EXHIBIT 16

Office of the State Public Defender
Administrative Policies

Subject: **Determination of Indigence**	Policy No.: **105**
Title **47**	Pages: **7**
Section: **1-111**	Revision Date: **12-6-06**
Effective Date: **7-1-06**	Effective Date: **12-6-06**

1.0 POLICY

1.1 The Office of the State Public Defender (hereinafter State Office) will provide public defender services to applicants that qualify under 47-1-111, MCA.

1.2 Beginning July 1, 2006 all district and limited courts will order the Office of the State Public Defender to assign counsel prior to the determination of indigence.

2.0 PREPARATION AND DELIVERY OF INDIGENCE FORM

2.1 Beginning July 1, 2006 all district and limited courts will send appointment forms to Regional Public Defender Offices. The appointment form is provided by the State Office, and provides information about the applicant for public defender services.

2.2 The State Office shall provide the Regional Public Defender Offices with Indigence Determination (ID) forms as prepared by the State Office and approved by the Montana Public Defender Commission.

2.3 Regional Deputy Public Defenders or their staff will deliver forms to all jails and courthouses and any other venue deemed appropriate.

2.4 An applicant for public defender services will be assigned provisional counsel prior to the determination of the applicant's indigence.

2.5 An applicant for public defender services must complete the ID form, sign it, and return it to the Regional Public Defender Office.

2.6 Indigence Determination Specialists (IDS), appointed by each Regional Public Defender Office, will aid any applicant requesting assistance. Information on the ID form is confidential.

3.0 DETERMINATION OF INDIGENCE

3.1 The IDS will review the ID form, fill in any missing information, and assure that the ID form is signed by the applicant.

3.2 The IDS will conduct two tests to determine if an applicant is eligible for state public defender services.

A. The first test is a "Gross Household Income (GHI) Test" that gathers all gross income from all occupants in the applicant's household. This GHI is compared to the Gross Income Guidelines (GIG) as provided in Attachment A to this policy. If the GHI dollar amount is less than the

dollar amount listed on the GIG the applicant passes this test. If the applicant fails the first test the IDS must go to the second test.

B. When the IDS determines that an applicant seeking public defender services is not clearly indigent within the meaning of subsection A above, the IDS shall then determine if the applicant qualifies because retaining competent private counsel would result in substantial hardship to the applicant or his household. This second test reviews both the disposable income and assets of the applicant. Disposable income is Gross Household Income less all expenses (rent, utilities, food, medical and loan payments, child support, etc). Assets are things that can be used as collateral to obtain loans, like homes, land, automobiles, investments, etc. This test is rather subjective in that the IDS must make the determination that the applicant can obtain, without substantial hardship, competent private legal counsel by paying legal retainers from net monthly income or borrowings on assets. The crime charged shall also be a factor considered in this determination.

3.3 If the applicant passes either test they are eligible for services. If qualifying under subsection A or B above, the person may, as appropriate be asked to repay some or all of the costs of representation.

3.4 If qualified under either subsection, the court before which the person is appearing will be advised that the person has qualified for public defender representation.

3.5 If the IDS has a question regarding an applicant's eligibility for public defender services, the Indigence Determination Officer (as appointed by the Chief Public Defender) will make a ruling.

3.6 If the applicant is eligible for public defender services, a written notice of approval shall be sent to the applicant, and the appropriate public defender office, contract attorney, or conflict coordinator.

3.7 Applicants approved for public defender services will be subject to eligibility review by the IDS every six months. If an applicant is found to be financially able to provide for their own defense they will be notified by the IDS and parts 3.6 through 3.9 of this policy and procedure will apply.

3.8 If the applicant does not qualify for public defender services, a written notice of disqualification and notice of the right to have the court review the finding will be sent to the applicant.

3.9 The Regional Deputy Public Defender shall immediately notify the court of record when it is determined that an applicant does not qualify for public defender services (refer to the Attachment B, Standard Letter of Notification, and Attachment C, Notice of Determination Regarding Indigency).

3.10 The judge must rescind the appointment of counsel when notified that an applicant does not qualify for public defender services.

3.11 A judge may overrule a determination that an applicant is not eligible for public defender services. If overruled, the State Office will provide public defender services to the applicant.

4.0 REIMBURSEMENT OF ATTORNEY FEES

4.1 If the applicant qualified under 3.2, and the applicant is found guilty by plea or trial, the Regional Deputy Public Defender or his/her designee shall determine the amount owed for public defender services.

4.2 If it appears that the defendant is unable to repay defense costs, and will not be able to repay defense costs, then pursuant to MCA §46-8-113 counsel for the defendant shall resist any attempt by the court to impose defense costs as a condition of sentencing. If the defendant has some ability to pay, then in determining both the amount and method of payment any payment plan must take into consideration the financial resources of the defendant and the nature of the burden that payment of costs will impose.

4.3 The hourly rate for public defender services is set at $71.00;

A. The amount of time spent on a case shall conform to the amount of time reported on the public defenders timesheet.

B. A copy of the bill along with notification of where payments shall be made will be provided to the client.

4.4 If the person is acquitted or the charges are dismissed, no reimbursement will be sought.

5.0 CLOSING

Questions about this policy should be directed to the State Office at the following address:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701
Phone 406-496-6080

ATTACHMENT A

GROSS INCOME GUIDELINES

Number of Persons in Household	Gross Household Income Guidelines
1	$13,034
2	$17,556
3	$22,078
4	$26,600
5	$31,122
6	$35,644
7	$40,166
8	$44,688
Each Additional Member Add:	$4,522

ATTACHMENT B

STANDARD LETTER OF NOTIFICATION

Name
Regional Deputy Public Defender
Region (#)
(Address)

(Date)

(Client Name)
(Client Address)

Dear (Client):

Please be advised that in applying the criteria outlined in Section 47-1-111, MCA, to the information you provided on your indigency questionnaire, I have determined that you do not qualify for public defender services. The public defender who is currently representing you will ask the Court to rescind the appointment of the Office of Public Defender. Until that occurs, your public defender will continue to represent you until you hire a private attorney. You are encouraged to hire a private attorney as soon as possible.

If you do not agree with this determination, you have the right to ask the judge in your case to review your financial status. If you do ask for review, we are required to make your indigency questionnaire available to the judge and the prosecutor for inspection.

Sincerely,

Regional Deputy Public Defender
Region (#)

ATTACHMENT C

NOTICE OF DETERMINATION REGARDING INDIGENCY

Name
Regional Public Defender
Region (#)
(Address)

Telephone:

MONTANA (XXXXX) JUDICIAL DISTRICT COURT, (XXXX) COUNTY

STATE OF MONTANA,	)	
	)	Cause No. _____
Plaintiff,	)	
	)	
v.	)	NOTICE OF DETERMINATION
	)	REGARDING INDIGENCY
_____,	)	
	)	
Defendant.	)	

COMES NOW, (RDPD), attorney for Defendant, (Name), and hereby notifies the Court that Defendant does not meet the criteria set out in Section 47-1-111, MCA, to be eligible for representation by the Office of Public Defender.

The Defendant has been notified of this determination as well as his right to ask this Court to review the determination.

(Name), who has been assigned to represent Defendant, will continue to represent Defendant until this court rescinds the appointment of the Office of the Public Defender.

DATED this _____day of _____, 2006.

_____
(Name)
Regional Deputy Public Defender
Region (#)

CERTIFICATE OF SERVICE

I hereby certify that I caused to be mailed a true and accurate copy of the foregoing NOTIFICATION OF DETERMINATION, postage prepaid, by U.S. mail, to the following:

Dated this _____day of _____, 2006.

_____