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**SENATE BILL 5376**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Senators Sheldon and Padden

AN ACT Relating to indigent defense; amending RCW 10.101.020 and 2.70.020; and reenacting and amending RCW 10.101.010.

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

**Sec.**  RCW 10.101.010 and 2011 1st sp.s. c 36 s 12 are each reenacted and amended to read as follows:

The following definitions shall be applied in connection with this chapter:

(1) "Anticipated cost of counsel" means the cost of retaining private counsel for representation on the matter before the court.

(2) "Available funds" means liquid assets and disposable net monthly income calculated after provision is made for bail obligations. For the purpose of determining available funds, the following definitions shall apply:

(a) "Liquid assets" means cash, savings accounts, bank accounts, stocks, bonds, certificates of deposit, equity in real estate, and equity in motor vehicles. A motor vehicle necessary to maintain employment and having a market value not greater than ((~~three~~)) six thousand dollars shall not be considered a liquid asset.

(b) "Income" means salary, wages, interest, dividends, and other earnings which are reportable for federal income tax purposes, and cash payments such as reimbursements received from pensions, annuities, social security, and public assistance programs. It includes any contribution received from any family member or other person who is domiciled in the same residence as the defendant and who is helping to defray the defendant's basic living costs.

(c) "Disposable net monthly income" means the income remaining each month after deducting federal, state, or local income taxes, social security taxes, contributory retirement, union dues, and basic living costs.

(d) "Basic living costs" means the average monthly amount spent by the defendant for reasonable payments toward living costs, such as shelter, food, utilities, health care, transportation, clothing, loan payments, support payments, and court-imposed obligations.

(3) "Indigent" means a person who, at any stage of a court proceeding, is:

(a) Receiving one of the following types of public assistance: Temporary assistance for needy families, aged, blind, or disabled assistance benefits, medical care services under RCW 74.09.035, pregnant women assistance benefits, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, medicaid, or supplemental security income; or

(b) Involuntarily committed to a public mental health facility; or

(c) Receiving an annual income, after taxes, of one hundred twenty- five percent or less of the current federally established poverty level; or

(d) Unable to pay the anticipated cost of counsel for the matter before the court because his or her available funds are insufficient to pay any amount for the retention of counsel.

(4) "Indigent and able to contribute" means a person who, at any stage of a court proceeding, ((~~is unable to pay the anticipated cost of counsel for the matter before the court because his or her available funds are less than the anticipated cost of counsel but sufficient for the person~~)) satisfies the criteria of subsection (3) of this section and who, under the standards identified in RCW 10.101.020, is found to also have available funds to pay a portion of ((~~that~~)) the anticipated cost of counsel for the matter before the court.

**Sec.**  RCW 10.101.020 and 1997 c 41 s 5 are each amended to read as follows:

(1) A determination ((~~of indigency~~)) that a person is indigent or indigent and able to contribute shall be made for all persons wishing the appointment of counsel in criminal, juvenile, involuntary commitment, and dependency cases, and any other case where the right to counsel attaches. The court or its designee shall determine whether the person is indigent or indigent and able to contribute pursuant to the standards set forth in this chapter.

(2) In making the determination ((~~of indigency~~)) that a person is indigent or indigent and able to contribute, the court shall also consider the anticipated length and complexity of the proceedings and the usual and customary charges of an attorney in the community for rendering services, and any other circumstances presented to the court which are relevant to the issue of indigency. The appointment of counsel shall not be denied to the person because the person's friends or relatives, other than a spouse who was not the victim of any offense or offenses allegedly committed by the person, have resources adequate to retain counsel, or because the person has posted or is capable of posting bond.

(3) The determination ((~~of indigency~~)) that a person is indigent or indigent and able to contribute shall be made upon the defendant's initial contact with the court or at the earliest time circumstances permit. The court or its designee shall keep a written record of the determination of indigency. Any information given by the accused under this ((~~section or sections~~)) chapter shall be confidential and shall not be available for use by the prosecution in the pending case.

(4) If a determination of eligibility cannot be made before the time when the first services are to be rendered, the court shall appoint an attorney on a provisional basis. If the court subsequently determines that the person receiving the services is ineligible, the court shall notify the person of the termination of services, subject to court-ordered reinstatement.

(5) A person receiving the appointment of counsel shall sign an affidavit swearing under penalty of perjury that all income, assets, and living costs reported are complete and accurate.

(6) All persons determined to be indigent and able to contribute, shall be required to execute a promissory note at the time counsel is appointed. The person shall be informed of the costs for which he or she is responsible and whether payment shall be made in the form of a lump sum payment or periodic payments. The payment and payment schedule must be set forth in writing. ((~~The person receiving the appointment of counsel shall also sign an affidavit swearing under penalty of perjury that all income and assets reported are complete and accurate. In addition, the person must swear in the affidavit to immediately report any change in financial status to the court.~~

~~(6)~~)) (7) The office or individual charged by the court to make the determination ((~~of indigency~~)) that a person is indigent or indigent and able to contribute shall provide a written report and opinion as to indigency on a form prescribed by the office of public defense, based on information obtained from the defendant and subject to verification. The form shall include information necessary to provide a basis for making a determination with respect to indigency as provided by this chapter.

**Sec.**  RCW 2.70.020 and 2012 c 257 s 1 are each amended to read as follows:

(1) The director shall:

((~~(1)~~)) (a) Administer all state-funded services in the following program areas:

((~~(a)~~)) (i) Trial court criminal indigent defense, as provided in chapter 10.101 RCW;

((~~(b)~~)) (ii) Appellate indigent defense, as provided in this chapter;

((~~(c)~~)) (iii) Representation of indigent parents qualified for appointed counsel in dependency and termination cases, as provided in RCW 13.34.090 and 13.34.092;

((~~(d)~~)) (iv) Extraordinary criminal justice cost petitions, as provided in RCW 43.330.190;

((~~(e)~~)) (v) Compilation of copies of DNA test requests by persons convicted of felonies, as provided in RCW 10.73.170;

((~~(f)~~)) (vi) Representation of indigent respondents qualified for appointed counsel in sexually violent predator civil commitment cases, as provided in chapter 71.09 RCW;

((~~(2)~~)) (b) Submit a biennial budget for all costs related to the office's program areas;

((~~(3)~~)) (c) Establish administrative procedures, standards, and guidelines for the office's program areas, including cost-efficient systems that provide for authorized recovery of costs;

((~~(4)~~)) (d) Provide oversight and technical assistance to ensure the effective and efficient delivery of services in the office's program areas;

((~~(5)~~)) (e) Recommend criteria and standards for determining and verifying indigency. In recommending criteria for determining indigency, the director shall compile and review the indigency standards used by other state agencies and shall periodically submit the compilation and report to the legislature on the appropriateness and consistency of such standards. The office of public defense shall periodically (i) offer training for the offices and individuals designated by the courts as responsible for determining indigency pursuant to RCW 10.101.020. To maximize efficiencies and statewide participation the office of public defense is encouraged to utilize distance learning technologies to deliver the training required by this section; and (ii) survey attorneys' fees statewide and publish the results to assist courts and their designees in identifying the usual and customary charges for retaining private counsel as provided in RCW 10.101.020(2);

((~~(6)~~)) (f) Collect information regarding indigent defense services funded by the state and report annually to the advisory committee, the legislature, and the supreme court;

((~~(7)~~)) (g) Coordinate with the supreme court and the judges of each division of the court of appeals to determine how appellate attorney services should be provided.

(2) The office of public defense shall not provide direct representation of clients.

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