

By Mr. Lees, petition (accompanied by bill, Senate, No. 870) of Brian P. Lees for legislation to clarify indigency in relation to public counsel services. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Seven.

AN ACT CLARIFYING THE DEFINITION, STANDARDS AND PROCEDURES FOR THE DETERMINATION OF INDIGENCY BY THE COMMITTEE FOR PUBLIC COUNSEL SERVICES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 2 of Chapter 211D of the General Laws,
2 as appearing in the 1994 Official Edition, is hereby amended by
3 striking out said section and inserting in place thereof the
4 following new text:—

5 Section 2. The definition of “indigency” for the purpose of this
6 chapter shall be made in accordance with the following uniform
7 standards and procedures. Defendants claiming indigency and
8 requesting legal representation or legal services from the
9 committee for public counsel services shall submit to the
10 committee and to the clerk of the appointing court the following
11 information:—

12 (a) Any defendant requesting a waiver of fees for legal repre-
13 sentation or legal services due to indigency pursuant to this
14 chapter shall be required to file a copy of a current account state-
15 ment listing all bank, credit union or other similar such savings
16 accounts and a copy of his or her activity on said accounts for the
17 past six months. The defendant shall file an affidavit signed by the
18 defendant containing the following information: defendant’s
19 name, aliases, social security number, date of birth, home and
20 mailing address, current occupation and salary; assets, including
21 but not limited to cash, monies in bank accounts, real property,
22 any other investments and all spouse’s assets to which the defen-
23 dant has legal access; income received in the past six months and

24 income expected to be received in the next six months; liabilities
25 and monthly expenses. The affidavit shall also state as follows:—

26 “I state, under the pains and penalties of perjury, that the state-
27 ments made in this affidavit are true, and that I have not omitted
28 any assets that I could use to pay fees for legal representation and
29 legal services, that I have not transferred any assets to avoid pay-
30 ment of fees for legal representation and legal services, and that
31 I have not taken any action nor has any action been taken on my
32 behalf relative to any assets in order to avoid having such assets
33 used for payment of fees for legal representation and legal
34 services.”

35 (b) The court shall order the defendant to pay, as a partial
36 payment of fees for legal representation and legal services, twenty
37 percent of the preceding six months’ average balance of the defen-
38 dant’s combined assets, excluding assets invested in a primary
39 residence, as described within the affidavit required under sub-
40 section (a) of this section, provided that all payment amounts as
41 required under this subsection shall be equal to or greater than ten
42 dollars. The court shall issue such an order unless it finds that the
43 defendant is incapable of making payments under such a plan, or
44 if the court determines, at any time, that such orders impose an
45 undue administrative burden upon the court. Upon receipt of a
46 copy of the court’s order, the defendant shall forward said pay-
47 ment to the clerk of the appropriate court who shall record said
48 payments and thereafter forward the same to the state treasurer
49 who shall deposit such in the general fund.

50 (c) Thereafter, the court shall order the defendant to pay, as
51 a continuing payment of fees for legal representation and legal
52 services, monthly payments of ten percent of the average monthly
53 balance of combined assets, excluding assets invested in a primary
54 residence, until the total cost of fees for legal representation and
55 legal services are repaid to this commonwealth, provided that all
56 payment amounts as required under this subsection shall be equal
57 to or greater than ten dollars. The court shall issue such an order
58 unless it finds that the defendant is incapable of making payments
59 under such a plan, or if the court determines, at any time, that
60 such orders impose an undue administrative burden upon the
61 court. Upon receipt of a copy of the court’s order, the defendant
62 shall forward said payment to the clerk of the appropriate court

63 who shall record said payments and thereafter forward the same to
64 the state treasurer who shall deposit such in the general fund. The
65 provisions of this subsection shall not apply, and the provisions of
66 subsection (d) shall instead apply if said defendant is incarcerated
67 at a state prison or county house of correction.

68 (d) The provisions of this subsection shall apply only to defen-
69 dants that have been found guilty and are incarcerated at a state
70 prison or county house of correction following adjudication of
71 their case. The court shall order the defendant to pay, as a contin-
72 uing payment of fees for legal representation and legal services,
73 monthly payments of ten percent of the average monthly income
74 in the defendant's inmate account, until all such fees are paid for,
75 provided that the payment amount to be drawn from the defen-
76 dant's inmate account is equal to or greater than ten dollars. The
77 court shall issue such an order unless it finds that the defendant is
78 incapable of making payments under such a plan, or if the court
79 determines, at any time, that such orders impose an undue admin-
80 istrative burden upon the court. Upon receipt of a copy of the
81 court's order, the defendant shall forward a copy of the order to
82 the Superintendent of the correctional facility having custody over
83 the defendant/inmate along with a written request for a payment
84 from the inmate's account to be paid to the court. The inmate shall
85 forward a true copy of the written request for payment to the
86 court, from the inmate's account, to the Superintendent no later
87 than ten working days prior to the date each monthly payment is
88 due. The Superintendent shall withdraw such payments as the
89 order requires and shall forward said payments to the clerk of the
90 appropriate court who shall record said payments and thereafter
91 forward the same to the state treasurer who shall deposit such in
92 the general fund.

93 (d) The court may appoint a master to review a defendant's
94 claim of indigency and make recommendations to the court. The
95 court or master may conduct a hearing on the defendant's claim of
96 indigency either before or after service of process, and may
97 dismiss such a claim if the court finds that the allegation of indi-
98 gency is untrue. Any hearing on a defendant's claim of indigency
99 shall be conducted telephonically, unless the court determines that
100 a hearing in court is necessary.

101 (e) In addition to any other actions or penalties that may be
102 available by law, if, after hearing, the court finds that the affidavit
103 submitted by the defendant contains false information or omits
104 material information, and if the court further finds that the mis-
105 representation or omission was intentional, the court may impose
106 fines or costs on the defendant. If, after hearing, the court finds
107 that the affidavit is frivolous and filed in bad faith in order to
108 abuse the judicial process, the court shall immediately require the
109 defendant to repay fees for legal representation and legal services
110 already provided by the committee for public counsel services and
111 shall otherwise deny the provisions of any other services from
112 said committee absent the filing and approval of any further valid
113 affidavit.

1 SECTION 2. Section two A of chapter two hundred eleven D of
2 the General Laws is hereby amended by striking out the second
3 paragraph and inserting in place thereof the following new text:—

4 Any person provided counsel under the provisions of this
5 chapter shall be assessed and required to repay the complete cost
6 of fees for legal representation and legal services. The appropriate
7 court shall issue such an order unless it finds that the defendant is
8 incapable of making payments under the provisions of section two
9 of this chapter, or if the court determines, at any time, that such an
10 order imposes an undue administrative burden upon the court. The
11 appropriate court shall have the power to enforce said order for
12 repayment of the cost of fees for legal representation and legal
13 services through the civil and criminal remedies available under
14 the contempt of court process.

1 SECTION 3. Upon passage, this act shall take effect on the
2 next July first.