

Regulatory Analysis

Notice of Intended Action to be published: 493—Chapter 10
“Eligibility Guidelines for Court-Appointed Counsel”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 13B.4(8)

State or federal law(s) implemented by the rulemaking: Iowa Code chapter 815 and section 13B.4

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

May 6, 2025
2 p.m.

Via videoconference:
meet.google.com/gbm-frju-oxh
Or dial: (US) +1 563.293.1803
PIN: 316 603 891#

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis, which must be received by the Office of the State Public Defender no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

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6200 Park Avenue, Suite 100
Des Moines, Iowa 50321
Phone: 515.218.2445
Email: kswaim@spd.state.ia.us

Purpose and Summary

This proposed rulemaking includes revisions of administrative rules based on the requirements of Executive Order 10. Chapter 10 provides information to the public about the organizational structure of the Office of the State Public Defender, its purpose, and its location.

Analysis of Impact

1. **Persons affected by the proposed rulemaking:**
 - **Classes of persons that will bear the costs of the proposed rulemaking:**
There are no expected additional costs to the State or individuals.
 - **Classes of persons that will benefit from the proposed rulemaking:**
The Office of the State Public Defender, indigent persons represented by court-appointed attorneys, members of the judiciary, and contract attorneys will benefit.
2. **Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:**
 - **Quantitative description of impact:**
Not applicable. There are no expected additional costs to the State or individuals.
 - **Qualitative description of impact:**
Not applicable.
3. **Costs to the State:**
 - **Implementation and enforcement costs borne by the agency or any other agency:**

There are no expected additional costs to the State. Changes have not been made to the substance of this chapter but to the language used.

- **Anticipated effect on state revenues:**

No effect on state revenues is anticipated.

4. **Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:**

Not applicable.

5. **Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:**

Not applicable.

6. **Alternative methods considered by the agency:**

- **Description of any alternative methods that were seriously considered by the agency:**

No alternative methods were considered.

- **Reasons why alternative methods were rejected in favor of the proposed rulemaking:**

No viable alternative was identified. The information and process set forth in this chapter are largely driven by existing statute.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.

- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.

- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.

- Establish performance standards to replace design or operational standards in the rulemaking for small business.

- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

There is no expected impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 493—Chapter 10 and adopt the following **new** chapter in lieu thereof:

CHAPTER 10
ELIGIBILITY GUIDELINES FOR COURT-APPOINTED COUNSEL

493—10.1(815) Eligibility. The eligibility of any person for legal assistance by an appointed attorney shall be determined in accordance with Iowa Code section 815.9 and with the guidelines set forth in these rules.

493—10.2(815) Income guidelines. Annually, the state public defender shall provide information to the court showing the most recently revised poverty income guidelines.

493—10.3(815) Designation of eligibility reviewer. The chief judge of each judicial district may designate the person(s) or entity to evaluate the eligibility of a person for legal assistance by an appointed attorney. However, the decision to appoint counsel remains with the court.

493—10.4(815) Application. Any person claiming to be entitled to legal representation by an appointed attorney shall have an indigency evaluation before being provided legal representation. The applicant should provide information on an affidavit of financial status. This form will be prescribed by the state public defender, but any form containing substantially the same information will be accepted.

10.4(1) Affidavit. The applicant shall provide information required by the affidavit of financial status under penalty of perjury.

10.4(2) Family. The applicant shall provide information that accurately represents the number of family members who are supported by or live with the applicant.

10.4(3) Income. The applicant shall provide information that accurately represents the total gross income received or reasonably anticipated to be received by the applicant.

10.4(4) Household income. The applicant shall provide information that accurately represents the gross income of the household in which the applicant lives. The income of a spouse need not be included if the spouse is the alleged victim of the offense charged. The income of a child member of the household need not be included unless the legal representation is sought for the child in a delinquency proceeding.

10.4(5) Assets. The applicant shall provide information that accurately represents the total assets owned, in whole or in part, by the applicant. This includes the requirement to disclose interest in real property and tangible and intangible personal property.

10.4(6) Liabilities. The applicant shall provide information that accurately represents the total monthly debts and expenses for which the applicant is responsible. Child support and alimony payments should be included only when payments have been made in a timely manner.

10.4(7) Nature of proceedings. In a criminal case, the affidavit of financial status shall contain a statement of the charge(s) against the defendant. In a juvenile or civil case, a statement of the nature of the proceedings shall be included.

10.4(8) Child applicant. If the applicant is a child, the child's parent, guardian or custodian shall complete the affidavit of financial status. The affidavit of financial status shall include a statement of the income, assets and liabilities of the person(s) having a legal obligation to support the child.

10.4(9) Additional information. The applicant shall provide such additional information as may be required by the court to determine the applicant's eligibility for appointed counsel. The applicant has a continuing duty to update information provided in the affidavit of financial status to reflect changes in the information previously provided.

493—10.5(815) Evaluation of affidavit of financial status. In determining whether counsel should be appointed to represent the applicant, the court should consider the following:

10.5(1) Family size. The total size of the applicant's household shall be used to determine eligibility for appointed counsel.

10.5(2) Household income. The applicant's income, or the combined income of the applicant and the applicant's spouse if they are living in the same residence, shall be used in determining an applicant's household income, subject to the following:

a. The income of the applicant's spouse shall not be considered if the spouse is the alleged victim of the offense charged.

b. The income of a child shall not be considered unless the child is requesting representation in a delinquency case or unless the child is under a conservatorship or is the beneficiary of trust proceeds.

c. In a juvenile proceeding, the income of both parents shall be considered in determining whether the child is entitled to appointed counsel. If a child's parents are divorced, the household income of each parent shall be considered separately.

10.5(3) *Federal Department of Health and Human Services (DHHS) poverty income guidelines.* The applicant's family size and household income shall be compared to the DHHS poverty income guidelines to determine whether the applicant's household income is 125 percent or less of the federal poverty level; between 125 percent and 200 percent of the federal poverty level; or 200 percent or greater of the federal poverty level as set forth in Iowa Code section 815.9(1) "a" through "c."

10.5(4) *Applicability to juvenile cases.* In evaluating whether to appoint counsel for a parent in a juvenile proceeding, the court shall consider not only the applicant's income but also the availability of any assets subject to execution and the nature of the proceeding in determining whether the parent is financially unable to employ counsel.

493—10.6(815) Forms. The state public defender shall promulgate forms to be used in court proceedings, including an Adult Affidavit of Financial Status, Juvenile Affidavit of Financial Status, Wage Assignment, and such other forms as the state public defender deems appropriate. Such forms shall be available at the administrative office of the state public defender and published on the state public defender's website at spd.iowa.gov.

These rules are intended to implement Iowa Code chapters 13B and 815.