



Hardship Guidelines

Estimated Costs of Hiring Private Counsel

Mission

Providing the most compassionate and expert defense of clients and the Constitution.

Vision

Creating expert teams of advocates for justice, bringing respect and dignity to our clients to achieve holistic and equitable outcomes.

About OPD's Hardship Guidelines

The Office of State Public Defender (OPD) administers a constitutionally grounded eligibility process to ensure access to counsel while safeguarding against undue financial burdens on applicants and taxpayers. Governed by [Montana Code Annotated § 47-11-111](#) and [OPD Policy 105 - Client Eligibility](#), this framework balances fiscal responsibility and efficiency with the constitutional, statutory, and court-ordered rights to representation by evaluating whether retaining private counsel would impose substantial hardship on an applicant's household.

Montana Code Annotated § 47-11-111(3)(b) establishes hardship eligibility by providing that a defendant is eligible for OPD representation if "the disposable income and assets of the applicant and the members of the applicant's household are insufficient to retain competent private counsel without substantial hardship to the applicant or the members of the applicant's household." OPD Policy 105(4)(B)(v) further defines Hardship Determination as

A determination of eligibility for public defender services due to the inability of an applicant to retain competent private counsel without creating a substantial financial hardship to the applicant's household, made after a verification and evaluation of an applicant's supporting documentation, such as real property ownership, paystubs, bank statements, unemployment status, public benefits status (EBT/SNAP/TANF/SSI/SSDI/etc...), worker's compensation, pension or retirement benefits, financial aid benefits, and/or other documentation requested by the ES for verification purposes, that an applicant's disposable household income (gross household income less reasonable and necessary expenses), extent and liquidity of assets, together with consideration of the severity of crime(s) charged, incarceration status, and the estimated cost of retaining private counsel.

The estimated costs of hiring private counsel are intended to represent the total estimated costs of hiring competent private counsel for complete representation through potential trial on the case(s) for which OPD is making a hardship determination.

The estimated costs of private counsel utilized are informed and updated in several ways, including through contract public defender acceptance rates and feedback, third-party private market surveys, documentation from OPD clients, such as a proposed fee agreement from a private attorney, and OPD's wealth of professional experience and expertise in the justice system.

Estimated Costs of Hiring of Private Counsel

Last updated December 2024

Type of Case	Estimated Total Costs of Hiring Private Counsel
Except as explicitly noted, all general Misdemeanor crimes, including: <ul style="list-style-type: none"> • Fugitive Warrant • All Local Ordinance crimes • Disorderly Conduct • Obstruction of a Peace Office • Minor in Possession crimes • Traffic offenses • Petitions to Revoke • 1st Offense Stacking crimes 	\$2,500
Felony Petitions to Revoke	\$3,500
DUI crimes, 1st Offense	\$5,000
Except as explicitly noted, all general Felony crimes, including: <ul style="list-style-type: none"> • offenses Against Public Administration • offenses Against Public Order • Property crimes 	\$5,000
2nd Offense Stacking crimes: <ul style="list-style-type: none"> • DUI crimes 2nd Offense • 2nd Offense Stacking crimes 	\$7,500
Misdemeanor Sex crimes	\$7,500
3rd Offense Stacking crimes: <ul style="list-style-type: none"> • DUI crimes 3rd Offense • 3rd Offense Stacking crimes 	\$10,000
Felony Burglary crimes	\$10,000
Felony DUI crimes	\$13,500
Felony Dangerous Drugs crimes	\$15,000
General Felony People crimes , except as noted below	\$15,000
Enhanced Felony People crimes , including: <ul style="list-style-type: none"> • Aggravated Assault • Assault with a Weapon • Aggravated Kidnapping 	\$20,000
Felony Sex offenses	\$35,000
Negligent or Mitigated Deliberate Homicide	\$100,000
Deliberate Homicide	\$150,000