H 4287

Chapter 54

THE COMMONWEALTH OF MASSACHUSETTS

In the Year Two Thousand and Five

AN ACT PROVIDING COUNSEL TO INDIGENT PERSONS.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to improve providing counsel to indigent persons, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public safety and convenience.

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

SECTION 1. Chapter 211D of the General Laws is hereby amended by striking out section 2 1/2, as appearing in the 2004 Official Edition, and inserting in place thereof the following section:-

Section 2 1/2. (a) Notwithstanding any general or special law to the contrary, a person claiming indigency under the provisions of section 2 must execute a waiver authorizing the court's chief probation officer or his designee, to obtain the person's wage and tax information from the department of revenue and any other information from the registry of motor vehicles that the court may find useful in verifying the person's claim of indigency. The waiver shall authorize the chief probation officer, or his designee, to conduct any further re-assessment required by this section.

(b) It shall be the responsibility of the chief probation officer assigned to each court to ensure that a person claiming to be indigent meets the definition of indigency under section 2. A person seeking the appointment of counsel shall be interviewed by the chief probation officer or his designee before the appointment of counsel. The person conducting the interview shall explain to the person seeking appointment of counsel (1) the definition of indigency, (2) the process used to verify his information with other state agencies, and (3) the consequences of misrepresenting his financial information in applying for the appointment of counsel. The person conducting the interview shall prepare a written indigency intake report that shall record the results of the interview and his recommendation on whether or not the person seeking appointment of counsel is indigent. The person seeking appointment of counsel

and the person conducting the interview shall sign the indigency intake report. In signing the report, the person seeking appointment of counsel shall certify under the pains and penalties of perjury that the information contained therein is true and that he has not concealed any information relevant to his financial status. All statements contained in the report shall be deemed material statements. The completed report shall be presented to a judge who may adopt or reject the recommendations in the report, either in whole or in part.

(c) Any appointment of counsel by the court is at all times subject to verification of indigency by the chief probation officer assigned to each court. Not later than 60 days after the appointment of counsel, the chief probation officer or his designee shall complete a re-assessment of the financial circumstances of the person for whom counsel was appointed to ensure that such person continues to meet the definition of indigency. In preparing his re-assessment, the chief probation officer or his designee may access wage and tax information in the possession of the department of revenue and such other information relevant to the verification of indigency in the possession of the registry of motor vehicles. Said departments shall provide such information to the chief probation officer or his designee upon request. Upon completion of his re-assessment, the chief probation officer shall prepare a written report of his findings. The chief probation officer shall sign the report, certifying that the person for whom counsel was appointed either continues to meet or does not continue to meet the definition of indigency. The report shall be filed with the case papers and shall be presented to the judge presiding at the person's next court appearance. If, upon receipt of the report, a judge finds that the person for whom counsel was appointed no longer meets the definition of indigency, he shall revoke the appointment of counsel and allow such person a reasonable continuance to obtain new counsel. Not later than 6 months after the appointment of counsel, and every 6 months thereafter, the chief probation officer or his designee shall conduct a further re-assessment of the financial circumstances of the person for whom counsel was appointed to ensure that he continues to meet the definition of indigency and shall prepare, sign and file a written report certifying that the person either continues to meet, or does not continue to meet, the definition of indigency.

(d) If a criminal defendant is charged with a second or further offense while continuing to be represented by court-appointed counsel for a previously charged offense, the court in its discretion shall determine whether any further determination of indigency, other than the 60-day and bi-annual re-assessments required by the defendant's representation for the first offense, need be undertaken. Upon completion of a re-assessment, the chief probation officer shall prepare a written report of his findings. The chief probation officer shall sign the report, certifying that the defendant either continues to meet or does not continue to meet the definition of indigency. The report shall be filed with the case papers and shall be presented to the judge presiding at the defendant's next court appearance. If, upon receipt of the report, a judge finds that the defendant no longer meets the definition of indigency, he shall revoke the appointment of counsel and allow the defendant a reasonable continuance to obtain new counsel.

(e) If the court finds that a person has materially misrepresented or omitted information concerning his property or assets for purposes of determining indigency, and that such person does not meet the definition of indigency, the court shall immediately terminate any assignment or appointment of counsel made under chapter 211D and shall assess costs of not less than $500 against such person.

(f) A person provided counsel under this chapter shall be assessed a counsel fee of $150, which the court may waive only upon determining that the person is unable to pay such $150 within 180 days. If, upon reviewing the chief probation officer's report on the 60-day re-assessment of the person's indigency, the court concludes that the person is able to pay the $150 counsel fee of which he obtained a waiver, the court shall invalidate the waiver and re-impose the $150 counsel fee.

(g) The court may authorize a person for whom counsel was appointed to perform community service in lieu of payment of the counsel fee. A person seeking to work off his counsel fee in community service shall perform 10 hours of community service for each $100 he owes in legal counsel fees. Notwithstanding any general or special law, rule or regulation to the contrary, a court proceeding shall not be terminated and the person shall not be discharged if he owes any portion of the legal counsel fee imposed by this section. The clerk shall not release any bail posted on such court proceeding until the legal counsel fee is satisfied in accordance with this chapter.

(h) The clerk of the court shall, within 60 days of appointment after counsel, report to the department of revenue and the registry of motor vehicles the amount of any legal counsel fee owed by the person for whom counsel was appointed under this chapter. The department of revenue shall intercept the fee from tax refunds due to persons who have not paid it. The registrar of motor vehicles shall place a lien in the amount of any portion of the legal counsel fee owed by the person for whom counsel was appointed upon the title of any motor vehicle owned in whole or in part by him. If the person for whom counsel was appointed does not own a motor vehicle the registry of motor vehicles shall not issue or renew such persons' driver's license or motor vehicle registration for any vehicle subsequently purchased by such person. The registry of motor vehicles shall not release the lien or issue or renew the license or motor vehicle registration until it receives notification from the clerk of the court that the fee has been collected or worked off in community service.

(i) The office of the commissioner of probation shall submit quarterly reports to the house and senate committees on ways and means detailing the effectiveness of any procedures implemented pursuant to this section to verify an individual's claim of indigency. The report shall include, but not limited to, the number of individuals determined to be indigent, number of individuals determined not to be indigent, number of individuals found to have concealed or otherwise misrepresented information relevant to his financial status, number of individuals found to no longer qualify for appointment of counsel upon any re-assessment of indigency required by this section, revenue generated through collection of indigent client fees, the average indigent client fee that each court division collects per case, recommendations to improve the procedures for verifying eligibility for counsel and other pertinent information to ascertain the effectiveness of verification procedures. The information within such report shall be delineated by court division.

SECTION 1A. Section 2A of said chapter 211D, as so appearing, is hereby amended by striking out the words "need not be appointed", in line 3, and inserting in place thereof the following words:- , on motion of the commonwealth, the defendant, or on the court's own motion, shall not be appointed.

SECTION 2. Said chapter 211D is hereby further amended by striking out section 11, as so appearing, and inserting in place thereof the following section:-

Section 11. The rates of compensation payable to all counsel, who are appointed or assigned to represent indigents within the private counsel division of the committee in accordance with the provisions of paragraph (b) of section 6, shall, subject to appropriation, be as follows: for homicide cases the rate of compensation shall be $100 per hour; for superior court non-homicide cases, including sexually dangerous person cases, the rate of compensation shall be $60; for district court cases and children in need of services cases the rate of compensation shall be $50 per hour; for children and family law cases, care and protection cases, sex offender registry cases and mental health cases the rate of compensation shall be $50 per hour. These rates of compensation shall be reviewed periodically at public hearings held by the committee at appropriate locations throughout the state, and notice shall be given to all state, county and local bar associations and other interested groups, of such hearings by letter and publication in advance of such hearings. This periodic review shall take place not less than once every 3 years.

Any counsel who is appointed or assigned to represent indigents within the private counsel division is prohibited from accepting any new appointment or assignment to represent indigents after he has billed 1400 billable hours during any fiscal year.

SECTION 3. Chapter 277 of the General Laws is hereby amended by striking out section 70C, as so appearing, and inserting in place thereof the following section:-

Section 70C. Upon oral motion by the commonwealth or the defendant at arraignment or pretrial conference, or upon the court's own motion at any time, the court may, unless the commonwealth objects, in writing, stating the reasons for such objection, treat a violation of a municipal ordinance, or by-law or a misdemeanor offense as a civil infraction. The provisions of this section shall not apply to the offenses in sections 22F, 24, 24D, 24G, 24L, and 24N of chapter 90, sections 8, 8A, and 8B of chapter 90B, chapter 119, chapter 119A, chapter 209, chapter 209A, chapter 265, sections 1, 2, 3, 6, 6A, 6B, 8B, 13, 13A, 13B, 13C, 14, 14B, 15, 15A, 16, 17, 18, 19, 20, 23, 28, 31 and 36 of chapter 268, chapter 268A, sections 10, 10A, 10C, 10D, 10E, 11B, 11C, 11E, 12, 12A, 12B, 12D and 12E of chapter 269 and sections 1, 2, 3, 4, 4A, 4B, 6, 7, 8, 12, 13, 16, 28, 29A and 29B of chapter 272. If a motion to proceed civilly is allowed, the court shall not appoint counsel. If counsel has already been appointed, the court shall revoke the appointment. A person

complained of for such civil infraction shall be adjudicated responsible upon such finding by the court and shall not be sentenced to any term of incarceration. The commonwealth shall maintain a copy of all objections filed under this section and shall report the number of such objections, delineated by divisions of the district court, every 6 months to the house and senate committees on ways and means.

When the court has treated a violation of a municipal ordinance or by-law or a misdemeanor offense as a civil infraction under this section and the ordinance, by-law or misdemeanor in question does not set forth a civil fine as a possible penalty, the court may impose a fine of not more than $5,000. An adjudication of responsibility shall neither be used in the calculation of second and subsequent offenses under any chapter, nor as the basis for the revocation of parole or of a probation surrender. An adjudication of responsibility under this section may include an order of restitution.

SECTION 4. Item 0321-1510 of section 2 of chapter 45 of the acts of 2005 is hereby amended by striking out the words "and provided further, that the rates of compensation paid for private counsel services from this item shall be the same as the rates paid in fiscal year 2005".

SECTION 5. Notwithstanding any special or general law to the contrary, there shall be in each district, as established under section 13 of chapter 12 of the General Laws, a pilot program providing adjunct staffing within the public defender division of the committee for public counsel services for which the committee shall hire 10 attorneys, 1 investigator and 2 support staff and provide such attorneys and staff with sufficient office space and office resources. The chief counsel of the committee shall assign the attorneys throughout the various district court divisions of each district in a manner that, in his determination, will likely result in the most effective and efficient representation of persons claiming indigency within each district. The assignment procedures may be amended by the chief counsel of the committee as he sees fit. The chief counsel of the committee shall provide quarterly reports to the house and senate committees on ways and means which shall include, but not be limited to, the following: the actual costs incurred in operating the pilot programs, including a detailed itemization of such costs; the number of cases handled by each attorney; the number of cases disposed of during each reporting period; the average time to dispose of said

cases; a schedule detailing the court assignments of each attorney and; the rationale for such attorney assignments.

SECTION 6. Notwithstanding any general or special law to the contrary, there shall be a permanent commission to study and analyze the imposition of civil penalties on certain offenses within the commonwealth. The duties and responsibilities of the commission shall include, but not be limited to, the following: (i) identify all violations of the general laws that are currently classified as a misdemeanor; (ii) determine the number of arrests made per year pursuant to such statutory violations; (iii) determine the number of such arrests which result in charges being filed by a district attorney's office and the percentage of such charges for which the commonwealth sought incarceration; (iv) determine the number of cases disposed of per year pursuant to such statutory violations; (v) determine the number of convictions per year pursuant to such statutory violations; (vi) determine the number of persons incarcerated in a house of correction pursuant to such statutory violations and; (vii) the number of occurrences per year in which a district attorney's office exercised the discretion authorized by section 70C of chapter 277 of the General Laws.

Based upon an analysis of such data, the commission shall determine the feasibility of classifying misdemeanor offenses as either "class A" misdemeanors or "class B" misdemeanors. Under such system of classification, "class A" misdemeanors would be criminal offenses deemed serious enough to warrant the possibility of incarceration in a house of correction and "class B" misdemeanors would be criminal offenses deemed non-serious and warrant assessment of a civil fine with no possibility of incarceration. Under such system, any person charged with the violation of a "class B" misdemeanor would be ineligible for appointment of counsel.

The commission shall consist of the following 11 members: the governor, or his designee; the speaker of the house of representatives, or his designee; the president of the senate, or his designee; the attorney general, or his designee; the chief justice of administration and management of the trial court, or his designee; the chief counsel of the committee for public counsel services, or his designee; a designee of the private counsel division of said committee; the president of the Massachusetts Association of District Attorneys, or his designee; the president of the Massachusetts Bar Association, or

his designee; the president of the Boston Bar Association, or his designee; and the commissioner of probation, or his designee.

The commission shall file an annual report of its activities and any legislative recommendations to the house and senate committees on ways and means not later than December 31 of each year. The report shall include, but not be limited to, the number of charges which would fall into class A misdemeanor or class B misdemeanor classification pursuant to this section that were filed during the preceding calendar year and the number of such misdemeanors for which private counsel was appointed.

SECTION 7. Notwithstanding any general or special law to the contrary, the committee for public counsel services may hire an additional 20 attorneys to handle children and family laws cases and juvenile court cases. The additional attorneys shall be assigned to existing committee for public counsel services offices. The committee shall submit a report to the house and senate committees on ways and means not later than April 1, 2006 on the efficiencies and cost-savings gained from these additional attorneys. The report shall include, but not be limited to, the following: (1) the number of assignment of counsel that has shifted from private bar advocates to the public defender division as a result of the hiring of the additional 20 attorneys, (2) the savings the commonwealth has realized as a result of the additional attorneys since the effective date of this act, and (3) the office to which each additional attorney has been assigned and the reason or reasons for such assignment.

SECTION 8. There shall be a commission to study the implementation of a dedicated fee, multiple fees, surcharge or combination thereof to be used for the purpose of providing counsel to indigent persons who are entitled to the assistance of assigned counsel either by constitutional provision, or by statute, or by rule of court. The commission shall be composed of 9 persons, including 3 members to be appointed by the speaker of the house of representatives, 3 by the president of the senate, and 3 by the governor. The commission shall recommend a fee structure to provide all or a portion of funding for counsel to indigent persons which shall include, but not be limited to; an additional fee assessed to members of the Massachusetts Bar; a surcharge on fines levied as part of criminal or civil sanction by a court; and a surcharge on parking and traffic citations. The commission shall report its findings and recommendations together with drafts of legislation as may be necessary to

carry such recommendations, into effect, by filing the same with the clerks of the house and senate on or before March 1, 2006.

SECTION 9. Section 2 shall take effect as of July 1, 2005.

House of Representatives, July 28, 2005.

Preamble adopted, Paul J Donato, Speaker.

In Senate, July 28, 2005.

Preamble adopted, , President.

House of Representatives, July 28, 2005.

Bill passed to be enacted, Paul J Donato, Speaker.

In Senate, July 28, 2005.

Bill passed to be enacted, , President.

July 29, 2005.

Approved,

at 1 o'clock and 9 minutes, P. M.

Kerry Healey

Acting Governor.