

SENATE BILL REPORT

SHB 1237

As Reported By Senate Committee On:
Law & Justice, March 28, 1995
Ways & Means, April 3, 1995

Title: An act relating to indigent persons.

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

Sponsors: 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: 3/21/95, 3/28/95 [DP-WM].
Ways & Means: 4/3/95 [DP]

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators Smith, Chair; C. Anderson, Vice Chair; Hargrove, Haugen, Johnson, Long, McCaslin, Roach and Schow.

Staff: Cynthia Runger (786-7717)

Background: The state must provide an indigent defendant with appointed counsel at state expense to assist the defendant in prosecuting his or her first direct appeal that is granted as a matter of right. According to both federal and state law, neither the federal nor state Constitution requires the state to provide counsel at state expense for collateral attacks.

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, or 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.

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 imposes 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 imposes a manifest hardship, the court may relieve the obligated party to pay the costs or may modify the payment schedule.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: Hundreds of appeals and collateral attacks are filed by indigent defendants at a substantial cost to the state. There is no constitutional right to state funded counsel for appeals other than appeals granted as a matter of right. Adopting the bill will save the state money and will reduce the number of frivolous appeals.

Testimony Against: The Washington Supreme Court just created a commission to deal with the issue of indigent defense. The court is well qualified to handle this issue. Counsel is rarely appointed for indigent defendants who raise collateral attacks, but when counsel is appointed, it is for good reason. This bill absolutely bars judges from appointing counsel on second collateral attacks.

Testified: Tom McBride, WAPA (pro); Pam Loginsky, Kitsap County Prosecuting Attorney (pro); Seth Fine, Snohomish County Prosecuting Attorney (pro); David Zukerman, Washington Association of Criminal Defense Lawyers (con).

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

Signed by Senators Rinehart, Chair; Cantu, Drew, Finkbeiner, Fraser, Hochstatter, Johnson, Long, McDonald, Pelz, Quigley, Roach, Snyder, Spanel, Strannigan, West, Winsley and Wojahn.

Staff: Linda Brownell (786-7913)

Testimony For: Prosecutors support this bill which deals with the provision of state funds for indigent defense when the State Constitution does not mandate the expenditure.

Testimony Against: There is currently a case before the Supreme Court, therefore legislative action should be postponed until the case is settled.

Testified: Sherry Appleton, WDA/WACOL (con); Tom McBride, WAPA (pro).