

815.9 Indigency determined — penalty.

1. For purposes of this chapter, chapters 13B, 229A, 232, 665, 812, 814, and 822, and section 811.1A, and the rules of criminal procedure, a person is indigent if the person is entitled to an attorney appointed by the court as follows:

a. A person is entitled to an attorney appointed by the court to represent the person if the person has an income level at or below one hundred twenty-five percent of the United States poverty level as defined by the most recently revised poverty income guidelines published by the United States department of health and human services, unless the court determines that the person is able to pay for the cost of an attorney to represent the person on the pending case. In making the determination of a person's ability to pay for the cost of an attorney, the court shall consider not only the person's income, but also the availability of any assets subject to execution, including but not limited to cash, stocks, bonds, and any other property which may be applied to the satisfaction of judgments, and the seriousness of the charge or nature of the case.

b. A person with an income level greater than one hundred twenty-five percent, but at or below two hundred percent, of the most recently revised poverty income guidelines published by the United States department of health and human services shall not be entitled to an attorney appointed by the court, unless the court makes a written finding that not appointing counsel on the pending case would cause the person substantial hardship. In determining whether substantial hardship would result, the court shall consider not only the person's income, but also the availability of any assets subject to execution, including but not limited to cash, stocks, bonds, and any other property which may be applied to the satisfaction of judgments, and the seriousness of the charge or nature of the case.

c. A person with an income level greater than two hundred percent of the most recently revised poverty income guidelines published by the United States department of health and human services shall not be entitled to an attorney appointed by the court, unless the person is charged with a felony and the court makes a written finding that not appointing counsel would cause the person substantial hardship. In determining whether substantial hardship would result, the court shall consider not only the person's income, but also the availability of any assets subject to execution, including but not limited to cash, stocks, bonds, and any other property which may be applied to the satisfaction of judgments, and the seriousness of the charge or nature of the case.

2. A determination of whether a person is entitled to an appointed attorney shall be made on the basis of an affidavit of financial status submitted at the time of the person's initial appearance or at such later time as a request for court appointment of counsel is made. The state public defender shall adopt rules prescribing the form and content of the affidavit of financial status. The affidavit of financial status shall be signed under penalty of perjury and shall contain sufficient information to allow the determination to be made of whether the person is entitled to an appointed attorney under this section. If the person is granted an appointed attorney, the affidavit of financial status shall be filed and permanently retained in the person's court file.

3. If a person is granted an appointed attorney, the person shall be required to reimburse the state for the total cost of legal assistance provided to the person pursuant to this section. "Legal assistance" as used in this section shall include not only the expense of the public defender or an appointed attorney, but also transcripts, witness fees, expenses, and any other goods or services required by law to be provided to an indigent person entitled to an appointed attorney.

4. a. If the appointed attorney is a public defender, the attorney shall submit a report to the court specifying the total hours of service plus expenses incurred in providing legal assistance to the person. In a criminal case, the report shall be submitted within ten days of the date of sentencing, acquittal, or dismissal. In a case other than a criminal case, the report shall be submitted within ten days of any court ruling or the conclusion of a trial held in the case, or if the case is dismissed within ten days of the dismissal.

b. If the appointed attorney is a private attorney or is employed by a nonprofit organization, the state public defender shall report to the clerk of the district court the amounts of any approved claims for compensation and expenses paid on behalf of a person

receiving legal assistance after such claims have been reviewed and paid by the state public defender unless the appointed attorney is paid other than on an hourly rate basis and the state public defender has notified the appointed attorney that the attorney is responsible for reporting the attorney's total hours of service plus expenses to the court.

c. If the appointed attorney has been notified by the state public defender that the attorney is responsible for reporting to the court the total hours of service plus expenses incurred in providing legal assistance to a person, the attorney shall submit a report to the court in the same manner as a public defender submits a report pursuant to paragraph "a". The amount of the attorney fees to be included in the total cost of legal assistance required to be reimbursed shall be calculated using the hours of service stated in the report at the hourly rate of compensation specified under section 815.7.

5. If the person receiving legal assistance is convicted in a criminal case, the total costs and fees incurred for legal assistance shall be ordered paid when the reports submitted pursuant to subsection 4 are received by the court, and the court shall order the payment of such amounts as restitution, to the extent to which the person is reasonably able to pay, or order the performance of community service in lieu of such payments, in accordance with chapter 910.

6. If the person receiving legal assistance is acquitted in a criminal case or is a party in a case other than a criminal case, the court shall order the payment of all or a portion of the total costs and fees incurred for legal assistance, to the extent the person is reasonably able to pay, after an inquiry which includes notice and reasonable opportunity to be heard.

7. When ordering payment of all or a portion of the total costs and fees incurred for legal assistance under subsection 6, the court may order payment of the costs and fees in reasonable installments as provided in section 909.3, or may order the entire amount due and payable. If any costs and fees are not paid at the time specified in the order of the court, a judgment shall be entered against the person for any unpaid amount. Such judgment may be enforced by the state in the same manner as a civil judgment.

8. If a person is granted an appointed attorney or has received legal assistance in accordance with this section and the person is employed, the person shall execute an assignment of wages. An order for assignment of income, in a reasonable amount to be determined by the court, shall be entered by the court. The state public defender shall prescribe forms for use in wage assignments and court orders entered under this subsection.

9. Notwithstanding subsections 3 and 6, a minor granted a court-appointed attorney or guardian ad litem under section 232.11 in a juvenile proceeding shall not be ordered to reimburse costs and fees incurred for legal assistance except as otherwise provided in chapter 232.

83 Acts, ch 186, §10137, 10201; 93 Acts, ch 175, §23, 24; 96 Acts, ch 1193, §9 – 11; 99 Acts, ch 135, §27; 2000 Acts, ch 1115, §6; 2002 Acts, ch 1067, §15; 2004 Acts, ch 1084, §13; 2012 Acts, ch 1063, §8, 9; 2013 Acts, ch 56, §1, 2

Referred to in §13B.10, 125.76, 229.19, 331.756(5a, 5c, 5d), 598.7, 602.8107, 801.4, 814.11, 815.4, 815.10, 815.10A, 815.14, 908.2A, 910.1, 910.2, 910.3, 910.9

[T] Subsection 4, paragraph b amended

[T] Subsection 4, NEW paragraph c