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## Judiciary Committee

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### SB 5376

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

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

**Sponsors:** Senators Sheldon and Padden.

#### Brief Summary of Bill

- Makes changes to provisions governing indigency determinations for the purposes of appointment of counsel, including to expressly require a determination of whether or not a person is indigent and able to contribute.
- Revises 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.

**Hearing Date:** 3/16/17

**Staff:** Edie Adams (786-7180).

#### Background:

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, and dependency proceedings, among others. When a person is entitled to counsel but is financially unable to obtain an attorney, the government must appoint an attorney 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.*

Under statute, a person is entitled to the appointment of an attorney if the person is indigent. A person is "indigent" if the person, at any stage of the proceedings, is:

- receiving a type of public assistance listed in statute;
- involuntarily committed to a public mental health facility;
- receiving an annual income of less than 125 percent of the federal poverty level; or
- unable to pay the anticipated cost of counsel because his or her funds are insufficient to pay any amount for the retention of counsel.

A person who meets any of these four criteria is considered indigent. A person who is indigent may nonetheless be found able to contribute to the costs of his or her defense. A person is "indigent and able to contribute" if the person, 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. Under a 2011 Washington Supreme Court decision, a person who is found indigent based on receipt of public assistance is presumptively indigent but may be found indigent and able to contribute if the person has sufficient assets to contribute to a portion of the cost of counsel.

A determination of indigency must be made for all persons wishing the appointment of counsel. In determining whether a person is indigent or indigent and able to contribute, the court or the court's designee considers the person's available funds, which consist of liquid assets and disposable net monthly income. Liquid assets include cash, bank 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. In addition, the court or court's designee must consider the anticipated length and complexity of the proceedings, the usual and customary charges of an attorney in the community for rendering services, and any other relevant circumstances presented to the court. Appointment of counsel may not be denied on the basis that the person posted or is capable of posting bond, or that the person's friends or relatives (other than a spouse who is not a victim) have resources adequate to retain counsel.

A person found indigent and able to contribute must execute a promissory note at the time counsel is appointed, and the person must be informed whether payment must be made in the form of a lump sum payment or periodic payments. The person receiving the appointment of counsel 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.

The Office of Public Defense (OPD) is responsible for administering state-funded services associated with indigent defense and contracts with attorneys to provide counsel for indigent parties in criminal appeals, dependency proceedings, and sexually violent predator civil commitments. The OPD is statutorily required to recommend standards for determining and verifying indigency and must, as part of this process, compile standards used by other states and periodically report to the Legislature regarding these standards. The OPD has developed an indigency screening form for use by the trial courts and provides periodic trainings and information concerning indigency screening standards.

### **Summary of Bill:**

The definition of "indigent and able to contribute" is revised to mean a person who, at any stage of the proceeding, satisfies any of the statutory criteria in the definition of "indigent" and who is found also to have available funds to pay a portion of the anticipated cost of counsel for the matter before the court.

When making a determination of indigency, the court or court's designee must also make a determination of whether the person is indigent and able to contribute. A person found indigent and able to contribute must be informed of the costs for which he or she is responsible, in addition to whether payment must be made in a lump sum or in periodic payments.

A person appointed counsel must include in the required sworn affidavit the person's living costs in addition to income and assets. The current requirement that a person appointed counsel swear in an affidavit to immediately report any change in financial status to the court is removed.

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.

The Office of Public Defense (OPD) must periodically offer training for the offices and individuals designated by the courts as responsible for determining indigency and is encouraged to use distance learning technologies to deliver the trainings. 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 counsel.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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