

SENATE BILL REPORT

ESSB 5020

As Passed Senate, February 17, 2014

Title: An act relating to indigent defense.

Brief Description: Modifying indigent defense provisions.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Sheldon and Carrell).

Brief History:

Committee Activity: Law & Justice: 1/21/13, 2/04/13, 2/08/13 [DPF, DNP, w/oRec];
1/24/14, 2/05/14 [DPS, DNP, w/oRec].
Passed Senate: 2/17/14, 27-20.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5020 be substituted therefor, and the substitute bill do pass.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pearson and Roach.

Minority Report: Do not pass.

Signed by Senators Darneille and Pedersen.

Minority Report: That it be referred without recommendation.

Signed by Senator Kline, Ranking Member.

Staff: Aldo Melchiori (786-7439)

Background: A person has a constitutional right to counsel, and counsel must be provided to a person who has insufficient funds to retain counsel. Under current law, indigent is a person who, at any stage of a court proceeding, receives public assistance, is involuntarily committed to a public mental health facility, has an annual income of 125 percent or less of the current federally established poverty level, or is unable to pay the anticipated cost of counsel. Indigent and able to contribute is a person who, at any stage of a court proceeding, is unable to pay the anticipated cost of counsel because the person's available funds are less than the anticipated cost of counsel but sufficient for the person to pay a portion of the cost. Under current law, a person who is indigent and able to contribute must execute a promissory note at the time counsel is appointed.

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.

Summary of Engrossed Substitute Bill: The definition of indigent and able to contribute is changed to mean a person who, at any stage of a court proceeding, meets the criteria for indigency, but who is also found to also have available funds to pay a portion of the anticipated cost of counsel. A person receiving the appointment of counsel must sign an affidavit swearing that all income, assets, and living costs reported are complete and accurate. The Office of Public Defense (OPD) must periodically offer training for those responsible for determining indigency. OPD must also periodically survey attorney fees statewide and publish the results to assist courts in identifying the customary charges for retaining private counsel. A motor vehicle with a value not greater than \$6,000 is not considered a liquid asset.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony:

Testimony From 2013 Regular Session.

PRO: Counties and cities lack the necessary resources to provide defense for all people who request it. The anticipated costs from the Washington Supreme Court's order that requires criminal defense caseload standards will be decreased by individuals contributing to their own defense. Counties and cities will be able to provide quality defense for individuals with the least amount of resources. A more thorough review of a person's available resources will result in an accurate determination of whether a person fits within the definitions of indigent. Taxpayer costs are reduced when a person contributes available funds to retain counsel.

CON: Tightening the definition of indigent stems from a fiscal concern, rather than a constitutional concern under the Sixth Amendment. Stricter criteria for determining whether a person is indigent will deny people defense, thus, subjecting counties and cities to risks of litigation. The number of pro se defendants will increase, and hinder judicial efficiency.

OTHER: OPD reviews the statute's effect on indigent defense. OPD's reports find that the screening by DSHS is rigorous.

Testimony From 2014 Regular Session.

CON: This will slow down the screening process and increase the cost of indigency assessments. The definition of able to contribute should exclude people receiving public benefits. The screening process would allow improper ex parte contact between the judge and the defendant. The state should adequately fund courts instead of trying to recover costs from indigent defendants. Indigent defendants should not need to pay a portion of the costs for inadequate counsel. The public defender is unable to represent the defendant while the determination is being made and this will extend that time.

OTHER: Some people on public assistance do have some assets that could be used to partially fund their defense. There is no widespread abuse of the public defense system.

There is some value of making sure that the screening process is robust. Defendants often overstate their assets, so this more robust screening system may help them qualify for more legal assistance.

Persons Testifying:

Persons Testifying From 2013 Regular Session.

PRO: Senator Sheldon, prime sponsor; Candice Bock, Assn. of WA Cities; Brian Enslow, WA State Assn. of Counties.

CON: Ramona Brandes, WA Assn. of Criminal Defense Lawyers and WA Defenders Assn.

OTHER: Sophia Byrd McSherry, WA State Office of Public Defense.

Persons Testifying From 2014 Regular Session.

CON: Larry Jefferson, WA Defenders' Assn., WA Assn. of Criminal Defense Lawyers; Arthur West, NW Poverty Law Center; David Montgomery, citizen.

OTHER: Sophia Byrd McSherry, WA State OPD.