

## Chapter PD 3

## INDIGENCY CRITERIA

PD 3.01	General rule
PD 3.02	Cost of retained counsel
PD 3.03	Computation of available assets
PD 3.038	Calculation of indigency

PD 3.04	Partial indigency
PD 3.05	Certified statement
PD 3.06	Access to indigency evaluations

Note: Chapter SPD 3 was renumbered chapter PD 3 under s. 13.93 (2m) (b) 1., Stats., Register, July, 1995, No. 475.

**PD 3.01 General rule.** A person shall be eligible for the assignment of publicly compensated counsel if the anticipated cost of retaining counsel exceeds the person's available assets.

History: Cr. Register, August, 1978, No. 272, eff. 9-1-78.

**PD 3.02 Cost of retained counsel.** (1) The "anticipated cost of retaining counsel," shall be determined by this schedule, except as provided by sub. (2):

	Milwaukee County	Other Counties
1st degree intentional homicide	\$6600	\$5650
Other armed Class A & Class B felony	3400	2800
Other felony	1900	1450
Traffic misdemeanor	400	300
Other misdemeanor	500	400
Juvenile	500	400
Civil commitment	565	450
Paternity	800	700
Appeals	2000	1500

(2) The cost of retaining counsel for any proceeding not covered by the schedule in sub. (1) shall be established by the state public defender.

(3) The state public defender shall periodically review the actual cost of retaining private counsel and report these findings to the state public defender board. The state public defender board may revise the schedule of the "anticipated cost of retaining counsel."

History: Cr. Register, August, 1978, No. 272, eff. 9-1-78; am. (1) renum. (2) to be (3) and am., tr. (2), Register, November, 1984, No. 347, eff. 12-1-84; am. (1), Register, January, 1992, No. 433, eff. 2-1-92; emerg. am. (1), eff. 5-12-95.

**PD 3.03 Computation of available assets.** (1) A person's "available assets" shall be determined by adding together:

(a) The person's liquid assets as defined in s. 977.07 (2), Stats.;

(b) Any money belonging to the person and expended to post bond to obtain release regarding the current alleged offense;

(c) The amount which could be raised by a loan on the person's non-liquid assets as provided in s. 977.07 (2), Stats., which, unless otherwise apparent, shall be computed as one-fourth the person's equity in that property; and

(d) The amount of income or other money the person anticipates receiving during the pendency of the case, and subtracting from that sum the amount required to provide the necessities of life for that person and those dependent on that person, during the pendency of the case.

(2) The "amount required to provide the necessities of life," means the payment amount specified in s. 49.19 (1) (a) 1., Stats., plus other specified, emergency, or essential costs. Among other costs, the amount paid to a person under a state and federal grant of supplemental security income for the aged, blind, and disabled

program pursuant to 42 USC 1381 to 1383c is considered an essential cost.

(3) The state public defender shall annually review the indigency standards specified herein and revise those standards as required.

(4) For the purposes of determining a person's eligibility for the assignment of publicly compensated counsel, felony and appellate cases are pending for 8 months, cases under ch. 51, Stats., for 2 months, and all other cases for 4 months.

History: Cr. Register, August, 1978, No. 272, eff. 9-1-78; am. (2), Register, August, 1981, No. 308, eff. 9-1-81; am. (1) (b), (2) and (4), Register, November, 1984, No. 347, eff. 12-1-84; renum. (1) (b) and (c) to be (1) (c) and (d), cr. (1) (b), am. (2), Register, April, 1990, No. 412, eff. 5-1-90; am. (2) and (4), Register, August, 1990, No. 416, eff. 9-1-90; emerg. am. (1) (c), (2) and (4), cr. (2m), eff. 5-12-95.

**PD 3.038 Calculation of indigency.** (1) Except as provided in sub. (2), a person's available assets as determined under s. PD 3.03 shall be compared to the anticipated cost of retaining counsel as specified under s. PD 3.02 as follows:

(a) If the available assets are less than or equal to \$100, the person is indigent.

(b) If the available assets are greater than \$100, but less than or equal to the anticipated cost of retaining counsel, the person is partially indigent.

(c) If the available assets are greater than the anticipated cost of retaining counsel, the person is not indigent.

(2) If a person's only income is aid to families with dependent children under s. 49.19 (1) (a) 1., Stats., relief of needy Indian persons under s. 49.046, Stats., or general relief as defined in s. 49.01 (5m), Stats., that person shall be determined indigent.

History: Cr. Register, April, 1990, No. 412, eff. 5-1-90; renum. to be (1) and am.; cr. (2), Register, October, 1992, No. 442, eff. 11-1-92; emerg. am. (2), eff. 5-12-95.

**PD 3.04 Partial indigency.** (1) If the person has insufficient assets to retain counsel, the state public defender shall provide counsel under s. 977.08, Stats., and the court or the state public defender may require the person to make payments to the state in partial payment of legal fees. The partial reimbursement required shall be equivalent to 20% of the applicable cost of retaining counsel in the case, as set forth in s. PD 3.02 (1), except the amount shall not exceed the person's available assets in excess of \$100.00.

(2) The state public defender may reduce the payments for legal fees under this section if it appears, by sworn statement of the person, that the person's financial status has sufficiently changed to warrant reduction in the payments or that the interests of justice require such reduction.

History: Cr. Register, August, 1978, No. 272, eff. 9-1-78; am. (1) and r. (2), Register, November, 1984, No. 347, eff. 12-1-84; am. (1), Register, April, 1990, No. 412, eff. 5-1-90; am. (1), Register, January, 1992, No. 433, eff. 2-1-92.

**PD 3.05 Certified statement.** (1) All persons provided with publicly compensated counsel shall be required to give a truthful statement of their assets, liabilities, and expenses. All such persons shall sign the completed indigency evaluation form certifying that the financial information that they have provided is accurate to the best of their knowledge and belief.

Note: Revised indigency evaluation forms can be obtained at no charge from the Office of the State Public Defender, Administration, 315 N. Henry Street, 2nd Floor, Madison, WI 53707.

(2) The state public defender may appoint counsel pursuant to telephone eligibility interviews, in which cases the clients shall sign the indigency evaluation form as soon thereafter as practicable.

(3) The state public defender shall retain for 3 years all indigency evaluations. After such time they shall be maintained by state records custodians pursuant to s. 16.61 (4), Stats.

History: Cr. Register, August, 1978, No. 272, eff. 9-1-78; cr. (2), Register, August, 1981, No. 308, eff. 9-1-81; emerg. am. (1) eff. 5-23-84; am. Register, November, 1984, No. 347, eff. 12-1-84; am. (1), r. and recr. (2), cr. (3), Register, July, 1995, No. 475, eff. 8-1-95.

**PD 3.06 Access to indigency evaluations.** (1) Access to indigency evaluations of persons provided with publicly compensated counsel may not be granted to any person, except the client, staff of the state public defender or counsel appointed by the state public defender, during the pendency of the action for which they are prepared.

(2) The state public defender shall inform the applicant of all of the following:

(a) The applicant shall provide complete and accurate information about income, assets, liabilities, and expenses, because the applicant will be required to certify, under s. PD 3.05 (1), the truthfulness of the information.

(b) The financial information provided by the applicant is not protected by the attorney-client privilege and the applicant may be prosecuted for a felony offense if the applicant intentionally provides false financial information.

(3) During the pendency of the action, when a prospective client has been found eligible for representation, questions of eligibility shall be resolved pursuant to s. 977.07 (3), Stats.

(4) Upon the conclusion of the action, a written request for release of the statement of assets, liabilities, and expenses may be made to the local representative of the state public defender for the county in which the action took place. The client's attorney and the state public defender regional supervisor for the county in which the action took place shall review and respond to each request within 10 business days in the following manner:

(a) Unless they believe that the release of the statement will violate the legal rights of the client or the ethical obligations of counsel, the statement shall be filed with the clerk of courts.

(b) If they believe that the release of the statement will violate the legal rights of the client or the ethical obligations of counsel, they shall file a motion in the court in which the action was heard for an order prohibiting the release of the statement. If the motion is granted, a sealed copy of the statement shall be filed with the clerk of courts. If the motion is denied, the statement shall be filed with the clerk of courts. The statement shall remain sealed during the course of any appeal on the motion.

(c) The local representative shall promptly notify the party requesting release of the statement of the action taken.

History: Emerg. cr. eff. 5-23-84; cr. Register, November, 1984, No. 347, eff. 12-1-84; emerg. am. (1), cr. (1m), eff. 5-12-95; am. (1), r. and recr. (2), Register, July, 1995, No. 475, eff. 8-1-95.