

## Chapter PD 3

## INDIGENCY CRITERIA

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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 3.015 Verification.** In order to screen the eligibility of applicants and collect amounts owed as reimbursement for legal services, the state public defender may verify the following financial information: social security numbers, income records, proof of eligibility for income-based programs, and proof of emergency or essential expenses. The state public defender shall report annually to the board on verification.

Note: In its November 1994 report, the legislative audit bureau (LAB) recommended that the state public defender implement a system of verifying financial information provided by applicants in the course of indigency determinations. LAB acknowledged that existing procedures were adequate for incarcerated applicants who could not have their spouses provide verification. The state public defender board strongly supports the goals of enhancing the accuracy of indigency determinations and providing representation by the state public defender to only those persons who are eligible. Therefore, the state public defender has adopted s. PD 3.015.

History: Cr. Register, January, 1996, No. 481, eff. 2-1-96.

**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
Involuntary termination of parental rights	3400	2800

(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., cr. (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; am. (1), Register, January, 1996, No. 481, eff. 2-1-96.

**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 with a value of \$500 or more 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. If the applicant has equity in real estate of \$30,000 or more, the applicant shall present verification to the state public defender that the applicant has unsuccessfully offered that equity to at least 2 qualified private attorneys as a retainer. In this paragraph, a "qualified private attorney" means an attorney who is certified in the applicable county to accept state public defender appointments for the case category of the applicant's case; 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. The following emergency or essential costs may be added to the cost of living amount specified in s. 49.19 (1) (a) 1., Stats; court-ordered obligations; student loan payments; utility bill arrearages; arrearages on taxes, rent payments or mortgage payments; payments for health insurance, medical care, and dental care; social service agency bills, work-related child care costs; payments for automobile insurance necessary to maintain employment; and payments by incarcerated persons as a condition of work-release privileges. 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.

(2m) The assets of the applicant's spouse shall be considered as if they were assets of the applicant, unless the spouse was the victim of a crime allegedly committed by the applicant.

(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 cases and cases under s. 980.02, Stats. are pending 6 months, appellate cases are pending for 8 months, cases under chs. 51 and 55, 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; am. (1) (c), (2) and (4), cr. (2m), Register, January, 1996, No. 481, eff. 2-1-96.

**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 (11) (a) 1., Stats., relief of needy Indian persons under s. 49.046, Stats., supplemental security income for the aged, blind, and disabled under 42 USC 1381-1383c, or a similar federal or state needs-based financial assistance program, 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; am. (2), Register, January, 1996, No. 481, eff. 2-1-96.

**PD 3.039 Change of circumstances and redetermination of indigency; withdraw from representation.** If a client has originally qualified for appointment of counsel by a determination of indigency, the state public defender shall apply the following financial guidelines when a client or client's spouse obtains a higher level of income or receives liquid assets:

(1) When a change in income from employment occurs within 30 days from the date that counsel was appointed, the same eligibility standards shall apply as applied to the original determination of indigency. When a change resulting in increased income other than from employment or a change resulting in increased liquid assets occurs, the same eligibility standards shall apply as applied to the original determination of indigency.

(2) If the change in income from employment occurs more than 30 days from the date that counsel was appointed, the client remains eligible for representation by the state public defender if the income does not exceed the gross monthly amount stated in the table included in sub. (3). If the gross monthly income exceeds that amount, the client is considered not indigent.

(3) The gross income eligibility table in this subsection applies to those individuals who originally qualified for public defender representation under this chapter, but who obtained employment that increased their income. Continuing eligibility is based on client income remaining below gross monthly amounts in the following table:

**Gross Income Eligibility Table**

\$7.50	Hourly
\$300.00	Weekly
\$1,300.00	Monthly
(\$99.45)	Less Social Security (7.65%)
(\$131.00)	Federal Tax
(\$56.50)	State Tax
\$1,013.05	Monthly Take Home
(\$622.50)	Cost of Living at the Federal Poverty Level
\$390.55	"Disposable" Income

Per agency cost of counsel table, one can retain a lawyer for a non-felony case for between \$300 and \$700.

<u>Family Size</u>	<u>Hourly Amount</u>	<u>Gross Monthly</u>
1	\$ 7.50	\$1,200.00
2	\$ 8.70	\$1,392.00
3	\$ 9.18	\$1,469.00
4	\$ 9.81	\$1,569.00
5	\$10.38	\$1,660.00
6	\$10.74	\$1,718.00
7	\$11.13	\$1,781.00
8	\$11.44	\$1,831.00
9	\$11.70	\$1,872.00
10	\$11.84	\$1,895.00

(4) When the state public defender determines that a client is not indigent, the state public defender shall move the court to withdraw from representation. The state public defender shall develop procedures for seeking to withdraw from cases in which clients have been determined not to be indigent, including procedures to notify and instruct private attorneys assigned to cases by the state public defender.

History: Emerg. cr. eff. 8-29-95; cr. Register, February, 1996, No. 482, eff. 3-1-96.

**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 3.055 Voluntary termination of employment.** If an applicant voluntarily terminates employment for the purpose of having the state public defender appoint counsel, the state public defender shall calculate the applicant's income on the basis of the

applicant's wages before the voluntary termination of employment.

History: Cr. Register, January, 1996, No. 481, eff. 2-1-96.

**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, counsel appointed by the state public defender, or the trial court, upon request of the court, during the pendency of the action for which they are prepared. If the client's attorney believes that release of the statement may violate the legal rights of the client or the attorney's ethical obligations, the attorney may seek a protective order under sub. (4) (b).

(1m) At the conclusion of the action, the statement, 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) 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; cr. (1m), Register, January, 1996, No. 481, eff. 2-1-96.