

**UPDATE ON
CRITERIA AND STANDARDS
FOR DETERMINING
AND VERIFYING INDIGENCY**

October 2007

Washington State Office of Public Defense

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EXECUTIVE SUMMARY

Indigency standards are being followed.

As noted in OPD's 2001 report on indigency determinations, the adoption of unified standards in the indigency statute, RCW 10.101, has, for the most part, successfully established consistent standards and guidelines for both the trial and appellate case level, according to a 2007 survey answered by 37 counties.

Washington's indigency rate for purposes of court-appointed counsel is consistent with national indigency rates.

To determine indigency, trial courts screen defendants who seek court-appointed counsel.

Trial level indigency determinations are conducted solely by judges in many counties, while in others non-judicial personnel do the screening. Basic financial standards established in the indigency statute are followed. Generally, substantial and reasonable efforts are made to determine indigency before state funds are used for court-appointed counsel.

The timing of indigency screening and the lack of counsel at arraignment in many courts needs to be addressed.

Indigent defendants have a constitutional right to counsel at arraignment, and screening practices need to be adjusted in some courts to ensure indigent defendants are timely appointed counsel. An OPD pilot program in Thurston District Court has addressed this issue, and a streamlined indigency application has been

successfully piloted as part of this program.

Verification practices vary from court to court.

Some counties hire employees to carry out verification inquiries regarding defendants' indigency applications; in many counties, verification inquiries are restricted to follow-up questions by the court.

Appellate indigency screening has become more uniform with the adoption of new court rules.

In response to a court rule change proposed by OPD in 2003 and adopted by the Supreme Court effective 2005, systems for appointing counsel have improved substantially. Appellate courts now directly appoint attorneys designated by OPD. OPD has trained hundreds of attorneys throughout the state on using an OPD-created Motion and Order of Indigency form to establish appealing parties' indigency status.

As OPD reported in 2001, it appears that Washington social services programs are governed by clear and detailed rules regarding establishing and verifying indigency.

These rules are being followed in the various programs administered by the Department of Social and Health Services and other state agencies. The standards governing these social services programs seem to be administered consistently. It is appropriate that the receipt of public assistance is a basis for establishing indigency in appointment of counsel determinations.

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I. INTRODUCTION

The Office of Public Defense's (OPD) enabling statute, RCW 2.70, requires the agency to "recommend criteria and standards for determining and verifying indigency." This report updates an OPD report on indigency standards published in 2001¹ and recommends standards and criteria for determining and verifying indigency for public defense cases in Washington.

To obtain information about the manner in which Washington courts assess and verify indigency at the appellate and trial level, OPD sent a survey to the criminal case indigency screeners in every county in the state in June 2007. Screeners were asked what person or group initially gathers information from applicants at the trial court level in order to determine indigency, who makes the initial decision on whether an applicant is indigent at the trial level, what standards are used by the trial court to assess indigency, how information is verified, the percentage of people who are found indigent, and questions relative to cost-recovery.

Thirty-seven counties responded to the survey. The survey results indicate that most courts use a combination of the federal poverty guidelines and a review of the applicant's income and expenses. This is in accord with RCW 10.101.010.

Since 2006, OPD has administered a state program under RCW 10.101 to distribute appropriated funds to the counties and cities for the improvement of public defense services. When applying for funds, each jurisdiction reports local public defense statistics, including the number of indigent public defense cases. This data was combined with the counties' 2007 indigency surveys for this report.

In recent years, OPD has proposed court rule changes, adopted by the Supreme Court, to improve indigency determinations on appeal. OPD has also created a new streamlined indigency determination application. These changes are discussed in this update to OPD's 2001 report.

¹ <http://www.opd.wa.gov/Report%202.htm>

II. INDIGENCY DETERMINATIONS AT THE TRIAL LEVEL

In general, the courts and counties determine indigency of persons requesting public defense in accordance with the indigency statute.

Indigency Standards

The Washington Supreme Court has held:

To qualify for appointed counsel, it is not necessary that an accused person be utterly destitute or totally insolvent. Indigence is a relative term, and must be considered and measured in each case by reference to the need or service to be met or furnished. In connection with the constitutional right to counsel, it properly connotes a state of impoverishment or lack of resources which, when realistically viewed in the light of everyday practicalities, effectually impairs or prevents the employment and retention of competent counsel.

Morgan v. Rhay, 78 Wn.2d 116, 119-20, 470 P.2d 180 (1970).

When an accused initially appears in a criminal case, or in a case involving involuntary commitment, dependency, or any other case where the right to counsel attaches, the trial court must determine if the person is indigent. RCW 10.101.020(1). The determination of indigency is based on the guidelines established by RCW 10.101.010. The office or individual designated by the court to make the determination of indigency shall provide a written report and opinion as to indigency on a form prescribed by the Office of Public Defense, based on information obtained from the defendant and subject to verification. RCW 10.101.020(6).² The form shall include information necessary to provide a basis for making a determination with respect to indigency as provided by this chapter. *Id.*

In determining indigency, the trial court must take into consideration the indigency guidelines, as well as the length and complexity of the proceedings, the usual and customary fees of attorneys in the community for similar matters, the availability and convertibility of any personal or real property owned, outstanding debts and liabilities, the accused's past and present financial records, earning capacity and living expenses, credit standing in the community, family independence, and any other circumstances which may impair or enhance the ability to advance or secure such attorney's fees as would ordinarily be required to retain competent counsel.³ The court may not deny appointment of counsel due to financial resources of the applicant's family

² The trial level form previously prescribed by OPD and used widely is published by the Administrative Office of the Courts (AOC), and is attached at Appendix D. See discussion at p. 6 concerning a new, alternative form also prescribed by OPD for indigency screening.

³ See *Morgan v. Rhay*, *supra*, 78 Wn.2d at 119-20.

or friends but the court may take into consideration the resources of the applicant's spouse, if the spouse is not the victim of the offense. The court may not deny indigency on the ground that the defendant has made bond. RCW 10.101.020(2).

Indigency Screening Practices

Before determining indigency, the courts employ various procedures to screen the defendants who request public defense representation. According to the screeners across the state, in the majority of counties at the trial court level, screening is conducted directly by the judge and/or a combination of judge and court staff. These screeners take information from the applicant regarding the applicant's indigency. In a significant number of counties the trial judge is the person who gathers this information.

Counties in which Employees Screen for Indigence

Today, 13 counties (Clark, Cowlitz, King, Kitsap, Klickitat, Mason, Pierce, San Juan, Skagit, Snohomish, Spokane, Walla Walla and Whatcom) handle the preliminary application process through employee screeners. The screeners interview applying defendants, using the OPD/AOC screening document or a modified version of the form. Most of these screeners have other duties as well; they are jail staff, probation staff, or pretrial services staff, for example.

In many, but not all, counties handling indigency screening through screening employee programs, screeners themselves are authorized to make the appointment of counsel. These employees fill out the indigency paperwork with the applicants, verify the supporting documentation (for those who are out of custody), and decide whether the applicants are indigent under the statute, which states that "(t)he court or its designee shall determine whether the person is indigent pursuant to the standards set forth in this chapter." If the screener concludes the applicant is indigent, a public defender is appointed.

In King County, screeners are employed by the King County Office of Public Defense, and in Skagit County, they are employees of the Office of Assigned Counsel. In Spokane, screeners work for Spokane County Pretrial Services. Three counties (King, Pierce and Skagit), require applicants to pay an initial application fee of either \$25 or \$10, which is required at the time they are screened. If an applicant cannot pay the fee in advance, the indigency screening fee is added to the judgment and sentence if the applicant is convicted.

Counties in which Judges Screen for Indigence

In 24 counties (Adams, Asotin, Benton, Chelan, Clallam, Columbia, Douglas, Garfield, Grant, Ferry, Franklin, Grays Harbor, Jefferson, Kittitas, Lincoln, Okanogan, Pacific, Pend Oreille, Skamania, Stevens, Thurston, Wahkiakum, Whitman and Yakima) the indigency determination process is handled directly by the courts.

Defendants in Pre-Trial Incarceration Status fill out indigency applications themselves before going to court. Jail staff then provide the applications to the court,

and the judge determines indigency during the defendant's initial court appearance. Those defendants unable to fill out the paperwork, often because they are not literate, are assisted by defense counsel or jail staff.

Defendants Who Are Not Incarcerated fill out indigency applications themselves which they pick up from a court office or receive in the courtroom. If needed, they may be assisted by defense counsel. The judge reviews the application, and may make follow-up inquiries by questioning the defendant under oath. The judge then determines whether the defendant is indigent. This process takes place in court, usually at the defendant's initial court hearing.

Provisional Counsel

If a determination of eligibility cannot be made before "the defendant's initial contact with the court or at the earliest time circumstances permit," the indigency statute requires immediate appointment of a provisional attorney:

If a determination of eligibility cannot be made before the time when the first services are to be rendered, the court shall appoint an attorney on a provisional basis. If the court subsequently determines that the person receiving the services is ineligible, the court shall notify the person of the termination of services, subject to court-ordered reinstatement.

RCW 10.101.020(4)

Thus, the mandatory language of the statute and the intent of the drafting committee indicate that provisional counsel must be appointed by the time of the applicant's first appearance if the court has not yet been able to obtain sufficient information to determine indigency.

In 2001, OPD reported that "provisional counsel is not being appointed consistently in all Washington trial courts... the court is directed by the indigency statute to appoint provisional counsel until a determination of indigency can be made. Some counties are not appointing counsel in a timely way." As discussed below, this remains a problem today.

Indigent and Able to Contribute

The indigency statute provides that applicants who have some assets but not enough to pay for private counsel may be found "indigent but able to contribute" and ordered by the court to pay a portion of their defense costs. These defendants may have non-liquid assets or be employed but earn less than enough to fully pay for counsel. The statute defines a person who is indigent and able to contribute as one "who, at any stage of a court proceeding, is unable to pay the anticipated cost of counsel for the matter before the court because his or her available funds are less than the anticipated cost of counsel but sufficient for the person to pay a portion of that cost." RCW 10.101.010(2).

Promissory Notes

If applicants are found indigent but able to contribute to the cost of their defenses, judges are authorized by the indigency statute to order them to sign promissory notes, usually to pay a certain sum into the court every month during the trial case. Promissory notes generally are based on set amounts for specific types of charges, as established by the county. For example, see the King County Promissory Note Schedule, Appendix A. If a promissory note is not paid in full by the end of the trial court proceedings, the note may be discharged, or in the case of conviction the costs may be rolled over into the judgment and sentence. Six counties use promissory notes as a means of collecting fees from applicants able to contribute to the costs of appointed counsel.⁴

Recoupment of Costs for Appointed Counsel

Upon conviction, most courts impose recoupment costs for appointed counsel as a condition of the judgment and sentence. In a few counties, the amount imposed depends on the defendant's ability to pay and whether the case was resolved by way of plea or trial. In others, a standard set fee is imposed in every case. For example, Adams County imposes \$350 in recoupment costs for appointed counsel; the Benton-Franklin joint judicial district judges impose a flat fee of \$750; Jefferson County imposes \$950 in cases that went to trial, and \$650 for cases not resulting in trial. See Chart of fees, attached as Appendix B.

Timeliness of Indigency Screening and the Appointment of Counsel

Timeliness of indigency screening can be improved through the use of a new, streamlined OPD form.

RCW 10.101 establishes that applicants who cannot afford to pay for an attorney must be evaluated as to their indigency status at their initial involvement with the trial court, which is usually the arraignment hearing. Arraignment is a critical stage of the proceeding, triggering the constitutional right to counsel, because the trial court advises defendants of the charges against them and they enter pleas of guilty or not guilty.

Throughout the state, many courts do not have public defense counsel present at arraignment. Proposed rule changes to CrRLJ4.1, CrRLJ 4.2, CrR 4.1, and CrR 4.2, which expressly establish the right to counsel at arraignment, are currently being considered for adoption by the Supreme Court. These rule changes were written by the Washington State Bar Association's (WSBA) multi-disciplinary Committee on Public Defense and endorsed by the WSBA's Board of Governors.⁵

⁴ These counties are Chelan, Grays Harbor, King, San Juan, Skagit and Snohomish.

⁵ The WSBA Committee on Public Defense, created to fashion solutions to pervasive public defense problems in Washington, released a report entitled "Making Good on Gideon's Promise," with a recommendation that the proposed arraignment counsel rules be adopted, among other recommendations, in March 2007.

In many courts, particularly misdemeanor courts, delays in the screening process cause delays in the appointment of counsel. A common practice is for defendants to be advised at arraignment that they have the right to a public defense attorney, but if they exercise this right, they are advised that their arraignment will be continued to another hearing time so their indigency status can be evaluated. In some cases, this means defendants remain incarcerated until the later hearing.

OPD Pilot Indigency Screening Forms

In early 2006, OPD established a pilot program at Thurston District Court to implement public defense standards in the court, including arraignment counsel. A group of private attorneys brought to the court's attention the fact that indigency screening was inadequate prior to the appointment of counsel. In response, OPD created a new indigency application that is easier for defendants to fill out than the more elaborate existing form. A copy is attached at Appendix C. The defendants fill out the form before or during the arraignment proceedings. The judge then reviews the form and asks questions of the defendants. For those who are found to be indigent, the court appoints the public defense arraignment attorney, who is present in court for that purpose. In those cases where the defendant's eligibility status is unclear, the court appoints the public defender for the arraignment hearing, and orders the defendant to provide additional documentation before the next court hearing.

A 2001 Spokane County Superior Court decision confirmed that the indigency application process cannot systematically delay appointment of public defense attorneys noting that "(i)f Respondent (the Spokane County District Court) or its designee is unable to determine the applicant's eligibility or ineligibility for public defender services at the time of application, or the extent of the applicant's ability to contribute to the cost of such services, respondent or its designee shall immediately appoint counsel on a provisional basis." *Knox v. Spokane County District Court*, Case No. 00205858-1, Writ of Mandamus and Order, at p. 9 (February 1, 2001.)

Upcoming Regional Screeners Meetings

OPD has begun working with employee screeners in the counties to hold regional screening meetings in the Spring of 2008. These meetings will provide the opportunity for screening training and the exchange of screening practice methods.

Membership of the Committee on Public Defense included judges, public defense attorneys, prosecutors, private attorneys, an assistant attorney general, law professors, county officials, city and county association representatives, and the Office of Public Defense, among other groups.
<http://www.wsba.org/lawyers/groups/committeonpuldifense.htm>

III. TRIAL LEVEL STANDARDS AND CRITERIA

Under the indigency statute, persons requesting public defenders must have income below 125 percent of the federally established poverty level.

Financial criteria for determining indigency at the trial court level are defined in the indigency statute. An indigent person is one who is:

- (a) Receiving one of the following types of public assistance: Temporary assistance for needy families, general assistance, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, Medicaid, or supplemental security income; or
- (b) Involuntarily committed to a public mental health facility; or
- (c) Receiving an annual income, after taxes, of one hundred twenty-five percent or less of the current federally established poverty level; or
- (d) Unable to pay the anticipated cost of counsel for the matter before the court because his or her available funds are insufficient to pay any amount for the retention of counsel.

RCW 10.101.010(1).

All 37 counties that participated in the 2007 indigency survey use the federal poverty guidelines as their basis for determining indigency. The guidelines take into account the number of people in the household and are updated by the federal government each year. Income of household members who contribute to the support of the applicant is included.

To receive assistance through most state welfare and social services agencies, applicants must be indigent. Applicants apply for benefits from several programs administered by the Department of Social and Health Services (DSHS) by submitting one general application. These benefits include cash assistance, food stamps, medical assistance, nursing care, child care, drug and/or alcohol treatment, and other programs.

In Washington, applicants whose household incomes are up to 125 percent of the federal guidelines are defined as indigent. Yearly income levels at 125 percent of the 2007 poverty guidelines are as follows:

2007 Poverty Guidelines (125%)

Persons in Family Unit	Poverty Guidelines At 125%.
1	\$12,763
2	17,113
3	21,463
4	25,813
5	30,163
6	34,513
7	38,863
8	43,213

For family units with more than 8 persons, add \$4,350 for each additional person.

SOURCE: aging.ca.gov., using amounts established in *Federal Register*, Vol. 72, No. 15, January 24, 2007, pp. 3147–3148⁶

Application for Indigency

RCW 10.101 establishes that an indigency application form must seek information regarding the applicant's employment, living expenses, support obligations, and eligibility for public assistance. If applicants are not public assistance recipients, they must list family income, contributions from other persons, and non-poverty based assistance, as well as income from stocks, bonds, and real estate. Applicants are required to list in detail monthly expenses and court-imposed obligations and sign the form under penalty of perjury.

All of the counties responding to the survey use screening forms. Many use the OPD/AOC form (Appendix D), or slightly modified versions of this form. As noted earlier, OPD's new streamlined indigency screening form is now recommended when defendants are filling out indigency applications themselves (see Appendix C).

⁶ Located at: <http://aspe.hhs.gov/poverty/07poverty.shtml>

IV. VERIFICATION OF INDIGENCY IN THE TRIAL COURTS

Courts use various verification and documentation methods to investigate indigency status. The indigency statute does not require that all financial information be verified, but rather establishes that the applicant's financial information is "subject to verification." RCW 10.101.020(6). All of the responding counties employ some type of verification. The methods used differ depending on the size of the jurisdiction, the cost of verification versus the cost-savings that may be generated, and other resource issues.

As noted earlier, counties require applicants to complete an indigency application form that includes a sworn affidavit. The screeners, whether judges or county employees, then make direct inquiries of the applicants regarding their indigency applications. The screeners may further require the applicants to provide wage stubs or proof of public assistance.

Current Verification Practices

Based on the indigency survey results, several counties provide and fund pretrial verification services. King, Pierce, Skagit and Snohomish routinely require the applicant to provide wage stubs, tax returns and verification of public assistance with every application. The applicant has the burden of providing supporting documents to the screener, and the screeners verify the information provided. The practices vary, but usually, in-custody defendants are screened and counsel is appointed before the arraignment hearing. Out-of-custody applicants are either screened before the arraignment calendar, or are provided provisional counsel at arraignment and are screened after the hearing.

For the most part, in the remaining counties, judges or county employees seek verification beyond the initial application when the judge and/or the screening staff have reservations about a defendant's claimed indigency status. Circumstances that trigger a verification inquiry can include significant financial support from family members or spousal income, property ownership, the defendant's employment, or other factors. In some counties, when the judge has reservations about a defendant's indigency, the judge requests the public defender or prosecutor to collect financial information and verification. Judges and court staff in smaller communities may be personally familiar with a defendant's financial situation, as well.

As the court noted in *Knox v. Spokane County District Court, supra*, one difficulty with going beyond judicial inquiry is that smaller counties in particular have not had a means of accessing all types of information. Nor do they have the resources (funds, staff, time), to spend on a verification process. Finally, an unduly burdensome screening process frustrates the underlying purposes of RCW 10.101, in that people may be discouraged from exercising their right to counsel.

Potential Verification Model

In conjunction with the indigency screening reforms being pursued in Thurston County, a group led by Thurston County private criminal attorneys and the courts is, with OPD's participation, in the process of developing a new model for indigency verification. As discussed earlier, OPD's abbreviated indigency form now used in Thurston District Court includes a verification authorization provision that is signed by applicants. Plans for the new verification program include staffing by interns, who would use a computer and telephone located at the courthouse to verify selected indigency screening applications by contacting employers, landlords, creditors, etc., as identified on the applications. This model is seen as having the potential for implementing verification on a low-cost basis while upholding the defendants' right to have counsel appointed at their first appearances.

V. TRIAL COURT INDIGENCY RATE

Judges and court employees often note that the overwhelming majority of criminal defendants, particularly those charged with felonies, have incomes below the poverty standard. This is also the case for those involved in dependency and termination cases and involuntary commitment hearings.

In 2001, OPD reported that the trial level superior court indigency rate in Washington was 85 percent to 90 percent. According to the 2007 indigency survey results, in those courts which keep indigency statistics, about 90 percent of the people seeking indigency status are found to be indigent at the trial level in superior court. (It must be noted that this statistic reflects only those who apply for indigency status; most defendants with higher income hire private attorneys and never seek indigency status.) As documented in OPD's 2001 report, Washington's indigency rate for court-appointed counsel is typical. According to the National Center for State Courts, between 80 percent and 90 percent of all people charged with felonies in the United States qualify for indigent defense. See "Indigent Defense: FAQs," 3/15/07, reported at <http://www.ncsconline.org/WC/CourTopics/FAQs.asp?topic=IndDef#FAQ534>

The misdemeanor indigency level has not yet been established. As data reported in the counties' RCW 10.101 funding applications becomes more comprehensive, this statistic will become available.

VI. INDIGENCY ON APPEAL

OPD has created a standardized Motion and Order of Indigency, which is now used for appellate indigency determination.

Persons who have been convicted of a crime, or who have lost custody of their children in dependency and/or termination cases, or who have been involuntarily civilly committed, either pursuant to RCW 71.05 (mentally disordered persons) or RCW 71.09 (sexually violent predators), or who are involved in other cases in which the right to counsel is guaranteed initiate appeals by filing notices of appeal in the trial court. Before a defendant is entitled to appointed counsel to assist with his/her appeal, indigency must be determined by the superior court judge.

Upon filing a notice of appeal, the defendant files a Motion and Order of Indigency and an affidavit describing his or her financial information, which is evaluated by the trial judge. The Motion and Order of Indigency is granted if “the party seeking public funds is unable by reason of poverty to pay for all or some of the expenses of appellate review.” Rules of Appellate Procedure (RAP) 15.2(b)(1).

After OPD’s 2001 report on indigency, the agency created a standardized Motion for Indigency and an Order of Indigency, streamlining the old forms and making them easier for applicants to fill out. These can be found at <http://opd.wa.gov/Appellate%20Program/Filing%20an%20Appeal.htm> RAP 15.2 was amended in 2005 to establish that the appellate courts, rather than the trial courts, appoint counsel for appeals. As provided in the amended rule, OPD designates the attorney to be appointed, and, in accordance with the rule, the Court of Appeals does not appoint an attorney until the Order of Indigency is received from the trial court. OPD provided training to hundreds of attorneys statewide on the new indigency forms and the appeal process in 2006 and 2007.

A majority of the indigency survey respondents report that the courts reassess indigency at the time the convicted party files a notice of appeal. In many counties, the judge reviews updated paperwork from the defendant and determines whether he or she is indigent. In other counties, employee screeners review the Motion and Order of Indigency. Thus, reasonable efforts are made within the resources available in the various counties to determine indigency before public funds are used for court-appointed appellate counsel.

According to the surveys, the overwhelming majority of criminal appellants who request publicly funded attorneys for appeals are indigent. In fact, almost all defendants who are indigent at trial are indigent on appeal. This most likely results from the fact that generally the trial courts’ indigency screening process is initially conducted carefully, and that almost all indigent criminal appellants remain incarcerated throughout their appeals.⁷

⁷ OPD, *supra*, note 1, at 17.

VII. INDIGENCY UNDER STATE AND FEDERAL STANDARDS

To receive assistance through most state welfare and social services programs, either as a case grant or in the form of other benefits, applicants must be indigent. Public assistance includes temporary assistance for needy families (TANF), general assistance, poverty-related veterans' benefits, food stamps, refugee resettlement benefits, Medicaid, and supplemental security income. Needs-based assistance also includes nursing care, drug or alcohol treatment, and other programs.

TANF is the state's cash assistance program for low-income families, supported by both federal and state funds. Recipients must be indigent, as determined by standards established by the state pursuant to federal requirements. Benefit amounts depend on the family's income and assets, as well as family size. DSHS requires pertinent documentation. Applications are signed under penalty of perjury.

Food stamp applicants fill out the same general state application as TANF applicants. Income and asset limits apply to the food stamp program and the amount of food stamps received depends upon income and family size. DSHS requires documentation of income and assets, shelter and living costs, and court-ordered obligations.

Reduced-price meals are provided by local school districts to low-income students. These meals are furnished through federal funds administered through the U.S. Department of Agriculture. The children of applicant families are eligible for reduced-cost meals if family income is less than 185 percent of the federal poverty guidelines.

State regulations setting the income eligibility maximums for a number of state programs are located at Appendix E.

Poverty Rates in Washington

In 2004, the poverty rate in Washington was 11.6 percent overall –14 percent for those living in rural communities and 11.2 percent for those living in urban areas. See "2004 County-Level Poverty Rates for Washington," data collected and reported by the USDA Economic Research Service, located at www.ers.usda.gov/Data/PovertyRates/Povlistpct.asp?ST=WA&view=percent.

These statistics are similar to those gathered in the "Washington State Civil Legal Needs Study", conducted by the Task Force on Civil Equal Justice Funding, in September 2003, located at <http://www.courts.wa.gov/index.cfm>.

The study found that Washington state ranked 22nd nationally in poverty. It ranked third in poverty growth rate over the previous decade, with a 46 percent increase in the number of people living in poverty since 1990. The study further found that poverty disproportionately affects residents in the state's predominantly rural areas. In

King County, which includes the Seattle metropolitan area and is the state's most developed region, the poverty rate was 10.7 percent. Poverty rates were much higher in the South Central (25 percent), Northeast (16.8 percent), Southeast (18.9 percent) and North Central (22.2 percent) regions, which are mostly rural with some smaller cities.

Finally, according to information received from the federal Legal Services Corporation (LSC), in 2006 there were 612,370 Washington citizens living in poverty. That year, Washington's overall population was 6,395,798.

VIII. CONCLUSION

The 1989 passage of the indigency statute, RCW 10.01, has for the most part successfully established more thorough and consistent indigency determinations at both the trial court and appellate court levels. In the 37 surveyed counties, all persons who are charged with crimes and who request court-appointed attorneys in the trial courts because they cannot afford to hire counsel are screened for indigency. All of the surveyed counties have an appropriately designated person or agency to determine indigency. In many counties, that person is the trial court judge. In several counties, there is a county department or agency that conducts the screening. Some counties with screening units verify indigency applications; other counties with fewer available resources only verify selected applications. Overall, reasonable efforts are made within the resources available in the various counties to determine indigency before public funds are used for court-appointed counsel.

In general, the basic financial standards established in the indigency statute are followed, though some counties use a modified version of the state form. Screening is mandatory under the indigency statute but should not become so complicated that it is not cost-effective. Rigid verification requirements are impermissible if they impede the defendant's right to timely appointment of counsel.

A streamlined OPD indigency determination application, located at Appendix C, has been piloted in OPD's Thurston District Court public defense pilot program. The streamlined process has allowed judges to complete indigency determination prior to appointing counsel for arraignments. This comports with the requirements of the constitutional right to counsel.

Most of the responding counties reassess indigency at the time the notice of appeal and Motion and Order of Indigency is filed. OPD has created a standardized Motion and Order of Indigency in conjunction with an appellate attorney appointment process which went into effect in 2005. The counties report a median average of 90 percent of the defendants who file criminal appeals are found indigent. This appears to be a reflection of the fact that all indigent defendants were screened before trial, and the overwhelming majority remain continuously incarcerated.

Findings

- 1. Washington's indigency rate for purposes of court-appointed attorneys is about 90 percent of defendants at the superior court trial level. This is within the federal Bureau of Justice's indigency range for criminal defendants nationally. The median appellate indigency level is about 90 percent as well.**
- 2. Trial level indigency screening appears to be implemented by appropriate court personnel in the various counties, in accordance with the statute; however, delays in screening and appointment of counsel are not permissible. Proposed court rules would ensure the timely appointment of public defense counsel at arraignment hearings.**
- 3. OPD's new streamlined indigency screening form can be used to improve the timing of indigency determinations in trial courts where the judge directly handles indigency screenings.**
- 4. A standard Motion and Order of Indigency has been published by OPD in conjunction with amendments to RAP 15.2, which have created a new indigent appellate appointment system. These changes have improved the appellate indigent appointment process.**
- 5. Many counties lack resources to implement a system for verification of indigency status. A proposed program for a low-cost verification system currently being considered in Thurston County will test a potentially efficient method for verification.**
- 6. Indigency under state assistance programs is for the most part defined by the federal poverty guidelines. Verification of an applicant's indigency is a requirement of programs administered by the Department of Social and Health Services. Washington programs appear to utilize appropriate standards and verification techniques to assess indigency.**

TABLE OF APPENDICES

Appendix A: King County Promissory Note Schedule

Appendix B: Chart of fees

Appendix C: New Streamlined Form Prescribed by OPD

Appendix D: State of Washington Determination of Indigency Form, presented by OPD and published by the Administrative Office of the Courts (AOC)

Appendix E: State regulations setting the income eligibility maximums for various Programs

APPENDIX A

2007 PROMISSORY NOTE AMOUNTS*

CASE TYPE	Cost of Counsel	Processing Fee	Total Amount	3 Month Payment	6 Month Payment
Felony	\$1,331.65	\$25.00	\$1,356.65	\$452.22	\$226.11
Felony Probation	\$439.44	\$25.00	\$464.44	\$154.81	\$77.41
Felony Sentencing Only	\$439.44	\$25.00	\$464.44	\$154.81	\$77.41
Homicide	\$2,663.30	\$25.00	\$2,688.30	\$896.10	\$448.05
KC Misdemeanor**	\$433.69	N/A	\$433.69	\$144.56	\$72.28
KC Misdemeanor Appeal	\$1,851.00	N/A	\$1,851.00	\$617.00	\$308.50
City of Shoreline Misdemeanor	\$175.00	N/A	\$175.00	\$58.33	\$29.17
City of Kenmore	\$175.00	N/A	\$175.00	\$58.33	\$29.17
Juvenile Offender	\$595.49	\$25.00	\$620.49	\$206.83	\$103.42
Juvenile Review	\$196.51	\$25.00	\$221.51	\$73.84	\$36.92
Becca (ARY, CHINS, Truancy)	\$551.75	\$25.00	\$576.75	\$192.25	\$96.12
Dependency	\$1,108.68	\$25.00	\$1,133.68	\$377.89	\$188.95
Dependency Review	\$443.47	\$25.00	\$468.47	\$156.16	\$78.08
COC	\$824.65	\$25.00	\$849.65	\$283.22	\$141.61
ITA	\$455.14	\$25.00	\$480.14	\$160.05	\$80.02
KC Mental Health Court	\$399.91	N/A	\$399.91	\$133.30	\$66.65
Drug Court	\$768.32	\$25.00	\$793.32	\$264.44	\$132.22

*Effective 1/1/07.

**Use this rate for KC misdemeanor probation, review, re-sentencing, or other hearing.

APPENDIX B

**CHART OF FEES IMPOSED AS RECOUPMENT COSTS FOR APPOINTED
COUNSEL/ PUBLIC DEFENDERS**

County	Fees imposed as recoupment in the trial courts
Adams	\$350 flat fee
Asotin	\$750 flat fee if convicted
Benton	\$750 plus costs "if found guilty"
Chelan	Usually \$300 for felonies (may be less if plea early on)
Clallam	\$350
Clark	Amount fixed by court order
Columbia	\$750 flat fee if convicted
Cowlitz	No fixed schedule of fees
Douglas	N/A
Ferry	No fixed schedule of fees
Franklin	\$750 plus costs "if found guilty"
Garfield	\$750 flat fee if convicted
Grant	No fixed schedule
Grays Harbor	\$500
Island	N/A
Jefferson	\$950 for trials, \$650 for cases not resulting in trial
King	See schedule at Appendix A (recoupment and promissory note schedules are the same)
Kitsap	No fixed schedule of fees
Kittitas	Lower Kittitas District Court \$200 per case
Klickitat	No fixed schedule of fees

County	Fees imposed as recoupment in the trial courts
Lewis	N/A
Lincoln	No fixed schedule of fees for felonies; \$111 for misdemeanors
Mason	No fixed schedule of fees
Okanogan	\$250 per felony case; \$200 per simple misdemeanor
Pacific	\$250 per case
Pend Oreille	No fixed schedule of fees
Pierce	\$25 screening fee; recoupment may be imposed by sentencing courts
San Juan	Detailed fee schedule
Skagit	\$125 - \$750 per felony; \$100 - \$250 per misdemeanor
Skamania	No fixed schedule of fees
Snohomish	\$962 per felony; \$258 per misdemeanor; \$500 per contempt of court; \$193 per expedited felony; \$100 per diversion
Spokane	\$250 - \$650 per felony; \$75 - \$250 per misdemeanor
Stevens	No fixed schedule of fees
Thurston	No fixed schedule of fees
Wahkiakum	\$80 per attorney hour
Walla Walla	Usually \$775 per case
Whatcom	No fixed schedule of fees
Whitman	No fixed schedule of fees; based on severity of charge, length of proceedings and future ability to pay
Yakima	No fixed schedule of fees

APPENDIX C

INDIGENCY SCREENING FORM

Name _____

Address _____
(Street) (City) (State) (Zip Code)

1. Place an "x" next to any of the following types of assistance you receive:

- | | |
|--|---|
| <input type="checkbox"/> Welfare | <input type="checkbox"/> Poverty Related Veterans' Benefits |
| <input type="checkbox"/> Food Stamps | <input type="checkbox"/> Temporary Assistance for Needy Families |
| <input type="checkbox"/> SSI | <input type="checkbox"/> Refugee Settlement Benefits |
| <input type="checkbox"/> Medicaid | <input type="checkbox"/> Other – Please Describe _____ |
| <input type="checkbox"/> General Assistance | _____ |

2. Do you work or have a job? yes no. If yes, occupation: _____

Employer's name & phone number _____

3. Do you have a spouse or partner who lives with you? yes no. If yes, name: _____

Occupation & Employer's name _____

4. Do you and/or your spouse/partner receive unemployment, Social Security, a pension, or workers' compensation? yes no. If yes, please specify _____. Amount \$ _____

5. Please complete all that applies:

- | | |
|--|----------|
| a. Monthly income from work (after deductions) | \$ _____ |
| b. Spouse or partner's monthly income from work (after deductions) | \$ _____ |
| c. Contribution from any person living w/you | \$ _____ |
| d. Interest, dividends, or other earnings | \$ _____ |
| e. Other income (specify) _____ | \$ _____ |

6. Do you and/or your spouse/partner have children residing with you? yes no. How many? ____

7. Including yourself, how many people in your household do you support? _____

8. Do you own a home? ___yes ___no. If yes: Value _____ Amount owed _____

9. Do you own a vehicle(s)? ___yes ___no. If yes, year(s) and model(s) of vehicle(s): _____

Value of vehicle(s)_____ Amount owed on vehicle(s) _____

10. How much money do you have in checking/saving account(s)? _____

Stocks, bonds or other investments? _____

11. Other than routine living expenses such as rent, utilities, food, etc, do you have other expenses such as **child support** payments, **court-ordered** fines or **medical** bills, etc.? If so, describe:

12. Do you have money available to hire a private attorney? ___yes ___no

I certify under penalty of perjury under Washington State law that the above is true and correct. I give my permission for the court or designated agency to verify this information and I authorize all persons listed above to release my financial information to the Thurston District Court, and I agree to hold them harmless for such release. **I also agree to immediately report any change in my financial status to the court.**

Signature

Date

FOR COURT USE ONLY - DETERMINATION OF INDIGENCY

_____ Eligible for a public defender at no expense

_____ Eligible for a public defender but must contribute \$_____

_____ Re-screen in future regarding change of income (e.g. defendant works seasonally)

_____ Not eligible for a public defender

JUDGE

APPENDIX D

STATE OF WASHINGTON
Determination Of Indigency Report

I. Identification

County _____ Court _____
 Jurisdiction (check one) () Superior () District () Municipal Name of City _____
 Applicant's Name _____ Case Number: _____

Case Type

(check the category corresponding to the most serious charge)

- | | | |
|-------------------------------|--|--------------------------------|
| ____(1) Felony - Class A+ | ____(5) Juvenile Felony - Class A+ | ____(9) Dependency |
| ____(2) Felony - Class A | ____(6) Juvenile Felony - Class A | ____(10) Civil Commitment |
| ____(3) Felony - Class B or C | ____(7) Juvenile Felony - Class B or C | ____(11) Civil Contempt |
| ____(4) Misdemeanor | ____(8) Juvenile - Misdemeanor | ____(12) Other (specify) _____ |

Charges _____

Applicant's Address _____

Applicant's Telephone (____) _____ - _____ (Street) _____ (City) _____ (State) _____ (Zip Code) _____
 Date of Birth ____ / ____ / ____ Social Security # (optional) ____ / ____ / ____

Occupation _____ Employer _____
 (Name) (Address) (Telephone)

II. Support Obligations

Total Number Dependents (include applicant in count) _____ If juvenile defendant, does he/she live with parents? (circle) Y N
 If yes: Father's name _____ Mother's name (include maiden) _____

III. Presumptive Eligibility (check all that apply)

a. ___ Party is indigent because receives public assistance in form of: () AFDC¹ () General Assistance () Food Stamps
 () Medicaid () Poverty-Related V.A.² Benefits () SSI³ () Refugee Resettlement Benefits () Other; specify _____
 Case Number _____ Verified? _____ Method _____

b. ___ Party is indigent because committed to a public mental health facility.
 Verified? _____ Method: _____

c. ___ Party is indigent because annual income, after taxes, is 125% or less of current federally established poverty level.
 \$ _____ Specify annual income after taxes
 Verified? _____ Method: _____

If Section III, a, b, or c applies, complete only Sections VIII, X and XI. Submit report to Court. If Section III is not applicable, complete all remaining sections.

IV. Monthly Income Verified?

- | | | | |
|--|-----------------|---|---|
| a. Monthly take-home pay (after deductions) | \$ _____ | Y | N |
| b. Spouse's take-home pay (enter N/A if conflict) | \$ _____ | Y | N |
| c. Contribution from any person domiciled with applicant and helping defray his/her basic living costs | \$ _____ | Y | N |
| d. Interest, dividends, or other earnings | \$ _____ | Y | N |
| e. Non-poverty based assistance (Unemployment, Social Security, Workers Compensation, pension, annuities) (DON'T include poverty-based assistance. See IV. a) | \$ _____ | Y | N |
| f. Other income (specify) _____ | \$ _____ | Y | N |
| Total Income | \$ _____ | | |

V. Monthly Expenses (for applicant and dependents; average where applicable)

- | | | | |
|--|-----------------|---|---|
| a. Basic Living Costs - Shelter (rent, mortgage, board) | \$ _____ | Y | N |
| Utilities (heat, electricity, water); enter 0 if included in cost of shelter | \$ _____ | Y | N |
| Food | \$ _____ | Y | N |
| Clothing | \$ _____ | Y | N |
| Health Care | \$ _____ | Y | N |
| Transportation | \$ _____ | Y | N |
| Loan Payments (specify) _____ | \$ _____ | Y | N |
| b. Court imposed obligations (check) ___ fines ___ court costs ___ restitution ___ support ___ other | \$ _____ | Y | N |
| c. Bail/bond paid or anticipated (this offense) | \$ _____ | Y | N |
| d. Other expenses (specify) _____ | \$ _____ | Y | N |
| Total Expenses | \$ _____ | | |

¹ Aid to Families with Dependent Children
² Veterans' Administration
³ Supplemental Security Income

VI. Total Income Part IV, minus Total Expenses Part V Disposable Net Monthly Income \$ _____

VII. Liquid Assets

Verified?

- a. Cash, savings, bank accounts (include joint accounts) \$ _____ Y N
 - b. Stocks, bonds, certificates of deposit \$ _____ Y N
 - c. Equity in real estate \$ _____ Y N
 - d. Equity in motor vehicle required for employment, IF over \$3,000 (list overage: value minus \$3,000) \$ _____ Y N
 Make of car _____ Year _____
 - e. Equity in additional vehicles (list total value) \$ _____ Y N
 - f. Personal property (jewelry, boat, stereo, etc.) \$ _____ Y N
- Total Liquid Assets \$ _____**

VIII. Affidavit and Notification

I, _____ (print name) do hereby certify (or declare) under penalty of perjury under the Laws of the State of Washington that the foregoing is true and correct (RCW 9A.72.085). By my signature below, I authorize the court to verify all information provided here. I further swear to immediately report any change in financial status to the court. I understand that if bail is imposed in this matter or if my financial condition changes I may request a redetermination.

Signed _____ Date _____ Place _____

IX. Determination of Indigency

- a. Disposable Net Monthly Income (from Section VI) \$ _____
 - b. Total Liquid Assets (from Section VII) + \$ _____
 - c. **Total Available Funds** (a plus b) = \$ _____
 - d. Anticipated Cost of Counsel for Offense Type(s) \$ _____
- ____ If (c) is zero (0) or less, party is **INDIGENT**. ____ If (c) is greater than (d), party is **NOT INDIGENT**.
 ____ If (c) is more than zero (0) but less than (d), party is **INDIGENT AND ABLE TO CONTRIBUTE**.
- Assessment Amount \$ _____**

X. Recommendation

Should this recommendation be modified due to anticipated length or complexity of case? (circle one) Yes No

If yes, explain _____

Other considerations or comments _____

The above constitutes my recommendation to the court. I have explained my recommendation to the party.

Screening Agent/Witness (please print) _____ Date _____

Signature _____ Agency/Organization _____

XI. Finding

____ Indigent ____ Not Indigent ____ Indigent and Able to Contribute Assessment \$ _____

Judge or Judge's Designee _____ Title _____

APPENDIX E

State regulations setting the income eligibility maximums for various state programs

WAC 388-478-0035: Maximum earned income limits for TANF and SFA. To be eligible for temporary assistance for needy families (TANF) or state family assistance (SFA), a family's gross earned income must be below the following levels:

Number of Family Members	Maximum Earned Income Level	Number of Family Members	Maximum Earned Income Level
1	\$ 698	6	\$1,682
2	880	7	1,942
3	1,092	8	2,150
4	1,284	9	2,360
5	1,480	10 or more	2,566

[Statutory Authority: RCW [74.04.050](#), [74.04.055](#), [74.04.057](#) and [74.08.090](#). 98-16-044, § 388-478-0035, filed 7/31/98, effective 9/1/98.]

WAC 388-478-0060: What are the income limits and maximum benefit amounts for Basic Food? If your assistance unit (AU) meets all other eligibility requirements for Basic Food, your AU must have income at or below the limits in column B and C to get Basic Food, unless you meet one of the exceptions listed below. The maximum monthly food assistance benefit your AU could receive is listed in column D.

EFFECTIVE 10-1-2006

Column A	Column B	Column C	Column D	Column E
Number of Eligible AU Members	Maximum Gross Monthly Income	Maximum Net Monthly Income	Maximum Allotment	165% of Poverty Level
1	\$1062	\$817	\$155	\$1348
2	1430	1100	284	1815
3	1799	1384	408	2283
4	2167	1667	518	2750
5	2535	1950	615	3218
6	2904	2234	738	3685
7	3272	2517	816	4153
8	3640	2800	932	4620
9	4009	3084	1049	5088
10	4378	3368	1166	5556
Each Additional Member	+369	+284	+117	+468

Exceptions:

(1) If your AU is categorically eligible as under WAC [388-414-0001](#), your AU does not have to meet the gross or net income standards in columns B and C. We do budget your AU's income to decide the amount of Basic Food your AU will receive.

(2) If your AU includes a member who is sixty years of age or older or has a disability, your income must be at or below the limit in column C only.

(3) If you are sixty years of age or older and cannot buy and cook your own meals because of a permanent disability, we will use column E to decide if you can be a separate AU.

(4) If your AU has zero income, your benefits are the maximum allotment in column D, based on the number of eligible members in your AU.

[Statutory Authority: RCW [74.04.050](#), [74.04.055](#), [74.04.057](#), [74.04.510](#), [74.08.090](#) and 7 C.F.R. § 273.9. 06-21-012, § [388-478-0060](#), filed 10/6/06, effective 11/6/06. Statutory Authority: RCW [74.04.050](#), [74.04.055](#), [74.04.057](#), [74.04.510](#), and [74.08.090](#). 05-21-101, § [388-478-0060](#), filed 10/18/05, effective 11/18/05. Statutory Authority: RCW [74.04.050](#), [74.04.055](#), [74.04.057](#). 04-23-025, § [388-478-0060](#), filed 11/8/04, effective 12/9/04. Statutory Authority: RCW [74.04.050](#), [74.04.055](#), [74.04.057](#), [74.04.510](#). 03-21-030, § [388-478-0060](#), filed 10/7/03, effective 12/1/03. Statutory Authority: RCW [74.04.050](#), [74.04.055](#), [74.04.057](#), [74.08.090](#). 02-21-050, § [388-478-0060](#), filed 10/14/02, effective 12/1/02. Statutory Authority: RCW [74.04.057](#), [74.04.500](#), [74.04.510](#). 01-21-059, § [388-478-0060](#), filed 10/16/01, effective 12/1/01. Statutory Authority: RCW [74.04.510](#), [74.08.090](#). 00-23-013, § [388-478-0060](#), filed 11/3/00, effective 12/4/00. Statutory Authority: RCW [74.04.510](#). 99-24-053, § [388-478-0060](#), filed 11/29/99, effective 12/30/99. Statutory Authority: RCW [74.08.090](#) and [74.04.510](#). 99-16-024, § [388-478-0060](#), filed 7/26/99, effective 9/1/99. Statutory Authority: RCW [74.04.050](#), [74.04.500](#), [74.04.510](#), [74.08.090](#). 99-05-074, § [388-478-0060](#), filed 2/17/99, effective 3/20/99. Statutory Authority: RCW [74.04.050](#), [74.04.055](#), [74.04.057](#) and [74.08.090](#). 98-16-044, § [388-478-0060](#), filed 7/31/98, effective 9/1/98.]

WAC 392-100-100: Definition -- Low-income student. As used in Title [392](#) WAC, "low-income student" means a student whose parent(s) or guardian(s) have an annual income equal to or less than one hundred eighty-five percent of the Income Poverty Guidelines published by the United States Department of Health and Human Services in Federal Register No. 220-91 56FR6859 or as later amended (i.e., the standard adopted by the United States Department of Agriculture for reduced priced meals).

[Statutory Authority: RCW [28A.220.030](#). 92-03-138 (Order 92-04), § 392-100-100, filed 1/22/92, effective 2/22/92.]

WAC 365-205-040: Who is eligible to become an IDA accountholder? Any individual whose household income at program entry is equal to or less than either:

- (1) Eighty percent of the area median income, adjusted for household size; or
- (2) Two hundred percent of federal poverty guidelines.

Local IDA service providers may choose to target incomes below these levels in their local IDA programs.

Additionally, the net worth of the individual's household as of the end of the previous calendar year may not exceed ten thousand dollars. Household net worth is defined as the total market value of all assets that are owned in whole or in part by any household member minus the total debts or obligations of household members, except that, for purposes of determining IDA eligibility, a household's assets shall not be considered to include the primary dwelling unit and one motor vehicle owned by a member of the household.

[Statutory Authority: RCW [43.79A.040](#) and chapter [43.31](#) RCW. 05-21-091, § 365-205-040, filed 10/18/05, effective 11/18/05.]

WAC 170-100-080: (re the early childhood education and assistance program)

Eligibility for services. (1) Contractors must recruit, document eligibility, and enroll children based on available funds. Enrolled children must not be participants in the federally funded head start program. Contractors must give priority for enrollment to children from families with the lowest incomes or to children from families with multiple needs.

(2) To be enrolled, children must meet the following age criteria.

(a) First priority for enrollment must be given to children who are four years old, but not yet five years old, by August 31 of the program year.

(b) Second priority may be given to children who are three years old by August 31 of the program year and meet other eligibility criteria.

(c) Contractors may not enroll children who are younger than three years old or older than five years old on August 31 of the program year.

(3) To be enrolled, children must meet either the following income or risk factor criteria:

(a) Family income. Children are eligible if their family income is at or below one hundred ten percent of the Federal Poverty Guidelines established by the United States Department of Health and Human Services. Contractors may choose which time period below best reflects the family's current financial circumstances:

(i) Previous calendar year before enrollment;

(ii) Twelve months before enrollment; or

(iii) Previous or current month, when annual family income has been documented and shows a significant recent decrease due to death, divorce, unexpected job loss, or similar circumstance.

(b) Risk factors. Up to ten percent of funded slots may be used for children from families who are not income eligible and are impacted by:

(i) Developmental factors, such as developmental delay or disability; or

(ii) Environmental factors, such as domestic violence, chemical dependency, child protective services involvement, or other factors affecting school success.

[06-18-085, recodified as § 170-100-080, filed 9/5/06, effective 9/5/06. Statutory Authority: Chapter [28A.215](#) RCW. 06-13-046, § 365-170-080, filed 6/16/06, effective 7/17/06. Statutory Authority: RCW [43.63A.060](#). 99-19-176, § 365-170-080, filed 9/22/99, effective 10/23/99. Statutory Authority: RCW [28A.34A.060](#). 88-18-039 (Order 88-04), § 365-170-080, filed 8/31/88. Statutory Authority: RCW [43.63A.060](#). 87-04-007 (Order 87-02), § 365-170-080, filed 1/23/87.]