

## Chapter SPD 3

## INDIGENCY CRITERIA

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**SPD 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.

**SPD 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.

**SPD 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

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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 (11) (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.

SPD 3.035 Consideration of need for expert services. History: Cr. Register, August, 1978, No. 272, eff. 9-1-78; am. (1), r. (2), Register, November, 1984, No. 347, eff. 12-1-84; r. Register, January, 1992, No. 433, eff. 2-1-92.

**SPD 3.038 Calculation of indigency.** A person's available assets as determined under s. SPD 3.03 shall be compared to the anticipated cost of retaining counsel as specified under s. SPD 3.02 as follows:

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

(2) 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.

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

History: Cr. Register, April, 1990, No. 412, eff. 5-1-90.

**SPD 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. SPD 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.

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**SPD 3.05 Sworn statement.** All persons provided with publicly compensated counsel shall be required to give a sworn statement of their assets, liabilities, and expenses.

(2) The state public defender and county designee shall retain for 5 years all indigency evaluations whether or not a person was determined to be indigent and the county designee shall forward to the state public defender on a monthly basis copies of all indigency evaluations.

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. 317, eff. 12-1-84.

**SPD 3.06 Access to statements of assets, liabilities, and expenses.** (1) Access to statements of assets, liabilities, and expenses of persons provided with publicly compensated counsel may not be granted to any person during the pendency of the action for which they are prepared. At the conclusion of the action, the statement of assets, liabilities, and expenses shall be placed in the court file upon the request of anyone, unless release is prohibited by court order under sub. (4) (b).

(2) Each prospective client shall be given the following information at the commencement of the eligibility interview:

(a) The financial information provided during the interview will be recorded in the statement of assets, liabilities, and expenses and shall be as complete and accurate as possible, since the prospective client will be required to swear to the accuracy of the statement at the conclusion of the interview; and

(b) A material misrepresentation about the prospective client's financial condition that is incorporated into the statement and sworn to by the prospective client may be the basis for prosecution for the felony crime of false swearing.

(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.