

**Office of the State Public Defender
Administrative Policies and Procedures**

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

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 PREPRATION 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. These forms, as prepared by the State Office, will provide information about an Applicant for public defender services.
- 2.2** The State Office shall provide the Regional Public Defender Offices will 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 completes the ID form, signs it, and returns it to the Regional Public Defender Office.
- 2.6** Indigence Determination Specialists (IDS), appointed by each Regional Public Defender Office, will assist any applicant requesting assistance. Information on the forms is confidential.

3.0 DETERMINATION OF INDIGENCE

- 3.1** The IDS will review all ID forms, fill in any missing information, and assure that the ID form is signed by the applicant.
- 3.2** There are two tests that an IDS will conduct to determine if an applicant is eligible for state public defender services.
- 3.3** The first test is a "Gross Household Income (GHI) Test" that gathers all of the gross income from all of the occupants in the applicant's household. This GHI is compared to the Gross Income Guidelines (GIG) as provided in Attachment A to this policy and procedure. 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.
- 3.4** The 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 competent private legal counsel by paying legal retainers from net monthly income or borrowings on assets. The amount of money necessary to obtain private counsel is dependent on the crime.
- 3.5** If the Applicant passes either test they are eligible for services.
- 3.6** If the IDS has a question regarding the determination of indigence of and applicant they can call the Indigence Determine Officer (as appointed by the Chief Public Defender) who will make rulings on these issues.
- 3.7** If approved, a written notice of the approval shall be sent to the applicant, the appropriate public defender office, contract attorney, or conflict coordinator.
- 3.8** Applicants that are approved for public defender services will be re-reviewed by the IDS's 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 3.8 through 3.11 of this policy and procedure will apply.
- 3.9** If the applicant does not qualify, he shall be notified in writing of his disqualification and his right to have the court review the finding.

- 3.10** 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 attached standard letter of notification and the Notice of Determination Regarding Indigency).
- 3.11** The judge must rescind the appointment of counsel.
- 3.12** A judge may overrule any disapproval. If overruled, the State Office will provide public defender services to the applicant.

Questions about this policy and procedure should be directed to 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

<u>Number of Persons in Household</u>	<u>Gross Household Income Guidelines</u>
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

OFFICE OF STATE PUBLIC DEFENDER



BRIAN SCHWEITZER
GOVERNOR

RANDI HOOD
CHIEF PUBLIC DEFENDER

STATE OF MONTANA

Phone: (406) 496-6080
Fax: (406) 496-6098

44 WEST PARK STREET
BUTTE, MONTANA 59701

(Date)

(Client name)

(Client Address)

Dear (Client):

The Region (#) office of the State Public Defender has determined that you are not indigent as defined by Section 47-1-111, MCA. You are required to hire private counsel to represent you or to represent yourself. Your public defender will continue to represent you until you hire private counsel.

If you do not agree with this determination or, after diligent attempts, you are unable to hire private counsel, you may ask the Court which has your case to review this determination.

If you believe that you have further information relating to the determination of indigency, please contact (name of RDPD) at (telephone #).

Sincerely,

Regional Deputy Public Defender
Region (#)

1 Name
Regional Public Defender
2 Region (#)
(Address)

3 Telephone:
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7 MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT, GALLATIN COUNTY

8 STATE OF MONTANA,)	Cause No. _____
9 Plaintiff,)	
10 v.)	NOTICE OF DETERMINATION
11)	REGARDING INDIGENCY
12 Defendant.)	

13
14 COMES NOW, (RDPD), attorney for Defendant, (Name), and hereby notifies
15 the Court that Defendant does not meet the criteria set out in Section 47-1-111, MCA, to
16 be eligible for representation by the Office of Public Defender.

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

19 (Name), who has been assigned to represent Defendant, will continue to represent
20 Defendant until private counsel enters a Notice of Appearance.
21

22 DATED this _____ day of _____, 2006.
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24

25 _____
(Name)
Regional Deputy Public Defender
26 Region (#)
27

CERTIFICATE OF SERVICE

I hereby certify that I caused to be mailed a true and accurate copy of the

1 foregoing NOTIFICATION OF DETERMINATION, postage prepaid, by U.S. mail, to
2 the following:

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4 Dated this _____ day of _____, 2006.

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