



## Ohio Administrative Code Rule 120-1-03 Standards of indigency.

Effective: December 1, 2015

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(A) General guidelines. The pivotal issue in determining indigence is not whether the applicant ought to be able to employ qualified counsel, but whether the applicant is, in fact, able to do so.

(1) An applicant whose gross income is 187.5 per cent or less of federally established poverty levels is presumed indigent and entitled to appointed counsel.

(2) An applicant whose gross income exceeds 187.5 per cent of the federal poverty level may qualify for appointed counsel if, after deducting basic living expenses, the applicants net income is at or below 125 percent of the federal poverty level or the applicant is financially unable to hire qualified counsel.

(3) When an applicant whose gross income exceeds one hundred twenty-five per cent of the federal poverty level is appointed counsel, the county may recoup some money for the services provided, in accordance with section 120.03 of the Revised Code and rule 120-1-05 of the Administrative Code.

(B) Presumptive eligibility. An applicant is presumed indigent and thus entitled to the appointment of counsel at state expense under the following circumstances:

(1) The applicant currently receives poverty-based public assistance such as federal supplemental security income, Ohio works first, temporary assistance to needy families, medicaid, aid to families with dependent children, supplemental nutrition assistance program, refugee cash assistance, refugee medical assistance, poverty-related veterans benefits, or other poverty-based governmental assistance.

(2) The applicant, at the time of application, has been committed to a public mental health facility.

(3) The applicant, at the time of application, is incarcerated in a state penitentiary.



(4) The applicant is a child as defined in division (B)(6) of section 2151.011 or division (C) of section 2152.02 of the Revised Code. In determining the eligibility of a child for appointed counsel, the income of the child's parent, guardian, or custodian shall not be considered.

(C) Income and expenses. When determining an applicant's indigence, the following shall be considered:

(1) Wages and earnings from employment, unemployment compensation, workers compensation, child support, pension and social security compensation, disability compensation, and all other forms of compensation and governmental assistance. Only the income of the applicant may be considered, unless other persons in the applicant's household have a legal duty to support the applicant.

(2) Other liquid financial assets, including but not limited to: available cash reserves in savings and checking accounts, commonly traded stocks and bonds, certificates of deposit, and other similar ownership or entitlement to readily available financial resources with which the applicant might hire legal counsel; but excluding property necessary to maintain employment.

(3) The number and ages of persons the applicant has a legal duty to support.

(4) Basic living expenses, including housing rent and/or mortgage payments, child support actually paid, child care, health insurance premiums, medical and dental expenses, costs of caring for an infirm family member, employment transportation costs, costs of fuel, food, telephone, utilities, taxes withheld, credit card and other loan payments, and other similar basic costs of living.

(5) Court-imposed obligations, including but not limited to: expected court costs, fines, restitution, and recoupment; application, jail, supervision, electronic monitoring, and other fees; and other similar costs associated with the legal proceeding at issue. An applicant's posting of bail or bond does not exclude the applicant from eligibility for appointed counsel.

(6) If the spouse of the applicant is the alleged victim, the spouse's income shall not be included for the determination of indigence.

(D) Applicants with liquid assets. For purposes of this rule, a liquid asset is defined as cash or an



asset that is payable on demand. Available credit to the applicant shall not be considered a liquid asset. An applicant may not be indigent if the applicant possesses monies and/or liquid assets that exceed:

(1) Two thousand dollars if the most serious charge against the applicant is a misdemeanor;

(2) Five thousand dollars if the most serious charge against the applicant is a felony of the fourth or fifth degree;

(3) Six thousand dollars if the most serious charge against the applicant is a felony of the third degree;

(4) Eight thousand dollars if the most serious charge against the applicant is a felony of the first or second degree.

(E) Applicants exceeding income levels or with liquid assets. An applicant whose gross income exceeds 187.5 per cent of the federal poverty level, whose net income exceeds one hundred twenty-five per cent of the federal poverty level, or whose liquid assets exceed the amounts in the subsection above is not precluded from eligibility for appointed counsel.

(1) The number, complexity, and seriousness of charges the applicant faces must be considered when deciding whether an applicant has sufficient funds to hire qualified counsel.

(2) If an applicant who is not indigent has tried but is unable to employ qualified counsel, counsel must be appointed.

(3) A defendant who retains counsel but does not have sufficient funds to pay for experts, transcripts, and other related expenses should be declared indigent for those purposes.

(F) Redetermination. A preliminary determination of indigence status shall not foreclose a redetermination of eligibility if new information becomes known or if changes in circumstances affect the applicants financial status.



(G) Confidentiality. Court rules, regulations, and procedures concerning the determination of initial and/or continued eligibility shall not require appointed counsel or public defenders to make any disclosures concerning the clients financial status beyond those disclosures necessary to the courts determination of indigence, pursuant to section 120.38 of the Revised Code.

(H) Applicants rights. The process of applying for appointed counsel shall in no way impede an applicants constitutional, statutory, or procedural rights. Financial eligibility standards shall be liberally interpreted to ensure an applicants right to counsel and to avoid an applicants waiver of that right rather than incur the expense of retained counsel.

(I) Requests for specific appointed counsel. When a defendant makes a request for a specific appointed counsel pursuant to division (A) of section 120.33 of the Revised Code, such request shall be considered and decided by the court.

(J) Financial disclosure form. A form requesting relevant information from the applicant shall be completed for each applicant prior to the appointment of counsel or as soon thereafter as practicable. If an applicant is unavailable or unable to complete the form, the court may declare indigence. Each county shall use the financial disclosure form prescribed by the state public defender, unless the county has received a waiver from the state public defender. In order to verify eligibility, individual applicants may be asked to provide additional information regarding income and expenses.