickel, Dyer, Backlund, Schoesler, McMahan, Boldt, Sheahan, Koster, Sherstad and Smith

Read first time 01/18/95. Referred to Committee on Law and Justice.

1 AN ACT Relating to indigent persons; amending RCW 13.40.145; and
2 adding new sections to chapter 10.73 RCW.

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (2) Appellate costs are limited to expenses specifically incurred
31 by the state in prosecuting or defending an appeal or collateral attack
32 from a criminal conviction or sentence. Appellate costs shall not
33 include expenditures in connection with the maintenance and operation
34 of government agencies that must be made irrespective of specific
35 violations of the law. Expenses incurred for producing a verbatim
36 report of proceedings and clerk's papers may be included in costs the
37 court may require a convicted defendant or juvenile offender to pay.

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

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

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

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

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

1 the public in producing a verbatim report of proceedings and clerk's
2 papers for use in the appellate courts.

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

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

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

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

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

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