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SENATE BILL 5311

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State of Washington

54th Legislature

1995 Regular Session

By Senators Haugen and McCaslin

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

1 AN ACT Relating to repayment of cost of counsel provided to  
2 indigent persons; and amending RCW 10.101.005 and 10.101.020.

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

4 **Sec. 1.** RCW 10.101.005 and 1989 c 409 s 1 are each amended to read  
5 as follows:

6 The legislature finds that effective legal representation should be  
7 provided for indigent persons and persons who are indigent and able to  
8 contribute, consistent with the constitutional requirements of  
9 fairness, equal protection, and due process in all cases where the  
10 right to counsel attaches. The legislature further finds that a person  
11 who is able to contribute for legal services should make that  
12 contribution regardless of whether that person is found guilty or not  
13 guilty, or whether the charge is dismissed for any reason.

14 **Sec. 2.** RCW 10.101.020 and 1989 c 409 s 3 are each amended to read  
15 as follows:

16 (1) A determination of indigency shall be made for all persons  
17 wishing the appointment of counsel in (~~criminal, juvenile, involuntary~~  
18 ~~commitment, and dependency cases, and any other case where the right to~~

1 ~~counsel attaches~~) misdemeanor and gross misdemeanor criminal cases.  
2 The ~~((court))~~ legislative authority or its designee shall determine  
3 whether the person is indigent pursuant to the standards set forth in  
4 this chapter. The legislative authority may designate the court to  
5 make the determination of indigency.

6 (2) In making the determination of indigency, the ~~((court))~~  
7 legislative authority or its designee shall also consider the  
8 anticipated length and complexity of the proceedings and the usual and  
9 customary charges of an attorney in the community for rendering  
10 services, and any other circumstances presented to the court which are  
11 relevant to the issue of indigency. The appointment of counsel shall  
12 not be denied to the person because the person's friends or relatives,  
13 other than a spouse who was not the victim of any offense or offenses  
14 allegedly committed by the person, have resources adequate to retain  
15 counsel, or because the person has posted or is capable of posting  
16 bond.

17 (3) The determination of indigency shall be made upon the  
18 defendant's initial contact with the ~~((court))~~ legislative authority or  
19 its designee or at the earliest time circumstances permit. The  
20 ~~((court))~~ legislative authority or its designee shall keep a written  
21 record of the determination of indigency. Any information given by the  
22 accused under this section or sections shall be confidential and shall  
23 not be available for use by the prosecution in the pending case.

24 (4) If a determination of eligibility cannot be made before the  
25 time when the first services are to be rendered, the ~~((court))~~  
26 legislative authority or its designee shall appoint an attorney on a  
27 provisional basis. If the ~~((court))~~ legislative authority or its  
28 designee subsequently determines that the person receiving the services  
29 is ineligible, the ~~((court))~~ legislative authority or its designee  
30 shall notify the person of the termination of services, subject to  
31 ~~((court-ordered))~~ reinstatement.

32 (5) All persons determined to be indigent ~~((and able to~~  
33 ~~contribute,))~~ shall not be required to execute a promissory note at the  
34 time counsel is appointed. The legislative authority or its designee  
35 may, at the time counsel is appointed, require a person to execute a  
36 promissory note if it determines that there is a reasonable basis to  
37 find that the individual could make a contribution toward recoupment of  
38 attorney fees. The ~~((person shall be informed whether payment shall be~~  
39 ~~made in the form of a lump sum payment or periodic payments.~~ The

1 ~~payment and payment schedule must be set forth in writing~~) note must  
2 include the following terms and provisions:

3 (a) The face amount shall be for the amount of costs not to exceed  
4 the anticipated cost of services to be rendered. This amount may be  
5 adjusted downward at the conclusion of the representation to reflect  
6 the actual cost of services rendered.

7 (b) Payment may be either a single lump sum or divided into  
8 installments.

9 (c) Interest shall be fixed at the rate paid on United States  
10 Treasury ninety-day obligations at the time the note is initially  
11 prepared and signed.

12 (d) The maturity of the note may not be fixed at more than five  
13 years from the date the note is signed.

14 (e) The note shall contain a provision that payments may be  
15 deferred or forgiven if the maker's indigency continues to maturity of  
16 the note. The maker must affirmatively initiate the showing of  
17 continued indigency in accordance with procedures established by the  
18 governing body or its designee.

19 (f) The note shall contain provisions that collection costs  
20 incurred, including reasonable attorneys' fees, shall be added to the  
21 principal balance due and that the note may be assigned to a private  
22 collection agency under RCW 19.16.500. When the note is assigned for  
23 collection, the maker waives the right to have the note deferred or  
24 forgiven under (e) of this subsection. The person receiving the  
25 appointment of counsel shall also sign an affidavit swearing under  
26 penalty of perjury that all income and assets reported are complete and  
27 accurate. In addition, the person must swear in the affidavit to  
28 immediately report any change in financial status to the ((court))  
29 legislative authority or its designee.

30 (6) The office or individual charged by the ((court)) legislative  
31 authority or its designee to make the determination of indigency shall  
32 provide a written report and opinion as to indigency on a form  
33 prescribed by the office of the administrator for the courts, based on  
34 information obtained from the defendant and subject to verification.  
35 The form shall include information necessary to provide a basis for  
36 making a determination with respect to indigency as provided by this  
37 chapter.

38 (7) If a person is denied an attorney based on a determination that  
39 the person is not indigent, or if the maker of the note is not granted

1 deferment or forgiveness of the note under subsection (6)(e) of this  
2 section, that person has ten working days to appeal to the court that  
3 has or had jurisdiction over that person's case if the person has  
4 received written notice to appeal. The court shall certify its  
5 findings on the issues appealed to the legislative authority or its  
6 designee.

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