

Office of the State Public Defender Administrative Policies

Subject: Eligibility Determination	Policy No.: 105
Title 47	Pages: 5
Section: 1-111	Last Review Date: 1-19-2021
Effective Date: 5-6-14	Revision Date: 1-19-2021

1.0 POLICY

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

2.0 DEFINITIONS

2.1 **Household:** an association of persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses.

2.1.1 The term does not include bona fide lessees, tenants, or roomers and boarders on contract.

2.2 **Hardship:** When evaluation of an applicant's disposable household income (gross household income less reasonable and necessary expenses), extent and liquidity of assets, severity of crime(s) charged, incarceration status, and estimated cost of retaining private counsel demonstrate an individual would incur substantial hardship to his/her family to retain competent private counsel, the applicant qualifies for public defender services.

2.3 **Presumptive Eligibility:** An applicant who is a current verified or documented recipient of a state or federally administered public assistance program such as TANF, SNAP or SSI shall be considered presumptively eligible and, therefore, qualified for public defender services.

2.4 **Presumptive Indigence:** An individual who is statutorily entitled to representation at public expense regardless of financial status under 47-1-104 (4)(b); a respondent in a proceeding for involuntary commitment for a mental disorder; or an individual who is unable to complete the application process for good cause is considered qualified for public defender services without completing an application.

2.5 **Current Client Status:** An applicant who has been approved for public defender services based upon presumptive eligibility, presumptive indigence, or the gross income guidelines will remain qualified for services in any new cases for a one-year period from the original approval date. Upon expiration of the one-year period, the applicant must submit a new application and financial documentation for any subsequent cases, except for an appeal of an existing OPD case. All applicants approved for services under a hardship determination are required to submit a new application for any new case, except for an appeal of an existing OPD case.

3.0 APPOINTMENT OF COUNSEL

3.1 All district courts and courts of limited jurisdiction shall send appointment forms to Regional Public Defender Offices. The appointment form is provided by the Central Services Division, and provides information about the applicant for public defender services. Clients approved for public defender services qualify for representation in an appeal, absent additional information requiring an eligibility redetermination. The Appellate Defender Division may also receive new appointments from the Supreme Court.

3.2 When an office receives an appointment from the court, OPD shall immediately assign counsel to the individual who, in turn, shall promptly complete the application for public defender services. OPD's representation of the individual shall continue unless OPD determines that the individual is not eligible for services, or the client refuses services and a motion to rescind is filed and granted by the Court.

4.0 APPLICATION FORM

4.1 The Central Services Division shall provide all OPD offices with a standard Application for Court-Appointed Counsel form.

4.2 Regional Deputy Public Defenders or their staff will make forms available to all jails and courthouses and any other venues deemed appropriate.

5.0 APPLICATION PROCEDURE

5.1 An applicant for public defender services must complete the Application for Court-Appointed Counsel form, sign it, and return it to the regional public defender office or the Appellate Defender Division within ten days of appointment. The office will move to rescind the appointment if the required materials are not provided as requested.

5.1.1 Certain applicants may be considered qualified for public defender services under special circumstances, including, but not limited to, Presumptive Eligibility, Presumptive Indigence and Current Client Status (see 2.0, Definitions). In some instances, application requirements may be waived.

5.1.2 An applicant may be required to provide documentation to verify income, expenses and assets. The office may move to rescind the appointment if the requested materials are not provided in a timely manner.

5.1.3 Information on the Application for Court-Appointed Counsel form and all supporting documentation is confidential.

5.2 An ES will aid any applicant requesting assistance in completing the application.

6.0 ELIGIBILITY DETERMINATION

6.1 Each Regional Deputy Public Defender, the Appellate Defender Division Administrator, and the Central Services Division Administrator will appoint

one or more ES for the office. This information will be maintained by the Central Services Division.

- 6.2** Regional Deputy Public Defenders and the Appellate Defender Division Administrator will sign motions to rescind appointments when required and will appear in court as needed. They will not act as the ES and will not be involved in the eligibility determination process for any of their own cases.
- 6.3** The ES will review the Application for Court-Appointed Counsel form, obtain missing information including proof of income, and assure that the form is signed by the applicant. Materials related to the application process will be maintained and coded in the case management system.
- 6.4** If Presumptive Eligibility, Presumptive Indigence or Current Client Status is not indicated, the ES will determine eligibility for services based on the Gross Income Guidelines (Attachment A), which are based on the federal poverty level.
- 6.5** If the applicant does not qualify under 6.4, the Central Services Division ES will be notified through the case management system to verify and evaluate the application materials and make a hardship determination. Verification may include, but is not limited to, production of paystubs, monthly bank statements, unemployment, food stamps/SNAP, TANF, Social Security, SSI, SSDI, Worker's Compensation, pension/retirement and financial aid benefit statements, and/or other documentation requested by the ES. The ES will also do a property records search when indicated.
- 6.6** The income and assets of another household member will not be considered in the eligibility determination if the household member is the alleged victim of the offense(s) allegedly committed by the applicant.
- 6.7** New or additional information regarding an applicant's income, assets and/or expenses may result in a redetermination of eligibility.

7.0 DISQUALIFIED APPLICANTS

- 7.1** If the applicant does not qualify for public defender services, the Central Services Division ES shall document the reasons for the determination and notify the referring office through the case management system. The referring office will send the applicant a written notice of disqualification together with a notice of right to judicial review of eligibility determination using the standard format generated by the case management system.
- 7.2** The Regional Deputy Public Defender or Appellate Defender Division Administrator shall immediately notify the court of record upon determination that an applicant does not qualify for public defender services using the standard Motion to Rescind Appointment generated by the case management system. Any exceptions to this requirement will be documented in the case management system.
 - 7.2.1** The public defender shall continue to provide representation to the applicant until receipt of a signed order from the judge rescinding the appointment of counsel.
 - 7.2.2** When the signed order rescinding the appointment is received, the attorney of record, whether FTE or contract, will be notified through the case management system, and the case will be closed.

7.2.3 If the court does not return a signed order rescinding the appointment within 45 days, OPD will record ED-Overtured by court as the outcome and continue to provide public defender services.

7.3 A judge may overrule a determination that an applicant is ineligible for public defender services. If overruled, OPD will provide public defender services to the applicant.

8.0 COMPLIANCE MONITORING

OPD will use the case management system to monitor, on a systematic basis, compliance with statutory and administrative policies governing the eligibility determination process.

9.0 CLOSING

Questions about this policy should be directed to the Central Services Division at the following address:

Office of the State Public Defender
Central Services Division
44 West Park
Butte, MT 59701

Phone 406-496-6080

ATTACHMENT A
GROSS INCOME GUIDELINES

2021

Household Size	Federal Poverty 100%	133% Annual	133% Monthly	133% Bi-Weekly	133% Weekly
1	\$12,880	17,130	1,428	659	329
2	17,420	23,169	1,931	891	446
3	21,960	29,207	2,434	1,123	562
4	26,500	35,245	2,937	1,356	678
5	31,040	41,283	3,440	1,588	794
6	35,580	47,321	3,943	1,820	910
7	40,120	53,360	4,447	2,052	1,026
8	44,660	59,398	4,950	2,285	1,142
Each Addtl	4,540	6,038	503	232	116