

# HOUSE BILL REPORT

## SHB 1237

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### As Passed Legislature

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

**Brief Description:** Specifying responsibility for payment of costs incurred on appeal by indigent persons.

**Sponsors:** By House Committee on Law & Justice (originally sponsored by Representatives Padden, Foreman, Honeyford, Chandler, Mielke, Johnson, Blanton, Goldsmith, Clements, Hickel, Dyer, Backlund, Schoesler, McMahan, Boldt, Sheahan, Koster, Sherstad and Smith).

**Brief History:**

**Committee Activity:**

Law & Justice: 1/18/95, 1/24/95, 1/25/95, 1/31/95 [DPS].

**Floor Activity:**

Passed House: 2/17/95, 82-12.

Senate Amended.

House Concurred.

Passed Legislature.

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### HOUSE COMMITTEE ON LAW & JUSTICE

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 15 members: Representatives Padden, Chair; Delvin, Vice Chair; Hickel, Vice Chair; Appelwick, Ranking Minority Member; Costa, Assistant Ranking Minority Member; Carrell; Chappell; Cody; Lambert; McMahan; Morris; Robertson; Sheahan; Smith and Veloria.

**Staff:** Pat Shelledy (786-7149).

**Background:** The state must provide an indigent defendant with appointed counsel at state expense to assist the defendant in prosecuting a first appeal that is granted as a matter of right. A number of statutes and court rules limit the prosecution of subsequent appeals and collateral attacks. The prosecutor's position is that neither the federal nor state constitution requires the state to provide counsel at state expense for collateral attacks. Federal law provides that the federal constitution does not require appointment of counsel at state expense for collateral attacks.

The court determines whether to appoint counsel at public expense on a case-by-case basis in accordance with applicable court rules.

The court may order a convicted defendant to pay costs based on certain criteria. The statute that authorizes recoupment of costs does not expressly include or exclude costs on appeal.

When a juvenile is adjudicated of an offense, the court may order the juvenile, the juvenile's parent, or another person legally obligated to support the juvenile to pay for publicly funded counsel based on ability to pay. No statutory provision exists for payment of attorneys' fees or costs on appeal.

**Summary of Bill:** Restrictions are placed on providing counsel for indigent adults and juveniles convicted of offenses when filing petitions for "collateral attack" and motions for discretionary review.

Counsel will be provided at public expense to an adult defendant convicted of a crime and a juvenile offender convicted of an offense when the offender:

- Files a direct appeal as a matter of right;

- Responds to the state's direct or discretionary appeal;

- Faces the death penalty and files a first collateral attack. The court may appoint counsel in a death penalty case to file a second or subsequent attack if the court determines the attack is not frivolous or time-barred.

- Files a first collateral attack that the chief judge has determined is not frivolous;

- Responds to a collateral attack by the state or files an appeal of a decision on a collateral attack filed by the state;

- Pursues a motion or petition for review upholding a decision from a court of limited jurisdiction after the Supreme Court or an appellate court has accepted discretionary review; and

- Pursues a motion or petition for review of an appellate court decision after the Supreme Court has accepted discretionary review.

Counsel will not be provided at state expense for an indigent person:

- Who is facing the death penalty and files a second or subsequent collateral attack is frivolous or time-barred; or

Who files and prosecutes a first collateral attack that is determined to be frivolous, or files a second or subsequent collateral attack.

The court of appeals, Supreme Court, and superior courts may require an adult or a juvenile convicted of an offense to pay appellate costs. The juvenile's parents or another person legally obligated to support a juvenile may also be required to pay appellate costs.

Costs are limited to expenses specifically incurred by the state in prosecuting or defending an appeal or a collateral attack from a criminal conviction.

A defendant, juvenile offender, or the juvenile's parents, or other legal guardian required to pay costs may ask the court for relief from the obligation if payment will impose a manifest hardship on the defendant, the defendant's immediate family, the juvenile offender, or the juvenile offender's parents or immediate family. If the court finds that payment will impose a manifest hardship, the court may relieve the obligated party to pay the costs or may modify the payment schedule.

**Appropriation:** None.

**Fiscal Note:** Requested January 16, 1995.

**Effective Date of Bill:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** The court is not constitutionally required to appoint counsel to assist a convicted offender to pursue collateral attacks or motions or petitions for discretionary review. The Legislature needs to specify when the Legislature considers that it is appropriate to appoint counsel at public expense when appointment of counsel is not constitutionally required. The court appoints counsel for motions for discretionary review or personal restraint petitions when it is not constitutionally required at the taxpayers' expense.

**Testimony Against:** The bill is unnecessary because the court rarely appoints counsel for collateral attacks and, when it does, the appointment is made to assist the court with briefing the issues. The Washington State Supreme Court has not ruled on the constitutional rights of defendants to appointment of counsel in collateral attacks, and consequently the Legislature should wait for the court's decision. The legislation will not save the state much money because of the few appointments.

**Testified:** Suzanne Elliott, Washington Defenders Association and Washington Association of Criminal Defense Lawyers (con); Pam Loginsky, Kitsap County Prosecuting Attorney's Office (pro); and Tom McBride, Washington Association of Prosecuting Attorneys (pro).