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## Civil Rights & Judiciary Committee

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### SSB 6215

**Brief Description:** Establishing a collaborative process to alleviate the burden on local courts to determine indigency through proof of receipt of public assistance.

**Sponsors:** Senate Committee on Law & Justice (originally sponsored by Senator Braun).

#### Brief Summary of Substitute Bill

- Provides that, for purposes of determining indigency and the appointment of counsel, online real-time verification of public assistance must be made available at no cost to all courts.
- Tasks the Office of Public Defense, in collaboration with specified state agencies, with promoting the utilization of online verification and providing training and technical assistance.

**Hearing Date:** 2/21/20

**Staff:** Cece Clynch (786-7195).

#### Background:

##### Determination of Indigency for Purposes of the Appointment of Counsel.

The United States and Washington constitutions, as well as state statutes and court rules, provide for the right to legal counsel for indigent persons in certain court proceedings, including criminal, juvenile, involuntary commitment, and dependency cases. A determination of indigency must be made for all persons wishing the appointment of counsel in these proceedings, as well as any other case in which the right to counsel attaches. It is the court, or its screener designee, that makes the determination of indigency. This must be done at a defendant's first contact with the court or at the earliest time permitted by the circumstances. If the determination cannot be made before the time when the first services are to be rendered, a court must appoint an attorney on a provisional basis. If a determination is later made that the person is not eligible, the court must notify the person of termination of services.

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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.*

"Indigent" is defined as a person who, at any stage of the court proceedings, is:

- receiving one of several types of public assistance;
- 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 the proceedings, 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 to pay a portion of that cost. Persons determined to be able to contribute are required to execute a promissory note at the time of appointment and be informed as to whether payment must be made in the form of a lump sum or periodic payments.

In making an indigency determination, the court must also consider the anticipated length and complexity of the proceedings and the usual and customary charges of an attorney in the community, and any other relevant circumstances presented to the court. It is expressly provided that appointment of counsel shall not be denied because a person's friends or relatives (other than a spouse who was not the victim of any offense(s) allegedly committed by the person) have adequate resources to retain counsel, or because the person has posted bail or is capable of posting bail.

The determination of indigency must be made in writing on a form prescribed by the Office of Public Defense (OPD) based on information obtained from the person and subject to verification. The statute provides for confidentiality of any information given, and expressly provides that this information shall not be available for use by the prosecution in the pending case.

On its website, the OPD includes links to the annual federal poverty guidelines, the sample indigency screening form developed per statutory direction, and statewide average private fee information that can be used as a tool for courts and screeners who may not have collected private fee information specific to their community. The sample indigency screening form includes a list of the various types of public assistance listed in the statutory definition, and asks persons applying to place an "x" next to any of the types of assistance that he or she is receiving. It also asks about employment, money from other sources, family members, whether the person owns his or her own home or vehicle, how much money is held in the bank or stocks and bonds, and the cost of routine living expenses and other expenses such as child support obligations.

#### Availability of Information Regarding the Receipt of Public Assistance.

Generally, for the protection of applicants and recipients, disclosure of the contents of records regarding public assistance by the Department of Social and Health Services and the Health Care Authority is prohibited. For purposes of any judicial proceeding, except one that is directly concerned with the administration of public assistance programs, these records are deemed privileged communications. There is an explicit statutory exception, however, for the right of any individual to inquire whether a named individual is a recipient of "welfare assistance;" the person inquiring is entitled to an affirmative or negative answer.

#### **Summary of Bill:**

Online real-time verification of public assistance must be made available at no cost to all courts and their screener designees by the Department of Social and Health Services (DSHS) or the Health Care Authority (HCA). The Office of Public Defense, in collaboration with the DSHS and the HCA, is tasked with promoting the utilization of online verification and providing training and technical assistance to the courts and their screener designees.

The reference to "welfare assistance" in the provision which speaks to the right of any individual to inquire about whether another individual receives benefits is changed to "public assistance."

**Appropriation:** None.

**Fiscal Note:** Preliminary fiscal note available.

**Effective Date:** The bill takes effect on September 1, 2020.