

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1237

Chapter 275, Laws of 1995

54th Legislature
1995 Regular Session

INDIGENT PERSONS--RIGHT TO COUNSEL--COURT FEES AND COSTS

EFFECTIVE DATE: 7/23/95

Passed by the House April 20, 1995
Yeas 93 Nays 3

CLYDE BALLARD

**Speaker of the
House of Representatives**

Passed by the Senate April 14, 1995
Yeas 47 Nays 1

JOEL PRITCHARD

President of the Senate

Approved May 9, 1995

MIKE LOWRY

Governor of the State of Washington

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1237** as passed by the House of Representatives and the Senate on the dates hereon set forth.

TIMOTHY A. MARTIN

Chief Clerk

FILED

May 9, 1995 - 3:37 p.m.

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1237

AS AMENDED BY THE SENATE

Passed Legislature - 1995 Regular Session

State of Washington 54th Legislature 1995 Regular Session

By 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)

Read first time 02/01/95.

1 AN ACT Relating to indigent persons; amending RCW 13.40.145; adding
2 new sections to chapter 10.73 RCW; and creating a new section.

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

4 NEW SECTION. **Sec. 1.** The legislature is aware that the
5 constitutional requirements of equal protection and due process require
6 that counsel be provided for indigent persons and persons who are
7 indigent and able to contribute for the first appeal as a matter of
8 right from a judgment and sentence in a criminal case or a juvenile
9 offender proceeding, and no further. There is no constitutional right
10 to appointment of counsel at public expense to collaterally attack a
11 judgment and sentence in a criminal case or juvenile offender
12 proceeding or to seek discretionary review of a lower appellate court
13 decision.

14 The legislature finds that it is appropriate to extend the right to
15 counsel at state expense beyond constitutional requirements in certain
16 limited circumstances to persons who are indigent and persons who are
17 indigent and able to contribute as those terms are defined in RCW
18 10.101.010.

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 10.73 RCW
2 to read as follows:

3 Counsel shall be provided at state expense to an adult offender
4 convicted of a crime and to a juvenile offender convicted of an offense
5 when the offender is indigent or indigent and able to contribute as
6 those terms are defined in RCW 10.101.010 and the offender:

7 (1) Files an appeal as a matter of right;

8 (2) Responds to an appeal filed as a matter of right or responds to
9 a motion for discretionary review or petition for review filed by the
10 state;

11 (3) Is under a sentence of death and requests counsel be appointed
12 to file and prosecute a motion or petition for collateral attack as
13 defined in RCW 10.73.090. Counsel may be provided at public expense to
14 file or prosecute a second or subsequent collateral attack on the same
15 judgment and sentence, if the court determines that the collateral
16 attack is not barred by RCW 10.73.090 or 10.73.140;

17 (4) Is not under a sentence of death and requests counsel to
18 prosecute a collateral attack after the chief judge has determined that
19 the issues raised by the petition are not frivolous, in accordance with
20 the procedure contained in rules of appellate procedure 16.11. Counsel
21 shall not be provided at public expense to file or prosecute a second
22 or subsequent collateral attack on the same judgment and sentence;

23 (5) Responds to a collateral attack filed by the state or responds
24 to or prosecutes an appeal from a collateral attack that was filed by
25 the state;

26 (6) Prosecutes a motion or petition for review after the supreme
27 court or court of appeals has accepted discretionary review of a
28 decision of a court of limited jurisdiction; or

29 (7) Prosecutes a motion or petition for review after the supreme
30 court has accepted discretionary review of a court of appeals decision.

31 NEW SECTION. **Sec. 3.** A new section is added to chapter 10.73 RCW
32 to read as follows:

33 (1) The court of appeals, supreme court, and superior courts may
34 require an adult or a juvenile convicted of an offense or the parents
35 or another person legally obligated to support a juvenile offender to
36 pay appellate costs.

37 (2) Appellate costs are limited to expenses specifically incurred
38 by the state in prosecuting or defending an appeal or collateral attack

1 from a criminal conviction or sentence or a juvenile offender
2 conviction or disposition. Appellate costs shall not include
3 expenditures to maintain and operate government agencies that must be
4 made irrespective of specific violations of the law. Expenses incurred
5 for producing a verbatim report of proceedings and clerk's papers may
6 be included in costs the court may require a convicted defendant or
7 juvenile offender to pay.

8 (3) Costs, including recoupment of fees for court appointed
9 counsel, shall be requested in accordance with the procedures contained
10 in Title 14 of the rules of appellate procedure and in Title 9 of the
11 rules for appeal of decisions of courts of limited jurisdiction. An
12 award of costs shall become part of the trial court judgment and
13 sentence. An award of costs in juvenile cases shall also become part
14 of any order previously entered in the trial court pursuant to RCW
15 13.40.145.

16 (4) A defendant or juvenile offender who has been sentenced to pay
17 costs and who is not in contumacious default in the payment may at any
18 time petition the court that sentenced the defendant or juvenile
19 offender for remission of the payment of costs or of any unpaid
20 portion. If it appears to the satisfaction of the sentencing court
21 that payment of the amount due will impose manifest hardship on the
22 defendant, the defendant's immediate family, or the juvenile offender,
23 the sentencing court may remit all or part of the amount due in costs,
24 or modify the method of payment under RCW 10.01.170.

25 (5) The parents or another person legally obligated to support a
26 juvenile offender who has been ordered to pay appellate costs pursuant
27 to RCW 13.40.145 and who is not in contumacious default in the payment
28 may at any time petition the court that sentenced the juvenile offender
29 for remission of the payment of costs or of any unpaid portion. If it
30 appears to the satisfaction of the sentencing court that payment of the
31 amount due will impose manifest hardship on the parents or another
32 person legally obligated to support a juvenile offender or on their
33 immediate families, the sentencing court may remit all or part of the
34 amount due in costs, or may modify the method of payment.

35 **Sec. 4.** RCW 13.40.145 and 1984 c 86 s 1 are each amended to read
36 as follows:

37 Upon disposition or at the time of a modification or at the time an
38 appellate court remands the case to the trial court following a ruling

1 in favor of the state the court may order the juvenile or a parent or
2 another person legally obligated to support the juvenile to appear, and
3 the court may inquire into the ability of those persons to pay a
4 reasonable sum representing in whole or in part the fees for legal
5 services provided by publicly funded counsel and the costs incurred by
6 the public in producing a verbatim report of proceedings and clerk's
7 papers for use in the appellate courts.

8 If, after hearing, the court finds the juvenile, parent, or other
9 legally obligated person able to pay part or all of the attorney's fees
10 and costs incurred on appeal, the court may enter such order or decree
11 as is equitable and may enforce the order or decree by execution, or in
12 any way in which a court of equity may enforce its decrees.

13 In no event may the court order an amount to be paid for attorneys'
14 fees that exceeds the average per case fee allocation for juvenile
15 proceedings in the county where the services have been provided or the
16 average per case fee allocation for juvenile appeals established by the
17 Washington supreme court.

18 In any case in which there is no compliance with an order or decree
19 of the court requiring a juvenile, parent, or other person legally
20 obligated to support the juvenile to pay for legal services provided by
21 publicly funded counsel, the court may, upon such person or persons
22 being properly summoned or voluntarily appearing, proceed to inquire
23 into the amount due upon the order or decree and enter judgment for
24 that amount against the defaulting party or parties. Judgment shall be
25 docketed in the same manner as are other judgments for the payment of
26 money.

27 The county in which such judgments are entered shall be denominated
28 the judgment creditor, and the judgments may be enforced by the
29 prosecuting attorney of that county. Any moneys recovered thereon
30 shall be paid into the registry of the court and shall be disbursed to
31 such person, persons, agency, or governmental entity as the court finds
32 entitled thereto.

33 Such judgments shall remain valid and enforceable for a period of
34 ten years subsequent to entry.

35 NEW SECTION. **Sec. 5.** If any provision of this act or its
36 application to any person or circumstance is held invalid, the
37 remainder of the act or the application of the provision to other
38 persons or circumstances is not affected.

Passed the House April 20, 1995.
Passed the Senate April 14, 1995.
Approved by the Governor May 9, 1995.
Filed in Office of Secretary of State May 9, 1995.