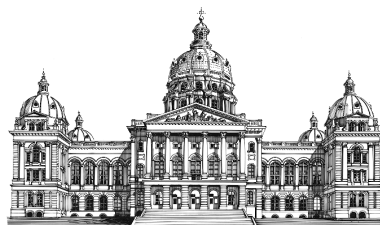


Iowa Legislative Fiscal Bureau

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State Capitol
Des Moines, IA 50319
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Indigent Defense Update

ISSUE

The General Assembly enacted several changes during the 1993 Legislative Session to more narrowly define when a person may be determined indigent for the purpose of appointment of legal counsel in criminal and juvenile cases. The changes include a definition of "partially indigent" and a requirement that these persons contribute at least a small amount to the cost of their own defense.

AFFECTED AGENCIES

State Public Defender
Judicial Department

CODE AUTHORITY

Sections 13B.4, 13B.10, 815.4, 815.5, and 815.9, Code of Iowa

BACKGROUND

In 1989, county public defenders and State appellate defenders were combined under the State Public Defender within the Department of Inspections and Appeals (DIA). The same year, the Indigent Defense Program was moved from the Judicial Department to the Department of Inspections and Appeals.

Indigent Defense is a State Program designed to provide legal representation to low-income criminal defendants. Legal representation is provided by either a State public defender or practicing attorney appointed by the Court.

The State Public Defender, appointed by the Governor and confirmed by the Senate, coordinates and supervises all court cases assigned to public defenders. All public defenders are State-employed attorneys working under the DIA.

Court-appointed attorneys are also compensated with State funds. Each court-appointed attorney submits a summary billing to the presiding judge stating in-court hours, out-of-court hours, hourly fee requested, and other expenses. The judge then determines the total amount of compensation. The District Court Judge authorizes all payment claims, the District Court Administrator reviews the information and prepares the proper documentation to forward to DIA, and payment is made for the amount authorized.

The changes made by the General Assembly to narrow the definition of persons who qualify for indigent defense is the latest in a series of attempts to cap the increasing costs of legal representation for indigent persons. Other cost reduction measures implemented include:

- Expansion of the State Public Defender's Office. The State Public Defender's Office was expanded in late FY 1991 to handle more indigent defense cases. A task force review of the average cost per-case indicated that cases handled by private court-appointed attorneys cost approximately twice as much as those handled by the State Public Defender. A supplemental appropriation of \$540,000 was provided to the State Public Defender in FY 1991 and additional funding of \$1.7 million in FY 1992 to add 44 attorneys and 4 new office locations.
- Pilot Project to Contract with Private Attorneys. Six counties participated in a pilot project in which attorneys under contract with the State Public Defender were given priority when outside assignments were made by the Court. Contracts were awarded to bidders providing contract terms most favorable to the State, balanced with other factors relating to the provision of competent and effective service.

Senate File 266, the Regulation Appropriations Bill, passed during the 1993 Legislative Session, contains the Code of Iowa changes that affect the definition of an indigent person. There are 2 key elements to the changes made by the General Assembly.

The first element is the objective definition of persons who qualify for indigent defense. Beginning September 1, 1993, the courts must use the federal Department of Health and Human Services poverty guidelines to determine the degree to which a person is indigent. Persons with incomes at or below 150% of the poverty guidelines are considered indigent and receive legal counsel at State expense. Persons with incomes above 150% are not indigent and not eligible for legal counsel at State expense. However, a person with income in excess of the 150% ceiling may still receive State paid legal counsel if the Court makes a written finding of substantial hardship.

The second element requires persons defined as "partially indigent" to contribute to the cost of their legal defense. Persons with incomes between 100% and 150% of the poverty level will be required to contribute \$100 for legal defense costs in accordance with rules adopted by the State Public Defender. Persons with incomes in excess of 150% of the poverty level who receive legal representation under the hardship clause, are considered "partially indigent" and are required to contribute \$200.

CURRENT SITUATION

The State Public Defender's Office prepared a discussion draft of the proposed Administrative Rules which was submitted by the Iowa Supreme Court Administrative Office to judges, district court administrators, and magistrates in June. Suggested changes have been incorporated in a revised draft that will be filed with the Administrative Rules Committee.

The State Public Defender's Office has prepared a proposed financial statement to be used by the person requesting appointment of counsel (see **Attachment A**). The financial statement was reviewed by all chief judges of the State. The requirement that a person provide a copy of their most recent tax return will most likely be deleted. However, the Court retains the authority to request that a copy be made available if necessary. A proposed financial statement for juveniles is in progress.

Attachment B is a guide prepared by the State Public Defender for use by judges that illustrates federal poverty levels and will assist judges in determining which persons are indigent and which persons are required to contribute to defense costs.

Senate File 266 requires the rules to be in effect and the new system operational by September 1, 1993. The State Public Defender will be able to comply with this requirement.

BUDGET IMPACT

Historical budget information for Indigent Defense costs is illustrated below:

	FY 1990	FY 1991	FY 1992	FY 1993
Court-Appointed Private Attorneys				
Total adult cases	17,444	18,937	16,471	Not available
Rate of change		8.6%	-13.0%	N/A
Total expenditures	\$ 9,200,000	\$14,385,000	\$11,795,465	\$ 10,995,593
Rate of change		56.4%	-18.0%	-6.8%
Public Defenders				
Total adult cases	12,659	14,674	27,914	28,105
Rate of change		15.9%	90.2%	0.7%
Total expenditures	\$ 3,718,274	\$ 4,696,959	\$ 6,210,746	\$ 7,521,508
Rate of change		26.3%	32.2%	21.1%
Totals				
Adult cases	30,103	33,611	44,385	N/A
Rate of change		11.7%	32.1%	N/A
Expenditures	\$ 12,918,274	\$19,081,959	\$18,006,211	\$ 18,517,101
Rate of change		47.7%	-5.6%	2.8%

The original FY 1993 appropriation for indigent defense was \$8,445,465. The Indigent Defense Budget Unit has received Code of Iowa, Section 8.39 (interdepartmental) transfers in the amount of \$2,618,000 making a total of \$11,063,465 available of which \$10,995,593 has been expended. These figures may change before FY 1993 is finalized. The adjusted FY 1993 appropriation for the State Public Defender was \$7,046,178. The State Public Defender received an interdepartmental transfer of \$620,000 making a total of \$7,666,178 available of which \$7,521,508 has been expended. Again, these numbers may change before FY 1993 is finalized.

The budget impact of the changes in SF 266 is not known. The estimated net appropriation for FY 1994 for Indigent Defense is \$8,778,665. The estimated net appropriation for FY 1994 for the State Public Defender is \$7,837,983.

STAFF CONTACT: Mary Shipman (Ext. 14617)

IN THE IOWA DISTRICT COURT FOR _____ COUNTY

STATE OF IOWA,

Plaintiff,

v.

Defendant



Criminal No. _____

**APPLICATION FOR APPOINTMENT
OF COUNSEL AND FINANCIAL
STATEMENT AND ORDER**

RECOMMENDATION TO THE COURT:

The Defendant is: Eligible for a court-appointed attorney Not eligible for a court-appointed attorney
 Partially indigent, however can afford to pay \$ _____ .00 towards the fees incurred
in behalf of his/her defense at this time.

Eligibility Reviewer (Court's Designee)

Date

ORDER

Defendant's request for appointment of counsel is: approved denied.

_____ is appointed to serve as counsel for the defendant.

The Defendant is found to be: fully indigent partially indigent and is ordered to
pay \$ _____ .00 towards the fees incurred in behalf of
his/her defense at this time.

Dated: _____, 19 ____.

Judge/Magistrate

APPLICATION FOR APPOINTMENT OF COUNSEL AND FINANCIAL STATEMENT

OFFICE USE ONLY

Case Number: _____

Judicial District: _____

County: _____

SECTION A - APPLICANT INFORMATION

DEFENDANT: _____ (Last) _____ (First) _____ (Middle)

HOME ADDRESS: _____ (Street or P.O. Box) _____ (City) _____ (State) _____ (Zip Code)

AGE: _____ (Years) DATE OF BIRTH: ____/____/____ SOCIAL SECURITY NUMBER: _____ - _____ - _____

HOME TELEPHONE NUMBER: () _____ - _____ WORK TELEPHONE NUMBER: () _____ - _____

MARITAL STATUS: Single Married Divorced Widow(er) DO YOU LIVE WITH YOUR SPOUSE?: Yes No

NAME OF SPOUSE, IF MARRIED: _____ (Last) _____ (First) _____ (Middle)

SPOUSE'S ADDRESS: _____ (Street or P.O. Box) _____ (City) _____ (State) _____ (Zip Code)

YOUR DEPENDENTS: _____ (Name) _____ (Age) _____ (Relationship to You)
[List all children you currently support who live with you]
_____ (Name) _____ (Age) _____ (Relationship to You)
_____ (Name) _____ (Age) _____ (Relationship to You)
_____ (Name) _____ (Age) _____ (Relationship to You)

EMPLOYMENT: YOUR OCCUPATION: _____

ARE YOU (Check One): Employed Unemployed Self-employed IS YOUR SPOUSE EMPLOYED? Yes No

	EMPLOYER NAME	ADDRESS
YOU	_____	_____ (Street or P.O. Box) _____ (City) _____ (State)
SPOUSE	_____	_____ (Street or P.O. Box) _____ (City) _____ (State)

INDICATE ALL PUBLIC ASSISTANCE PROGRAMS FROM WHICH YOU ARE CURRENTLY RECEIVING BENEFITS:

- Family Investment Program (Formerly ADC) Food Stamps Medicaid Heating Assistance
 Refugee Cash Assistance General Assistance Other (Specify) _____

UNDER WHAT NAME DO YOU RECEIVE THE ABOVE BENEFITS? _____ (Last) _____ (First) _____ (Middle)

WHERE DO YOU RECEIVE THESE BENEFITS? _____ (City) _____ (County) _____ (State)

SECTION B - INCOME AND OTHER ASSETS

MONTHLY INCOME

	Per Month
EMPLOYMENT/SELF-EMPLOYMENT	\$ _____.
SPOUSE EMPLOYMENT	\$ _____.
UNEMPLOYMENT COMPENSATION	\$ _____.
WORKER'S COMPENSATION	\$ _____.
SOCIAL SECURITY	\$ _____.
VETERAN'S BENEFITS	\$ _____.
PENSION/RETIREMENT INCOME	\$ _____.
ALIMONY	\$ _____.
CHILD SUPPORT	\$ _____.
PUBLIC ASSISTANCE	
ADC/FIP	\$ _____.
Food Stamps	\$ _____.
Medicaid	\$ _____.
Heating Assistance	\$ _____.
Refugee Cash Assistance	\$ _____.
General Assistance	\$ _____.
Other _____	\$ _____.
OTHER (Specify) _____	\$ _____.

1. TOTAL INCOME:	\$ _____.

SECTION C - EXPENSES AND DEBTS

MONTHLY BILLS/DEBTS

	Per Month
RENT/HOUSE PAYMENT	\$ _____.
DEPENDENT CARE	\$ _____.
UTILITIES	\$ _____.
TAXES (Income, Property)	\$ _____.
FOOD/CLOTHING	\$ _____.
MEDICAL/DENTAL SERVICES	\$ _____.
ALIMONY/CHILD SUPPORT	\$ _____.
CREDIT CARDS	\$ _____.
CASH BUSINESS EXPENSES	\$ _____.
OTHER (Specify) _____	\$ _____.
_____	\$ _____.
_____	\$ _____.
_____	\$ _____.
_____	\$ _____.
_____	\$ _____.
_____	\$ _____.
2. TOTAL EXPENSES:	\$ _____.

SECTION D - OTHER ASSETS

	Cash Value
CASH	\$ _____.
BANK ACCOUNTS/CREDIT UNION (Checking and Savings)	\$ _____.
STOCKS, BONDS, SECURITIES	\$ _____.
CERTIFICATES OF DEPOSIT	\$ _____.
CASH VALUE LIFE INSURANCE	\$ _____.
REAL ESTATE (Home, Land)	\$ _____.
[Value minus amount owed]	
OTHER (Boat, Camper, Jewelry, Antiques, etc.)	\$ _____.
MOTOR VEHICLE(S) (Auto, Truck, Motorcycle)	
Year Make Amount Owed	
_____	\$ _____.
_____	\$ _____.
_____	\$ _____.
_____	\$ _____.
TOTAL OTHER ASSETS:	\$ _____.

SECTION E - CALCULATIONS

TOTAL MONTHLY INCOME (from Line 1)	\$ _____.
TOTAL EXPENSES (from Line 2)	- \$ _____.
SUBTRACT LINE 2 FROM LINE 1	= \$ _____.

AFFIDAVIT

I request that the Court appoint an attorney to represent me at public expense. I am financially unable to retain my own attorney without substantial hardship to me. My financial statement is submitted in support of this application for a court-appointed attorney.

I authorize the Court's designee to contact federal and state government agencies, employers, financial institutions, and other person(s) or entities to verify my financial status as presented in this application.

I understand that I must inform my court-appointed attorney if my financial situation should change before the completion of my case. My court-appointed attorney is authorized to notify the Court of any such changes in my financial situation.

I further understand that I may be responsible for the repayment or partial repayment for the costs of my defense as the Court may determine.

I certify, under the penalty of perjury, that this application is true and accurate. I further certify that this application contains no deliberate misrepresentation and the information I have provided is complete to the best of my knowledge.

Signature of Defendant (Applicant)

Date

You are required to provide a copy of your most recent federal income tax return with this application. You must also provide your most recent pay slip.

OFFICE USE ONLY

The Defendant is charged with the following public offense(s):

_____ in violation of Iowa Code section _____

_____ in violation of Iowa Code section _____

_____ in violation of Iowa Code section _____

_____ in violation of Iowa Code section _____

INCOME ELIGIBILITY CRITERIA

Family Size	100 %		150 %	
	Monthly Gross Income	Annual Gross Income	Monthly Gross Income	Annual Gross Income
1	\$ 581	\$ 6,970	\$ 871.25	\$ 10,455
2	\$ 786	\$ 9,430	\$ 1,178.75	\$ 14,145
3	\$ 991	\$ 11,890	\$ 1,486.25	\$ 17,835
4	\$ 1,196	\$ 14,350	\$ 1,793.75	\$ 21,525
5	\$ 1,401	\$ 16,810	\$ 2,101.25	\$ 25,215
6	\$ 1,606	\$ 19,270	\$ 2,408.75	\$ 28,905
7	\$ 1,811	\$ 21,730	\$ 2,716.25	\$ 32,595
8	\$ 2,016	\$ 24,190	\$ 3,023.75	\$ 36,285
9	\$ 2,221	\$ 26,650	\$ 3,331.25	\$ 39,975
10	\$ 2,426	\$ 29,110	\$ 3,638.75	\$ 43,665

*For each additional family member add: \$ 205 (monthly 100%) - \$ 2,460 (annual 100%)

**For each additional family member add: \$ 307.50 (monthly 150%) - \$ 3,690 (annual 150%)

DETERMINATION OF INDIGENCY

A person is indigent if income level is at or below 150% of the poverty income guideline.

A person is not indigent if income level is greater than 150% of the poverty income guideline. However, a person with an income level greater than 150% of the poverty income guideline may be deemed partially indigent.

DETERMINATION OF PAYMENTS

A person deemed indigent whose income level is at or below 100% of the poverty income guideline is not required to contribute to the cost of representation.

A person deemed indigent whose income level is greater than 100% but not more than 150% of the poverty guidelines shall contribute at least \$100 of the cost of representation or a greater amount as determined by the Court.

A person deemed partially indigent shall contribute at least \$200 to the cost of representation or a greater amount as determined by the Court.

Source: U.S. Department of Health and Human Services *Annual Updates of the Poverty Income Guidelines* published each year in the Federal Register.

(February 1993)