

# SENATE BILL REPORT

## SB 5376

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As Reported by Senate Committee On:  
Law & Justice, February 1, 2017

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

**Brief Description:** Modifying indigent defense provisions.

**Sponsors:** Senators Sheldon and Padden.

**Brief History:**

**Committee Activity:** Law & Justice: 1/25/17, 2/01/17 [DP, DNP].

### Brief Summary of Bill

- Requires the court to determine if a defendant is either indigent or indigent and able to contribute to defense costs based on the defendant's financial information.
- Bases the decision on the defendant's financial information in a sworn statement of income, assets, and living costs.
- Defines when the defendant is indigent and able to contribute.
- Directs the court to tell the defendant the amount they must pay and the payment terms.
- Requires the Office of Public Defense to provide periodic statewide training.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** Do pass.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Angel and Wilson.

**Minority Report:** Do not pass.

Signed by Senators Pedersen, Ranking Minority Member; Darneille and Frockt.

**Staff:** Aldo Melchiori (786-7439)

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*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.*

**Background:** The courts must provide legal assistance to anyone who cannot afford to hire a lawyer to defend them in criminal, juvenile, involuntary commitment, and dependency cases. A defendant who requests a court-paid lawyer must disclose all income, assets, and living costs in a sworn statement. Local courts decide if the defendant qualifies for a court-paid lawyer based on the sworn statement, typical local defense attorney costs, and the difficulty of the case. If the defendant has enough available funds, they must pay some of the defense costs.

Available funds are liquid assets and disposable net monthly income. Indigent means a person who, at any stage of a court proceeding, is:

- receiving temporary assistance for needy families, aged, blind, or disabled assistance benefits, medical care services, pregnant women assistance benefits, poverty-related veterans' benefits, food stamps, refugee resettlement benefits, Medicaid, or supplemental security income;
- involuntarily committed to a public mental health facility;
- receiving an annual income, after taxes, of 125 percent or less of the current federally established poverty level; or
- 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.

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 their available funds are less than the anticipated cost of counsel but sufficient for the person to pay a portion of the cost.

The state's Office of Public Defense (OPD) provides administrative services and state funds to local courts to improve the quality of local public defense services.

**Summary of Bill:** The local courts must determine if a defendant is either indigent or indigent and able to contribute to defense costs based on the defendant's financial information. The defendant provides financial information in a sworn statement of income, assets, and living costs. The court must keep the defendant's financial information confidential.

When the defendant is indigent and able to contribute, the court tells the defendant the amount they must pay and the payment terms. The defendant must sign a promissory note guaranteeing payment.

The OPD must provide periodic statewide training and use distance learning technology. The OPD must complete an attorneys' fees survey for right to counsel cases. The survey results must be publicly available.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

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

**Staff Summary of Public Testimony:** PRO: This will not significantly affect county budgets. Ninety-six percent of indigent defense is currently paid by counties. The state should more adequately fund indigent defense.

CON: Indigent defense is constitutionally mandated. The cost of doing these inquiries is likely to be more than the funds recovered.

OTHER: The OPD already provides training for evaluating the need for indigent defense. The OPD has information about indigent defense use. Attorney fees for a typical felony drug case costs approximately \$13,750 and a typical Class A felony case costs approximately \$30,000.

**Persons Testifying:** PRO: Julianna Roe, Washington State Association of Counties.

CON: Arthur West, citizen.

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

**Persons Signed In To Testify But Not Testifying:** No one.