

**REPORT ON INDIGENCY STANDARDS:  
DETERMINING ELIGIBILITY FOR COURT-APPOINTED  
COUNSEL SERVICES IN VIRGINIA  
TO  
THE GOVERNOR  
AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



**HOUSE DOCUMENT NO. 13**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
1984**

HOUSE JOINT RESOLUTION NO. 76

*Requesting the Supreme Court of Virginia to establish a committee to study the advisability of establishing indigency standards.*

Agreed to by the House of Delegates, February 8, 1983

Agreed to by the Senate, February 14, 1983

WHEREAS, in fiscal year 1981-82 costs for providing court-appointed counsel for indigents charged with criminal offenses in Virginia reached \$8.3 million; and

WHEREAS, these costs have risen by 332 percent during the past decade; and

WHEREAS, at present no definitive standards or guidelines for the determination of indigency exist in Virginia; and

WHEREAS, such guidelines may prove of great assistance to the judiciary in attempting to effectively and equitably evaluate the financial eligibility of an individual for court-assigned counsel; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Supreme Court of Virginia is requested to establish a committee to study the advisability of establishing indigency standards for statewide implementation. In completing its work, the committee specifically shall consider:

1. The feasibility of developing equitable financial standards for determining indigency and

2. Whether or not such guidelines would be administratively efficient and cost effective so as to be useful for the judiciary.

The committee shall be composed of no more than twelve members, including members of the Committee on District Courts and the Judicial Council, as well as circuit and district court judges and clerks, defense attorneys and Commonwealth's attorneys; and, be it

RESOLVED FURTHER, That judges of all courts in the Commonwealth are requested to take into account the substantial increases in costs for court-appointed counsel over the past few years and are urged to use utmost care in the review of cases where defendants are seeking such counsel as well as in the determination of compensation for attorneys who provide legal defense services for indigents; and, be it

RESOLVED FINALLY, That the Office of the Executive Secretary is requested to include as part of its continuing education program for all judges additional information and training to assist them in assessing the indigency claims of defendants.

The joint committee is requested to complete its work in time to submit its recommendations to the 1984 Session of the General Assembly.

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## Introduction

"In its legal function, this single word (indigency) represents a fine dividing line between the injustice of denying an indigent defendant his right to counsel, and the injustice of expending public funds for one not really in need."<sup>1</sup>

During the past three years, considerable attention has been focused by the legislature, the judiciary, and the Bar on the issue of funding for indigent defense services in Virginia. Within the state, questions have been raised both about the effectiveness of the court-appointed counsel system and the equity of the current fee structure for those representing indigents. However, the attention by the General Assembly has been directed primarily on the need to contain what are perceived to be spiraling increases in costs for these services.

In fiscal year 1983, expenditures for court-appointed counsel reached \$8,117,254, almost doubling those paid five years ago. Within the past 14 years, expenses have risen an average of 17 percent a year, an overall rise of 646 percent. A number of cost containment measures have been considered and/or adopted in response. Since 1980, the General Assembly has requested a yearly report from the Supreme Court on efforts being made to contain costs within the criminal fund; the largest category within that fund being court-appointed attorneys fees and expenses. The feasibility of expanding the public defender system into additional circuits as an alternative to the present court-appointed counsel system also has been examined. During its 1983 Session, the legislature reduced fees for attorneys representing indigents by four percent and prohibited payments of more than one fee for attorneys representing defendants on multiple charges arising out of the same offense.

Also crucial to the funding issue is the manner in which the courts determine the eligibility of an accused for court-appointed counsel. While general criteria are provided by statute and through the 1983 Appropriations Act, there are, at present no specific

indigency standards in Virginia similar to those implemented in several other states. Thus, the 1983 General Assembly enacted House Joint Resolution #76 directing the Supreme Court of Virginia to establish a committee to study the advisability of developing such standards for use by all courts in determining whether or not a defendant charged with a criminal offense is entitled to legal representation at public expense. In addition, the Supreme Court was directed through the Appropriations Act to examine the need to modify existing financial criteria for the determination of indigency.

In July 1983, Chief Justice Harry L. Carrico appointed a ten-person committee of judges, clerks of court, Commonwealth's attorneys, and defense attorneys to undertake the study. Membership of the Indigency Standards Advisory Committee is as follows:

The Honorable Bernard G. Barrow, Judge  
Second Judicial Circuit  
Virginia Beach

The Honorable H. Selwyn Smith, Judge  
Thirty-First Judicial Circuit  
Manassas

The Honorable Melvin R. Hughes, Judge  
Thirteenth Judicial District  
Richmond

The Honorable James L. Tompkins, Judge  
Twenty-Seventh Judicial District  
Hillsville

The Honorable J. R. Zepkin  
Ninth Judicial District  
Williamsburg

The Honorable John E. Kloch  
Commonwealth's Attorney  
Alexandria

The Honorable Barbara R. Williams  
Clerk, Tenth Judicial Circuit  
Appomattox

Mrs. Opal R. Hall  
Clerk, Twenty-First Judicial District  
Martinsville

Dennis W. Dohnal, Esquire  
Bremner, Baber & Janus  
Richmond

Clifford R. Weckstein, Esquire  
Lichtenstein, Weckstein & Raney  
Roanoke

The Committee met throughout the fall reviewing both expenditure data and a comparative analysis of indigency guidelines utilized in 17 states, the District of Columbia, the federal courts, and those developed by four national legal organizations. Based upon this research, the Committee drafted a set of proposed guidelines which were distributed for comment to numerous individuals within and outside the criminal justice system. Responses were discussed by the Committee in early December and incorporated into its report and recommendations.

In compliance with House Joint Resolution #76, the Committee has formulated a set of indigency guidelines which are recommended for adoption by the General Assembly. Those recommendations are listed on the following page. Section I of the report provides an overview of indigent defense costs and reviews some of the factors contributing to the increases in expenditures in Virginia and throughout the country. Current provisions for appointment of counsel and determination of indigency are outlined in Section II of the document. Section III summarizes the Committee's findings with regard to eligibility criteria used in other states. Finally, Section IV discusses the development of the new indigency standards proposed by the Committee for implementation throughout the Commonwealth.

## Recommendations

The Indigency Standards Advisory Committee recommends the adoption of the following criteria for the determination of indigency and eligibility for appointed counsel or public defender services in all Virginia courts:

1. A defendant shall be presumed eligible for court-appointed counsel if that person is a current recipient of a state or federally administered public assistance program for the indigent. Examples of such programs are Aid to Dependent Children, Food Stamps, Medicaid, and Supplemental Security Income (SSI). This presumption shall be rebuttable where the court finds that a more thorough examination of the financial resources of the defendant is necessary.

2. If the defendant requests court-appointed counsel and is not presumptively eligible (under recommendation #1), the court shall thoroughly examine the financial resources of the defendant with consideration given to (A) net income, (B) assets, and (C) exceptional expenses.

A. Net Income - This shall be defined as total salary and/or wages minus deductions required by law. Also to be considered are income and amenities from other sources including but not limited to social security funds, union funds, veteran's benefits, other regular support from an absent family member; public or private employee pensions, dividends, interests, rents, estates, trusts, or gifts.

B. Assets - The court shall examine all assets convertible into cash within a reasonable period of time without causing substantial hardship or jeopardizing defendant's ability to maintain home/employment. Assets shall include all cash on hand as well as in checking and savings accounts, stocks, bonds, certificates of deposit, and tax refunds. All personal property owned by the defendant which is readily convertible into cash shall be considered, except property exempt from attachment. All real estate owned by the defendant shall be considered in terms of the amounts which could be raised by a loan on the property.

C. Exceptional Expenses - In making its determination, the court shall consider, in addition to income and assets, any unusual expenses of the defendant and/or his/her family which would, in all probability, prohibit him/her from being able to secure private counsel. Such items shall include but not be limited to costs for medical care, family support obligations, and child care payments. The court also shall take into consideration the estimated cost of representation customarily charged by members of the practicing bar for the specific type of offense(s) for which the defendant is before the court.

3. If the defendant's available funds (sum obtained from income and assets minus any exceptional expenses) are at or below the amounts in the following table, the defendant shall be deemed eligible for defense services at public expense.

<u>Household Size</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>
Available Funds (annually)	\$7,290	9,810	12,330	14,850

\_\_\_ (Add \$2,520 for each additional member in households of more than four.)

4. For purposes of eligibility determination, the income, assets, and expenses of the spouse, if any, who is a member of the defendant's household, shall be considered unless the spouse was the victim of the offense or offenses allegedly committed by the accused.
5. The Supreme Court of Virginia shall be responsible for distributing to all courts the annual updates of the federal poverty income guidelines made by the Department of Health and Human Services.
6. If the available funds of the accused exceed recommended guidelines and the defendant fails to employ counsel and does not waive his right to counsel, the Court may, in exceptional circumstances and where the ends of justice so require, appoint an attorney to represent the defendant provided, however, that in making such appointments the Court shall state in writing its reasons for so doing. The written statement by the Court shall be included in the permanent record of the case.
7. The indigency standards for adult defendants as outlined above also shall apply to juveniles and parents entitled to court-appointed counsel under the provisions of §16.1-266 and §16.1-267.
8. The judge of each appointing court shall designate the Office and/or individual(s) to be responsible for interviewing and assisting the defendant in filling out the financial statement forms. Examples of such offices and/or individuals are magistrates, intake officers in the juvenile and domestic relations district courts and, where possible, the clerk's office. The use of court volunteers supervised through one of these offices also may be appropriate.
9. In addition to the written request for court-appointed counsel, every defendant who desires legal representation shall fill out a sworn financial statement on forms provided by the Supreme Court to support the claim of indigency and to permit the judge to determine the validity of the claim. The proposed form for the financial statement is as follows:





## I. Indigent Defense Costs: An Overview

Legislation permitting the courts to appoint counsel for indigents charged with criminal offenses existed as long ago as 1849 in Virginia. As a result of several landmark decisions made by the United States Supreme Court, these statutes have been expanded considerably within the past twenty years.<sup>2</sup> Today, Virginia law provides that the right to counsel must be extended to any indigent defendant charged with an offense which is punishable by incarceration.

The dramatic increases in court-appointed counsel, both in Virginia and throughout the country, generally are attributed to the expansion in right to counsel provisions as well as to rising crime rates and current economic conditions. The chart below traces these expenditures over the past fourteen years. Only three times during this period have expenses decreased, the latest occurring in fiscal year 1982-83, when there was a small decline in three-tenths of a percent.

### COURT-APPOINTED ATTORNEYS STATEWIDE COSTS

July 1, 1968 - June 30, 1969	\$1,087,943.78
July 1, 1969 - June 30, 1970	1,325,352.48
July 1, 1970 - June 30, 1971	1,655,788.64
July 1, 1971 - June 30, 1972	1,920,070.14
July 1, 1972 - June 30, 1973	2,140,622.40
July 1, 1973 - June 30, 1974	1,883,190.50
July 1, 1974 - June 30, 1975	2,703,750.06
July 1, 1975 - June 30, 1976	4,299,466.18
July 1, 1976 - June 30, 1977	4,634,596.10
July 1, 1977 - June 30, 1978	4,919,389.14
July 1, 1978 - June 30, 1979	4,265,260.63
July 1, 1979 - June 30, 1980	6,154,907.00
July 1, 1980 - June 30, 1981	7,294,238.00
July 1, 1981 - June 30, 1982	8,140,795.00
July 1, 1982 - June 30, 1983	8,117,254.00

A significant problem in funding indigent defense services is the lack of predictability in determining costs. It is impossible to know in advance how many indigents will be arrested in a given year, with what offenses they will be charged or

what fees or expenses will be allowed for a given case. Therefore, neither the courts nor the legislature can fully control the number of appointments which will be required or the amount of money, within the statutory limitations, which will be needed to compensate attorneys for representing such persons. A multi-year analysis illustrates this point (see Chart B on the following page.) Within the past fiscal year, expenses decreased in twice as many circuits as in fiscal year 1982. However, expenses in several circuits that had noted decreases in 1983 had experienced increases by as much as 50 percent in 1982. The inability to forecast with any degree of certainty the costs for court-appointed counsel coupled with the substantial increases has frustrated both those within the General Assembly and the judiciary as well.

Virginia is not alone. Providing adequate funding for indigent defense services is now referred to by the American Bar Association as a national crisis in the criminal justice system. In 1981, court-appointed attorney costs in the United States were approximately one-half billion dollars, up 38 percent from 1978. Many states are into deficit funding for these services and in others, monies have simply been depleted prior to the end of the fiscal year. As a result, state court systems and legislatures have begun actively scrutinizing these expenditures and taking measures ranging from totally revamping the method by which they provide counsel to poor people, requiring courts to more carefully monitor attorneys fees, and redefining their eligibility criteria or establishing specific guidelines for eligibility.

The latter efforts appear to have been undertaken by states both as a potential cost control measure and to assist judges in making more realistic distinctions between and more consistent decisions about those who can and cannot afford to retain counsel. Absent specific instructions or guidelines and the staff to verify statements by the defendant, the decision often may be an intuitive or subjective assessment by judges. The resulting problem is that substantial discrepancies can exist not only between and among various courts but between individual judges of the same circuit on what constitutes eligibility for appointed counsel.

COURT APPOINTED ATTORNEY EXPENSES \*

<u>Circuit</u>	<u>FY 81</u>	<u>FY 82</u>	<u>% Change FY 81-82</u>	<u>FY 83</u>	<u>% Change FY 82-83</u>
1	173,655	184,984	6.5	209,171	13.1
2	99,866	115,777	15.9	92,702	-19.9
3	292,353	304,114	4.0	304,666	0.2
4	596,615	591,367	-0.9	588,676	-0.5
5	198,480	209,106	5.4	189,502	-9.4
6	90,878	124,976	37.5	147,195	17.8
7	221,558	277,813	25.4	286,928	3.3
8	228,047	250,885	10.1	210,683	-16.0
9	227,699	220,822	-3.0	234,611	6.2
10	142,705	145,605	2.0	154,666	6.2
11	99,541	118,638	19.2	121,441	2.4
12	122,599	141,133	15.1	166,781	18.2
13	640,918	611,862	-4.5	657,970	7.5
14	182,698	223,516	22.3	216,763	-3.0
15	265,762	323,069	21.6	329,197	1.9
16	306,695	347,780	13.4	299,301	-13.9
17	349,023	364,308	4.4	371,213	1.9
18	273,631	279,253	2.1	314,553	12.6
19	604,706	670,823	10.9	610,643	-9.0
20	121,854	162,364	33.2	164,432	1.3
21	109,468	135,746	24.0	136,496	0.6
22	164,637	163,821	-0.5	163,400	-0.3
23	151,381	267,506	76.7	204,765	-23.5
24	347,051	357,905	3.1	398,263	11.3
25	135,058	166,293	23.1	155,783	-6.3
26	258,812	334,089	29.1	281,467	-15.8
27	248,397	245,247	-1.3	285,063	16.2
28	129,465	122,516	-5.4	130,390	6.4
29	204,910	239,907	17.1	254,235	6.0
30	136,466	170,014	24.6	183,855	8.1
31	168,136	262,253	56.0	249,940	-4.7
Unassigned	1,219	7,299		2,503	
Totals	7,294,283	8,140,795	11.6	8,117,254	-0.3

\*

16.1-267  
19.2-163  
19.2-326

While some additional criteria for determining eligibility for court-appointed counsel was adopted by the 1983 General Assembly and incorporated into the 1983 Appropriations Act, the task of studying the advisability of establishing specific indigency standards was left to the Indigency Standards Advisory Committee. House Joint Resolution #76 directed the Committee to determine whether such indigency standards are feasible and whether they can be implemented without causing unreasonable delays in disposing of cases or unreasonable administrative expense for the court system.

## **II. Existing Provisions for Appointment of Counsel and Indigency Determination**

Statutory procedures for appointment of counsel and indigency determination are outlined in Article 3, Chapter 10, of Title 19.2 of the Code of Virginia. The law provides that any "indigent" person charged with an offense which may be punishable by incarceration is entitled, upon request, to competent legal counsel at public expense. The court is not required to appoint counsel in instances in which the accused is charged with a non-jailable misdemeanor or, if charged with a jailable misdemeanor, where the judge has declared in writing prior to trial that any sentence upon conviction will not include imprisonment.

The appointment of counsel in cases involving juveniles is handled differently according to type of case. In abuse and neglect and termination of parental rights cases as well as in entrustment agreement proceedings, a lawyer must be appointed pursuant to §16.1-266 of the Code. The parents are liable to pay the costs of such representation under §16.1-267, if they are financially able to do so.

In cases involving children alleged to be in need of services or delinquent, an attorney is appointed if the court determines that the child is indigent and his or her parent or guardian does not retain counsel on the child's behalf. In practice, juveniles are found to be indigent almost without exception when considering their financial resources apart from those of their parents or guardian as well. If the parents are found financially able to retain counsel and refuse to do so, then they are ordered by the court to pay the costs for such representation. In custody cases where each parent or person is represented by counsel, the court does not appoint an attorney for the child except in instances in which the judge finds that the interests of the child are not being adequately represented. In such instances, the Code makes no provision for indigency determination for either the child or parent. In effect, indigency criteria are not used to decide whether counsel should be appointed but to determine whether the parent or other person legally responsible for the child is financially able to pay for such legal representation.

In all cases, the court is not required to appoint a lawyer where a person who is otherwise entitled to such defense services knowingly and intelligently waives his right to counsel or indicates that he will retain private representation.

The court is directed to ascertain whether or not a defendant requesting court-appointed counsel is "indigent within the contemplation of the law" and, if so, to provide the accused with a statement of indigency. This statement is signed and sworn by the defendant certifying to the court that he/she is without financial means to obtain a lawyer. The court is further directed to question the defendant as to his/her employment, wages, bank accounts, real or personal property and any other income or assets. If, in the opinion of the court, the defendant is indigent and entitled to representation, a lawyer is appointed. Except in jurisdictions served by public defenders, counsel is selected by rotation among individual attorneys who have indicated willingness to be so appointed. This same process is used to determine if a juvenile's parents are financially able to pay for legal counsel to represent the child.

If, during the course of the proceedings, a defendant undergoes a change in circumstances such that he is no longer indigent, he must obtain private counsel and so advise the court. The court also may request the Commonwealth's attorney to investigate the indigency status of any defendant. In practice, this type of investigation is made only in unusual circumstances in most circuits.

Until last year, no further guidance was provided to judges in defining or measuring indigency. The 1983 General Assembly added language to the Appropriations Act (1983 Virginia Acts of Assembly, Chapter 22):

In addition to the provision of Article 3, Chapter 10, of Title 19.2 of the Code of Virginia, no court shall appoint counsel until it has determined, by oral examination or other appropriate means, the accused's liquid assets and those assets which can be converted to cash within a reasonable period of time and are not needed to maintain employment, or to shelter, clothe, feed and care for the accused and his immediate family. Assets which cannot be converted to cash within a reasonable period of time and other property which is exempt from attachment or execution by law, shall be calculated to be assets equivalent in dollar to the amount of

the loan which could be, in fact, raised by using these assets as collateral. For purposes of determining indigency, assets of the spouse, where appropriate, shall be considered as if they were assets of the accused, unless the spouse was the victim of the offense or offenses allegedly committed by the accused.

Only after the court has determined that the accused's income and assets are not sufficient to cover the cost of competent representation for the particular charge or charges then pending against the accused may the court determine the accused to be indigent; provided, however, that in determining the sufficiency of the accused's income and assets the court shall give due consideration to the reasonable and necessary living expenses of the accused as well as payments on the accused's outstanding indebtedness.

Nothing herein shall be construed to limit the court from reevaluating the accused's status upon a change of circumstances.

Information gathered by the Indigency Standards Advisory Committee indicates that the interpretation of these guidelines and the mechanics of eligibility determination varies significantly among Virginia's thirty-one judicial circuits and districts. A number of courts require the defendant to submit a written financial statement to the court. In others, the judge questions the defendant under oath at the arraignment hearing on his ability to hire private counsel. In some courts, both of these steps are taken. In a few juvenile and domestic relations courts, either the clerk or an intake officer are assigned to interview the defendant and a report is made either orally or in writing to the court.



### **III. Defining Indigency - A National Perspective**

Although there have been numerous decisions specifying the types of proceedings in which states are obligated to provide counsel, neither the federal or state courts have defined with any accuracy the point at which a defendant is or is not indigent.<sup>3</sup> Perhaps as a result, a variety of factors are taken into consideration among the states in defining or establishing the threshold of indigency.

To put Virginia's existing guidelines into perspective and to identify the key factors utilized by other states in making eligibility decisions, an analysis of indigency criteria used in 17 states, the District of Columbia, and the federal courts was prepared. In addition, standards developed by four national legal organizations (the American Bar Association, the National Advisory Commission on Criminal Justice Standards and Goals, the National Legal Aid and Defender Association, and the National Center for State Courts) were included in the analysis. A copy of the analysis is included in the Appendix on page 34. In order to better compare guidelines between states, the information was arranged in matrix form. States were randomly selected; several of those represented in the survey had recently revised their criteria.

The matrix divides the states' indigency standards into six categories of eligibility factors. These include presumptive tests for indigency, income resources, non-income resources, expenses and liabilities, use of indigency formulas, and methods of administration/implementation. A number of the eligibility factors were common among the states. However, the research indicated little comparability or uniformity in the language of the guidelines themselves, either in definitions, content, or comprehensiveness. For example, while Colorado and Georgia rely primarily on the defendant's income to determine eligibility, Connecticut looks first to what the defendant may have in non-income liquid assets, such as money in a savings account. Most of the remaining states question the defendant both about income and non-income resources but the weight given to each in determining eligibility for counsel is unclear.<sup>4</sup>

The lack of comparability in guidelines among the states has been discussed in a number of national reports issued recently on this topic.<sup>5</sup> A 1983 law review article prepared by a Virginia district court judge and member of the Committee characterizes most statutory definitions of indigency as "a series of word games" and argues that the utter lack of uniformity and resulting uneven application both within and among courts and judges raises serious due process questions.<sup>6</sup> The article points out that government has promulgated specific eligibility standards in such areas as welfare and social legislation. Thus:

"...the case for establishing such requirements is even stronger in this area (indigent defense), in that an affirmative constitutional right is at stake. If there must be specific standards for establishing one's eligibility for non-constitutional entitlements, certainly one's constitutionally mandated right to counsel should not depend on the uncontrolled or unguided determination of a judge or a staff member of a court clerk's office or public defender's office. Where there are no specific criteria, a criminal defendant clearly may be found eligible for court-appointed counsel in one jurisdiction and, on the same facts, be found ineligible in an adjoining one. This is precisely the unequal treatment of similarly situated individuals that due process protections enjoins.

One underlying concept found present in the guidelines of most states was that the defendant need not be entirely without funds in order to be deemed indigent. With some variation, states seem to have tracked the language incorporated in guidelines issued by the American Bar Association in 1978 which emphasize:

"Counsel should be provided to any person who is financially unable to obtain adequate representation without substantial hardship to himself or his family. The defendant should be able to provide for the basic necessities of life without jeopardizing his/her ability to maintain one's home or employment."

Beyond the "substantial hardship" test, the states begin to deviate. A summary of the six categories of eligibility factors follows.

#### Presumptive Tests for Indigency

Within the past three years, ten states have revised or are in the process of revising criteria for indigency determination. One of the trends indicated among these

states is the establishment or formal recognition of circumstances which constitute presumptive evidence of eligibility or ineligibility. In effect, states are setting up a "litimus" test for indigency; if defendants meet one or more of the prescribed circumstances they are considered automatically eligible for court-appointed counsel. No further inquiry is made into their finances. Although eligibility criteria vary among these entitlement programs, they are generally seen as stringent enough to qualify defendants for court-appointed counsel.

Some states set up presumptive factors for automatic eligibility, others develop presumptive factors for automatic ineligibility. The advantages in using such presumptive tests are that they reduce paperwork, expedite the eligibility determination process, and are set at such a subsistence level that they can eliminate or significantly reduce differences of opinion about the defendant's ability to employ counsel. They are simple to apply, also. The disadvantages are that they are too low and more rigid than some of the other method of determining eligibility. However, in no state using presumptive factors are they the only criteria.

The most frequently recognized presumptive factor of indigency is being a current recipient of public assistance. It is important to note that many of these social services programs require that the recipients have earnings well below the national poverty level. Other states include as presumptively eligible any defendant who receives Medicaid, Supplemental Security Income benefits, and is unemployed or receiving benefits under the Unemployment Compensation Act of Virginia and is without liquidable assets.

One of the many controversies among the sets of guidelines is the treatment of a defendant's ability to post bond and, also, the financial relationship between ability to post bond and ability to hire a lawyer. Inability to make bond is treated as a presumptive factor of indigency in five states. Kentucky and Florida appear to regard it as just the opposite - a defendant who can afford to post bond is automatically ineligible for court-appointed counsel. Six of the states exempt "bond funds" from consideration in

evaluating a defendant's total income. Language in several others address it simply by stating that ability to make bond should be indicative of defendant's ability to borrow. In at least one decision by the Illinois Supreme Court, a trial court was reversed when it relied solely on ability to borrow or raise bail as the one criterion for a finding of ineligibility for court-appointed counsel.<sup>8</sup>

### Income Resources

Guidelines in all states require that the court inquire into and establish the defendant's place of employment and gross or net income. The majority of states surveyed look to gross income, others use net income because the latter is considered to be a more realistic figure to judge the defendant's ability to pay for a lawyer. Present criteria in Virginia specify neither; the law instructs the courts to inquire about the amount of the defendant's wages, but leaves to the decision of the courts which scale to use in so doing. North Dakota, South Carolina and West Virginia use a more comprehensive definition of income and include examination of monies such as income from self-employment, social security payments, pension funds, and from dividends or trusts. Interestingly, these three states have simply tracked the language which appears in the indigency guidelines set out in legislation governing the Legal Services Corporation programs. The Legal Services Corporation is a federal agency under which local Legal Aid Society offices are operated. Attorneys are employed in these offices to represent indigents in civil matters.

### Non-Income Resources

In addition to income, the eligibility criteria in all states require some type of examination of the defendant's assets. However, this category is considered more elusive and complex than income because most courts lack the ability to verify the holding of assets and to determine the value of items such as cars, personal property or real estate in any expedient way. Perhaps as a result, the primary emphasis in this category is on cash assets or any items readily convertible into cash. A number of states specify

certain types of assets to be examined including bank accounts, tax refunds, stocks, bonds, real estate, and personal property. Others simply require the court to consider any asset convertible into cash within time periods ranging from seven to thirty days.

Statements similar to that contained in the Appropriations Act in Virginia indicating that the sale of any asset should not result in causing substantial hardship for the defendant, also are found in other states.

General statements directing an examination of personal property items were also common. Most controversial among the items in this category is car ownership. Guidelines in several states treat a single family automobile used for transportation as an asset which should be excluded from consideration. In what appears to be the only judicial decision directly on point, the Supreme Court of Hawaii in State vs. Mickle held that "an economy car in this age of high density living and compressurized civilization" should be considered a necessity of life since with it the unbearable becomes the bearable.<sup>9</sup> Automobile ownership is considered in other states as evidence of defendant's ability to borrow.

In looking at real estate assets, a distinction is made between owner-occupied residential real estate and real estate held for investment purposes or by inheritance. Some states specifically exempt the defendant's own home from consideration, while others do so by implication because selling one's home would cause a "substantial hardship on the defendant." There are few, if any, guidelines to assist courts in evaluating the effect which real estate ownership for investment should have on eligibility. This may be because this circumstance is so rarely encountered. States addressing the issue at all say that home ownership and ownership of other property exempt from attachment should be indicative of the defendant's ability to borrow.

### Family Support

Unless a couple is estranged or a conflict of interest is involved, many states represented in the survey consider the income, assets, and expenses of the spouse as

those of the defendant's. This is consistent with standards used by legal aid offices and by most public assistance programs. The reasoning here is that if total family expenses are to be used in reducing available funds for hiring an attorney, then total household income must be included in the calculations as well. In Georgia, North Dakota and in the federal courts, spouse income is not included in the calculation of the defendant's income but is considered in determining the actual extent of the defendant's living expenses. Unless a conflict of interest is involved, most of the states also include the income, expenses, and assets of parents or guardians in determining eligibility for juvenile defendants. Interestingly, the Florida statutes require parents to be held liable for the costs of providing counsel for their children up to a maximum of \$1,250. In Virginia, §16.1-267 of the Code of Virginia provides that parents may be assessed up to \$100 per charge in certain cases if they are found to be financially able to pay court-appointed counsel fees.

#### Expenses and Liabilities

Also recognized within the standards of most states is the need to examine a defendant's legitimate living expenses as well as his/her income and assets when determining indigency. This need was acknowledged in the mid-1960's by Chief Judge John S. Hastings of the U.S. Court of Appeals (7th Circuit) when he wrote that a defendant:

"may be employed regularly at a substantial wage, but have a number of dependents who require all his income for living purposes, and as a consequence have no income or surplus or property available for an adequate defense."<sup>10</sup>

Statutes in several states require that the accused list average weekly or monthly living expenses on a financial statement form; the total of the expenses is then deducted from his/her income and assets. Food, shelter, clothing, court-ordered support payments and medical costs are the items most frequently included as basic living expenses.

Guidelines in Connecticut appear to place emphasis on "exceptional" expenses for which the defendant is responsible. The criteria specifies that five types of payments

may be considered in reducing income for the purposes of eligibility determination: recurrent serious medical expenses, family support payments, mortgage payments, day-care services and bail funds. Interestingly, these standards also address the overall indebtedness of the accused by stipulating that "the mere existence of consumer debts (e.g. auto loans, home furnishings, etc.) should not be considered in determining an accused's eligibility for public defender/court-appointed counsel services unless they are so high as to effectively eliminate any chance of his/her obtaining a loan for the cost of legal representation."<sup>11</sup>

In Virginia, the criteria contained in the Appropriations Act cover this category generally by stating that the court must give due consideration to the reasonable and necessary living expenses of the accused as well as payments on the accused outstanding indebtedness. The language also appears to consider funds which are needed to maintain employment as well as those needed to shelter, clothe and feed the accused and his immediate family.

#### Use of Indigency Formulas

In addition to presumptive tests, there are two other types of income "cut-off" formulas used by states in measuring indigency. The first formula compares the "bottom line" of the defendant's income, assets, and expenses to an income figure drawn from nationally or state set poverty guidelines. The second test looks at the financial resources of the accused in light of the estimated cost which would be charged by private counsel for defending him/her. The estimated fees are determined by surveys of members of the practicing bar.

Colorado, California, West Virginia and the District of Columbia base their indigency formula on the Federal Poverty Income Guidelines. These guidelines have been adopted by the federal government as the official U.S. poverty guidelines. They are used widely in determining eligibility for social services programs because they are considered to be the only research-based poverty guidelines available today. They are derived by

multiplying the cost of the 1955 "economy food plan" established by the Department of Agriculture by a factor of three. (Another survey conducted by the Department during the 1950's showed that poor persons spend about one-third of their income on food.) Each of the indices lists gross or net income per size of household. The guidelines are updated annually using a factor equal to the Consumer Price Index. Among the programs employing the guidelines are: Food Stamps, Low-Income Home Energy Assistance Block Grant, and the Community Service Block Grant. The 1983 poverty income guidelines as established by the federal Department of Health and Human Services are as follows:

1983 POVERTY INCOME GUIDELINES

<u>Size of Family Unit</u>	<u>Poverty Guidelines</u>
1	\$ 4,860
2	6,540
3	8,220
4	9,900
5	11,580
6	13,260
7	14,940
8	16,620

(For family units with more than 8 members, a figure of \$1,680 is added for each additional member.)

The Legal Services Corporation has established a cut-off point of 125 percent of the federal poverty guidelines as the maximum allowable income a person may have to be entitled for legal representation in civil matters. Colorado and North Dakota use the identical test for court-appointed counsel eligibility in criminal cases, although, in the latter, the income guideline is advisory in nature only. West Virginia recently adopted a formula which allows for a maximum income of 150 percent of the poverty level.

Minnesota has devised a state set poverty level. The statutes establish that an unmarried defendant is eligible for court-appointed counsel if his net weekly income does not exceed 40 times the federal minimum wage or 60 times the minimum wage, if married with dependents. Similarly, localities in Georgia are given a minimum and maximum range within which accessibility to a lawyer is mandated. However, counties



also are directed to establish a tripartite committee composed of the judge, a member of the local bar association, and one other person to determine any additional eligibility criteria to be in effect in each jurisdiction.

Two states, Maryland and Illinois, use the estimated cost of counsel as the cut-off point. In Maryland, indigency determinations are made by the public defender's office. If the defendant does not fall into the category of presumptively eligible, the interviewer will ascertain if the income and/or liquidable assets of the applicant exceed the amount needed for the support of the accused or his family. If the remaining income and/or liquidable assets are insufficient to cover the anticipated costs of representation as indicated by the prevailing legal fees in the locale, the defendant is eligible for public defender or court-appointed counsel services. The fees are determined from the results of regularly updated surveys conducted by the public defender's office of privately retained criminal lawyers who practice in the criminal courts.

Four states and the District of Columbia use both poverty income guidelines and the estimated cost of representation in deciding indigency questions. The District of Columbia provides one example of this type of system. In Washington, D.C., indigency guidelines are developed by a Board of Judges of the Superior court and approved by a Joint Committee on Judicial Administration. In addition to using presumptive criteria, an income eligibility scale has been developed which is based on the national poverty guidelines but adapted by the federal Bureau of Labor Statistics to reflect "Lower Living Standard Income Levels." (The Bureau has recently decided to discontinue publishing these levels due to budget cuts.) If the defendant's income and assets do not exceed the income figure specified in this schedule, he/she is eligible for appointment of counsel. The indigency guidelines also establish amounts which are considered as minimums necessary to retain a qualified attorney (e.g. for appellate matters \$1,500; for felonies \$1,500; for misdemeanors \$750; and for other types of cases covered, \$400). If the defendant's income and assets are greater than the income figure in the schedule by an amount which equals to or is greater than the estimated fee; the defendant is ineligible.

If his income is greater than the amount specified in the schedule but less than the cost of representation, the defendant is eligible for appointment of counsel but must pay a "contribution" toward his defense. The amount of the contribution also is set forth in the guidelines.

Typically seen in the guidelines of states not using estimated cost of counsel as a cut-off test is a general statement which suggests that the court "take into consideration" prevailing fees for retained counsel. For example, guidelines in Colorado establish as the cut-off test a refusal of representation by two private lawyers due to the defendant's lack of funds. Thus, if a defendant's income is above 125 percent of the poverty level but he/she is refused representation by two lawyers, the judge may appoint one for the defendant. Where it appears that a person may be marginally indigent, Connecticut requires that the defendant attempt to acquire representation through a pre-paid legal services plan and be refused before counsel is appointed.

The National Center for State Courts has undertaken a number of projects evaluating indigency criteria in individual states. Reports released by the Center conclude that there are advantages and disadvantages to using either formula.<sup>12</sup> The advantage is that one standard is being applied to all defendants seeking counsel. Their research indicates, however, that cut-off tests, used alone, often do not sufficiently reflect individual circumstances nor do they take into account the cost of private legal representation for different types of charges. The Center says that when these levels are intended as a floor below which indigency is presumed, they sometimes become a ceiling above which appointments are rare, even when justified.<sup>13</sup> Finally, comparing the "bottom line" of the defendant's income to the estimated cost of counsel is said to be insufficient, in and of itself, especially in the absence of up-to-date estimates on average fees.

## Administration/Implementation of Indigency Standards

In accordance with House Joint Resolution #76, the Indigency Standards Advisory Committee was guided by an important assumption: than any guidelines developed in Virginia for determining the eligibility of the accused for court-appointed counsel must be equitable and they must be able to be implemented without causing undue delay in disposing of cases or causing undue administrative burden on the court. Thus, general information pertaining to the administrative mechanics of the indigency screening process in various states also was gathered.

### Structure for Indigency Standards

All of the state statutes surveyed contain general provisions for the appointment of counsel and determination of indigency. In addition, however, seven states issue their indigency guidelines by Supreme Court Rule or through a directive of the Chief Justice. In Connecticut, Maryland and West Virginia, the State Public Defender Commission is responsible for promulgating these standards. A primary argument for establishing the criteria other than by state statute is that the guidelines tend to be in need of regular review and updating, particularly in states using a poverty income guideline or estimations of the cost of counsel.

### Administrative Mechanisms for Screening and Verifying Indigency Claims

Among the states surveyed, the predominant method for providing legal representation for indigents was by statewide public defender system. This fact is important to note in that, typically, these offices have staff assigned to collect and verify the information upon which the indigency determination is made. Verification of the information provided by defendant is seen as one of the one missing links in the screening process in a number of states. It occurs infrequently, if at all, in states not specifically mandating the responsibility to some office. Even in public defender system states, verification activities are sometimes curtailed due to the press of other duties. Colorado, for example, has a statewide public defender system. Two years ago, the

legislature established several "indigency screening units" within the court system to better handle investigation and verification activities. Staff in these units also were assigned responsibility for recoupment of monies contributed by defendants for public defender services. It was anticipated that the funds saved by these offices would be sufficient to substantially support their operation (i.e. more thorough investigations would result in fewer appointments and contributions would increase). Interestingly in 1983, the Colorado legislative defunded the units due to lack of cost-effectiveness.

In Washington, D.C., the entire appointment of counsel and indigency screening process is administered by offices referred to as Criminal Justice Act programs. Staff in these offices also are responsible for collecting funds which the defendant has been ordered by the court to help pay for his defense.

In four other states, probation offices are assigned to interview persons requesting court-appointed counsel prior to the convening of court each day. Massachusetts is the only one of these states known to evaluate the effectiveness of using such personnel to conduct the indigency screening process. Other than general statutory provisions, no definitive indigency standards have been established for Massachusetts courts. A pilot project undertaken in one judicial district concluded that absent specific standards inconsistent, highly subjective and widely varying decisions on indigency will be made regardless of who is assigned responsibility for the screening process.<sup>13</sup>

In Virginia, Section 19.2-159.1(C) of the Code of Virginia directs the Commonwealth's Attorney's office to investigate indigency claims, upon request of the court. The law also provides that the Commonwealth's attorney may designate another governmental agency to assist in this task. In the past, some social services offices performed this duty. A number of Commonwealth's attorney and social services department directors have maintained that they lack the staff to conduct such investigations on a regular basis.

In the fall of 1983, the Twenty-Fourth Judicial District instituted a pilot project in the city of Lynchburg. Responsibility for obtaining information on the indigency

status of the accused was designated to the magistrate. In all cases where court-appointed counsel is requested, the magistrate collects and forwards both the written request for counsel and a financial statement to the court for review. The magistrate then advises the defendant of the court date at which he or she is to be present and at which the judge makes a determination upon the request. Although the results continue to be closely monitored and evaluated, both the judges and magistrates feel the project is successful in expediting the screening process and thus saving time for the court, the defendant, and most importantly, for victims and witnesses. The city of Portsmouth and Fairfax County also have undertaken similar projects in the past.

An additional need which has been recognized in a few states is that of providing some "middle ground" or additional gradation between the classification of indigent and non-indigent (eligible or not eligible for court-appointed counsel). In revising their criteria, these states have begun to categorize defendants as:

- fully indigent;
- marginally indigent (meaning that they can afford some or all of the costs of representation);
- persons who were indigent at the time of arraignment or trial but whose status subsequently changes; or
- not indigent.

With some variation, procedures for providing legal services to marginally indigent defendants are similar to those established by the Supreme Court in Colorado. In Colorado courts, if the defendant's income exceeds the defined maximum, he or she must seek to retain private counsel. If refused legal services by at least two private attorneys because of inability to pay, the defendant is considered partially indigent and the court then appoints a public defender or private counsel but orders the defendant to reimburse the state for attorneys fees. The sum to be reimbursed is determined by the amount the defendant earns per month in excess of the poverty guideline figure. The guidelines require that this amount be paid in monthly payments until the full amount is paid.<sup>14</sup> A

similar system exists in Washington, D.C.; however, there any partially indigent defendant who is required to make a contribution towards costs of counsel must pre-pay the fee prior to trial.

### Recoupment Procedures

Indigency guidelines in a few states also specify the administrative procedures to be used for recouping some or all of the costs for indigent defense services. In Virginia, every person convicted of a criminal offense who has had the services of a court-appointed attorney is assessed the full costs for that representation, the full amount being tacked on to court costs. Defendants make payments both for court costs and attorney's fees to the Clerk's office. Approximately \$1 million was recouped in the court-appointed counsel costs in fiscal year 1983; \$539,572 in circuit courts and \$436,126 in district courts.

In other states, reimbursement by the defendant is paid directly to the public defender's office or to the probation department. North Dakota recently established a procedure in which the district attorney in that state may contract with a private sector debt collection agency on a contingent fee basis to collect fees from defendants. The procedure was initiated in 1983 and officials say this has not yet been sufficient experience with it to evaluate its success. In Virginia, the 1983 General Assembly enacted a similar statute allowing the Attorney General's office to contract with private attorneys to collect debts owed to state agencies by individuals and/or groups.

#### **IV. The Development of Proposed Indigency Standards**

Based upon the information presented during the course of the study, the Committee concluded that the adoption of definitive standards would assist courts in more effectively evaluating the financial eligibility of a defendant for court-appointed counsel. Therefore, a set of proposed guidelines and financial statement form was drafted using existing statutory provisions and incorporating relevant features from the standards utilized in other states.

Within the judicial system, copies of the proposal were sent to all judges, clerks of court, and chief magistrates. In addition, comments were solicited from all Commonwealth's attorneys, members of the Board of Governors of the Criminal Law Section of the Virginia State Bar, the presidents of the Old Dominion Bar and Virginia Women Attorneys Association, the directors of all legal aid society and public defender offices and the executive directors of the Virginia Poverty Law Center and the American Civil Liberties Union of Virginia.

The majority of those who commented on the guidelines were judges. Several of the respondents endorsed the adoption of the guidelines stating that their implementation would provide an objective standard for the courts to apply in determining indigency. Others recommended changes to modify the instructions and simplify the financial statement form. Still others said that while additional criteria were needed, the guidelines as drafted would cause delays in case processing as well as increased expenditures for court-appointed attorneys.

The Committee met in December and reviewed each of these concerns and suggestions. As a result, a number of revisions were made and incorporated into the final recommendations. The proposed indigency standards as adopted by the Committee appear below along with commentary to each recommendation.

### Recommendation No. 1 - Presumption of Indigency

A defendant shall be presumed eligible for court-appointed counsel if he/she is a current recipient of a state or federally administered public assistance program for the indigent. Examples of such programs are Aid to Dependent Children, Food Stamps, Medicaid, and Supplemental Security Income (SSI).

Eligibility criteria for public assistance programs in Virginia are set at a subsistence level. The income levels required to qualify for such assistance in most programs fall well below the national poverty level. In addition, because of inflation, the purchasing power of most recipients has eroded substantially within the past few years. Thus, the likelihood that these individuals could retain an attorney is considered minimal, particularly in felony cases. In order to expedite the screening process and provide a standard which can be uniformly applied, the Committee recommends that individuals receiving such funds be presumptively eligible for court-appointed counsel. Under the proposal, no further inquiry into the financial resources of these persons would be required.

### Recommendation No. 2 - Financial Resources

If the defendant requests court-appointed counsel and is not presumptively eligible (under Recommendation #1), the court shall thoroughly examine the financial resources of the defendant with consideration given to the following factors:

(A) net income, (B) assets, and (C) exceptional expenses.

- A. Net Income - This shall be defined as total salary and/or wages minus deductions required by law. Also to be considered are income and amenities from other sources including but not limited to social security funds, union funds, veteran's benefits, other regular support from an absent family member; public or private employee pensions, dividends, interests, rents, estates, trusts, or gifts.
- B. Assets - The court shall examine all assets convertible into cash within a reasonable period of time without causing substantial hardship or jeopardizing defendant's ability to maintain home/employment. Assets shall include all cash on hand as well as in checking and savings accounts, stocks, bonds, certificates of deposit, and tax refunds. All personal property owned by the defendant which is readily convertible into cash shall be considered, except property exempt from attachment. All real estate owned by the defendant shall be considered in terms of the amounts which could be raised by a loan on the property.



- C. **Exceptional Expenses** - In making its determination, the court shall consider, in addition to income and assets, any unusual expenses of the defendant and/or his/her family which would, in all probability, prohibit him/her from being able to secure private counsel. Such items shall include but not be limited to costs for medical care, family support obligations, and child care payments. The court also shall take into consideration the estimated cost of representation customarily charged by members of the practicing bar for the specific type of offense(s) for which the defendant is before the court.

The Committee felt that an examination of these three income sources would provide the court with a comprehensive accounting of both the defendant's financial resources and obligations. Net as opposed to gross income was selected to be reviewed because members felt that it was more indicative of funds the defendant actually has available for employing private counsel. Realistically, the members felt that defendants also are better able to answer questions on their bi-weekly or bi-monthly take-home pay than on their annual salary. Also to be disclosed under this category are other potential sources of income which may be regularly received by the defendant.

The types of assets to be considered are substantially the same as those currently specified in §19.2-159.1 and in the 1983 Appropriations Act. In requiring this information, the Committee appreciates that the instances in which indigent defendants have assets such as stocks and bonds are relatively few. However, in order to conserve public funds wherever possible, the Committee felt that inquiry into these type of assets should be made. The financial statement form requires the defendant to specify net value on real estate, motor vehicles, and other personal property. Net value is defined as the amount the defendant could obtain from sale of the item minus the amount he/she still owes on the property.

Because the indigency formula (recommendation No. 3) takes into account basic living expenses, the guidelines require that the defendant list only unusual or exceptional expenses for which he/she may be responsible. The Committee cited examples of such debts but does not regard this as an all-inclusive list. Also to be factored under this section is the judge's estimation of costs a defendant would incur if he/she was represented in the case by private counsel. The Committee felt that this cost could be

established by the judge based upon experience. An additional method of determining costs would be to have the local bar association conduct a survey on average fees for defending misdemeanor, felony, and juvenile cases as well as preparing and presenting criminal appeals.

Recommendation No. 3 - Indigency Formula

If the defendant's available funds (sum obtained from adding income and assets and subtracting exceptional expenses) are at or below the amounts in the following table, the defendant is deemed eligible for defense services at public expense.

<u>Household Size</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>
Available Funds (annually)	\$7,290	\$9,810	12,330	14,850

(Add \$2,520 for each additional member in households of more than four.)

The figures contained in this formula represent 150 percent of the official poverty level threshold as defined by the federal Department of Health and Human Services. As previously mentioned, the Legal Services Corporation has established a maximum income eligibility level of 125 percent of the poverty level. The Committee believes that criminal defendants who are facing possible imprisonment are arguably entitled to greater latitude than individuals being represented at public expense in civil matters. This 150 percent is consistent with the standard recently adopted by West Virginia.

Recommendation No. 4 - Spouse Income

For purposes of eligibility determination, the income, assets, and expenses of the spouse, if any, who is a member of the defendant's household, shall be considered unless the spouse was the victim of the offense or offenses allegedly committed by the accused.

Since exceptional expenses of the entire family or household are to be included in the calculation of "total expenses," the total income of the family, including that of a spouse living in the home, will be required as well. Exceptions to this standard are where the spouse is a victim of the alleged offense.

### Recommendation No. 5 - Updates to Indigency Formula

The Supreme Court of Virginia shall be responsible for distributing to all courts the annual updates of the poverty guidelines made by the federal Department of Health and Human Services.

By law, the federal poverty income guidelines are updated each year by the federal Department of Health and Human Services. The Committee suggests that responsibility for providing courts with annual updates of the formula be placed with the Supreme Court of Virginia.

### Recommendation No. 6 - Exceptional Circumstances

If the available funds of the accused exceed recommended guidelines and the defendant fails to employ counsel and does not waive his right to counsel, the Court may, in exceptional circumstances and where the ends of justice so require, appoint an attorney to represent the defendant; provided, however, that in making such appointments, the Court shall state in writing its reasons for so doing. The written statement by the Court shall be included in the permanent record of the case.

In proposing statewide standards, the Committee recognized that there may be limited instances in which a defendant may have available funds which place him/her marginally in excess of the guidelines but because of certain circumstances (e.g. unusually high fees being demanded in advance) the individual still may be unable to obtain an attorney. Members also discussed the court's predicament in cases in which an obstreperous or irrational defendant refuses to employ an attorney or waive his right to counsel and thus continues to delay the proceedings. Considering the potential repercussions to the judicial system which could result if such defendants are refused counsel, the Committee added this mechanism to allow courts to appoint an attorney in exceptional circumstances. The recommendation would require the judge to set forth in writing the reasons for making the appointment in these cases.

### Recommendation No. 7 - Juvenile Cases

The indigency standards for adult defendants as outlined above also shall apply to juveniles and parents entitled to court-appointed counsel under the provisions of §16.1-266 and §16.1-267.

The Committee believes that the proposed standards are equally appropriate for determining the financial eligibility for court-appointed counsel for persons under eighteen years of age or for their parents.

#### Recommendation No. 8 - Financial Statement

In addition to the written request for court-appointed counsel, every defendant who desires legal representation shall fill out a sworn financial statement to support the claim of indigency and to permit the judge to determine the validity of the claim.

A financial statement was drafted to capture the information required for eligibility determination. If the defendant is a recipient of public assistance and thus presumptively eligible, only the first questions need to be answered. In other cases, net income and assets of both the defendant and spouse, where applicable, must be listed. Determining the type of pay period (weekly/bi-monthly, etc.) will assist the interviewer in computing an annual income figure. The figure derived by adding income and assets and then subtracting total expenses will be the defendant's available funds. The indigency formula will be applied to the defendant's available funds and total household size. In all cases the defendant must sign the sworn statement at the bottom of the form.

#### Recommendation No. 9 - Indigency Determination Procedures

Each chief judge shall designate the Office and/or individual(s) to be responsible for interviewing and assisting the defendant in filling out the financial statement forms. Examples of such offices and/or individual(s) are magistrates, intake officers in the juvenile and domestic relations courts and, where possible, the clerk's office. The use of court volunteers supervised through one of these offices also may be appropriate.

In light of varying workload pressures among the courts and court-related offices, the Committee recommends that responsibility for developing indigency screening procedures rest with the judges of each appointing court. Judges are encouraged to consider a number of options in assigning an office and/or individual(s) to assist the

defendant in filling out the financial statement form. The Committee was impressed with the results to date in districts using the magistrate's office. Such programs were reported to assist the courts substantially in collecting the necessary forms early in the process and thus helping to reduce the need for continuances and additional hearings. Expanding the use of intake officers in collecting the information from juveniles and their parents also is suggested.

## APPENDICES

PROPOSED LEGISLATION

**§ 19.2-159. Statement of indigence by person charged with felony; appointment of counsel. Determination of indigency; eligibility guidelines; statement of indigence; appointment of counsel.**—A. If the accused shall claim that he is indigent, and the charge against him is a ~~felony~~, criminal offense the penalty for which may be death or confinement in the penitentiary or jail, subject to the provisions of § 19.2-160, the court shall ~~ascertain by~~ determine from oral examination of the accused and or other competent evidence whether or not the accused is indigent within the contemplation of law; and if the court thereby determines that such accused is indigent as contemplated by law, the court shall provide the accused with a statement which shall contain the following:

"I have been advised this ..... day of ....., 19.., by the (name of court) court of my right to representation by counsel in the trial of the charge pending against me; I certify that I am without means to employ counsel and I hereby request the court to appoint counsel for me"..... (signature of accused) pursuant to the guidelines set forth in this section.

B. In making its finding, the court shall determine whether or not the accused is a current recipient of a state or federally funded public assistance program for the indigent. If the accused is a current recipient of such a program, he shall be presumed eligible for the appointment of counsel. This presumption shall be rebuttable where the court finds that a more thorough examination of the financial resources of the defendant is necessary.

C. If the accused shall claim to be indigent and is not presumptively eligible under the provisions of paragraph B, then a thorough examination of the financial resources of the accused shall be made with consideration given to the following:

(1) The net income of the accused, which shall include his total salary and wages minus deductions required by law. The court also shall take into account income and amenities from other sources included but not limited to social security funds, union funds, veteran's benefits, other regular support from an absent family member; public or private employee pensions, dividends, interests, rents, estates, trusts, or gifts;

(2) All assets of the accused which are convertible into cash within a reasonable period of time without causing substantial hardship or jeopardizing the ability of the accused to maintain home and employment. Assets shall include all cash on hand as well as in checking and savings accounts, stocks, bonds, certificates of deposit, and tax refunds. All personal property owned by the accused which is readily convertible into cash shall be considered, except property exempt from attachment. Any real estate owned by the accused shall be considered in terms of the amounts which could be raised by a loan on the property. For purposes of eligibility determination, the income, assets, and expenses of the spouse, if any, who is a member of the accused's household, shall be considered, unless the spouse was the victim of the offense or offenses allegedly committed by the accused;

(3) Any unusual expenses of the accused and his family which would, in all probability, prohibit him from being able to secure private counsel. Such items shall include but not be limited to costs for medical care, family support obligations, and child care payments. The court also shall take into consideration the estimated cost of representation customarily charged by members of the practicing bar for the particular charge or charges pending against the accused.

D. The available funds of the accused shall be calculated as the sum of his total income and assets less the exceptional expenses as provided in subsection 3 of paragraph C. Counsel shall be appointed for the accused if his available funds are equal to or below 150 percent of the federal poverty income guidelines prescribed for the size of the household of the accused by the federal Department of Health and Human Services. The Supreme Court of Virginia shall be responsible for distributing to all courts the annual updates of the federal poverty income guidelines made by the Department.

E. If the available funds of the accused exceed 150 percent of the federal poverty income guidelines and the accused fails to employ counsel and does not waive his right to counsel, the court may, in exceptional circumstances, and where the ends of justice so require, appoint an attorney to represent the accused. provided that, in making such appointments, the court shall state in writing its reasons for so doing. The written statement by the court shall be included in the permanent record of the case.

F. If the court determines that the accused is indigent as contemplated by law pursuant to the guidelines set forth in this section, the court shall provide the accused with a statement which shall contain the following:

"I have been advised this ..... day of ....., 19..., by the (name of court) court of my right to representation by counsel in the trial of the charge pending against me; I certify that I am without means to employ counsel and I hereby request the court to appoint counsel for me."..... (signature of accused)

The court also shall require the accused to complete a written financial statement to support the claim of indigency and to permit the court to determine whether or not the accused is indigent within the contemplation of law.

The accused shall execute the said statements under oath, and the said court shall appoint competent counsel to represent the accused in the proceeding against him, including an appeal, if any, until relieved or replaced by other counsel.

The executed statements by the accused and the order of appointment of counsel shall be filed with and become a part of the record of such proceeding.

All other instances in which the appointment of counsel is required for an indigent shall be made in accordance with the guidelines set forth in this section.

Except in jurisdictions having a public defender (pursuant to Article 4 of Chapter 10 of this title, § 19.2-163.1 et seq.), counsel appointed by the court for representation of the accused shall be selected by a fair system of rotation among members of the bar practicing before the court whose practice regularly includes representation of persons accused of crimes and who have indicated their willingness to accept such appointments. (Code 1950, §19.1-241.3; 1964, c. 657; 1966, c. 460; 1975, c. 495; 1976, c. 553; 1978, c. 720.)



**§ 19.2-159.1. Same; interrogation by court; filing; change in circumstances; investigation by Commonwealth's attorney.**--A. The court shall thoroughly interrogate any person making the statement of indigency required in § 19.2-159 as to his means of livelihood, the amount of his wages, if any, location of bank accounts, real and personal property owned by such person, and any other income or assets accruing or owned by him. The court and shall further advise such person of the penalty which might result from false swearing, as provided in § 19.2-161.

B. The statement and oath of the defendant shall be filed with the papers in the case, and shall follow and be in effect at all stages of the proceedings against him without further oath. In the event the defendant undergoes a change of circumstances so that he is no longer indigent, the defendant shall thereupon obtain private counsel and shall forthwith advise the court of the change of circumstances. The court shall grant reasonable continuance to allow counsel to be obtained and to prepare for trial. When private counsel has been retained, appointed counsel shall forthwith be relieved of further responsibility and compensated for his services, pro rata, pursuant to § 19.2-163.

C. Upon the request of the court, it shall be the duty of the Commonwealth's attorney of the county or city in which such statement and oath was made to make an investigation as to the indigency of the defendant, or of any other person making such statement. The Commonwealth's attorney is authorized to delegate the responsibility for such investigation to any subordinate in his office, or to any agency, state or local, which possesses the facilities to quickly make such investigation. Such investigation shall be reduced to writing and forwarded to the court in which the statement and oath was made within fourteen days after such request by the court is made. Such report shall be placed with the papers in the case. (Code 1960, § 19.1-241.3:1; 1975, c. 580; 1977, c. 6; 1981, c. 289.)

**§ 16.1-266. Appointment of counsel.**--A. Prior to the hearing by the court of any case involving a child who is alleged to be abused or neglected or who is the subject of an entrustment agreement or a petition terminating residual parental rights or is otherwise before the court pursuant to subsection A 4 of § 16.1-241, the court shall appoint a discreet and competent attorney-at-law as guardian ad litem to represent the child.

B. Prior to the adjudicatory or transfer hearing by the court of any case involving a child who is alleged to be in need of services or delinquent, such child and his or her parent, guardian, legal custodian or other person standing in loco parentis shall be informed by a judge, clerk or probation officer of the child's right to counsel and of the liability of the parent, guardian, legal custodian or other person standing in loco parentis for the costs of such legal services pursuant to § 16.1-267 and be given an opportunity to:

1. Obtain and employ counsel of the child's own choice; or
2. If the court determines that the child is indigent within the contemplation of the law pursuant to guidelines set forth in § 19.2-159 and his or her parent, guardian, legal custodian or other person standing in loco parentis does not retain an attorney for the child, a statement of indigence shall be executed substantially in the form provided by § 19.2-159 along with a financial statement by such child, and the court shall appoint an attorney-at-law to represent him; or

3. Waive the right to representation by an attorney, if the court finds the child and the parent, guardian, legal custodian or other person standing in loco parentis of the child consent, in writing, to such waiver and that the interests of the child and the parent, guardian, legal custodian or other person standing in loco parentis in the proceeding are not adverse. Such written waiver shall be in accordance with law and shall be filed with the court records of the case.

C. Prior to the hearing by the court of any case involving a parent, guardian or other adult charged with abuse or neglect of a child or a parent or guardian who could be subjected to the loss of residual parental rights and responsibilities, such parent, guardian or other adult shall be informed by a judge, clerk or probation officer of his right to counsel and be given an opportunity to:

1. Obtain and employ counsel of the parent's, guardian's or other adult's own choice; or

2. If the court determines that the parent, guardian or other adult is indigent within the contemplation of the law, pursuant to guidelines set forth in 19.2-159, a statement shall be executed substantially in the form provided by § 19.2-159 along with a financial statement by such parent, guardian or other adult and the court shall appoint an attorney-at-law to represent him; or

3. Waive the right to representation by an attorney in accordance with the provisions of § 19.2-160.

D. In all other cases which in the discretion of the court require counsel or a guardian ad litem to represent the interests of the child or children or the parent or guardian, a discreet and competent attorney-at-law may be appointed by the court. However, in cases where the custody of a child or children is the subject of controversy or requires determination of each of the parents or other person claiming a right to custody is represented by counsel, the court shall not appoint counsel or a guardian ad litem to represent the interests of the child or children unless the court finds, at any stage in the proceedings in a specific case, that the interests of the child or children are not otherwise adequately represented. (Code 1950, §§ 16.1-173, 63.1-248.12; 1956, c. 555; 1966, c. 709; 1968, c. 581; 1970, c. 87; 1973, c. 440; 1974, c. 513; 1975, cc. 341, 465, 559; 1977, c. 559; 1980, c. 572; 1982, c. 451.)

**§ 16.1-267. Compensation of appointed counsel.—**A. When the court appoints counsel to represent a child pursuant to § 16.1-266 A and, after an investigation by the court services unit, finds that the parents are financially able to pay for the attorney and refuse to do so, the court shall assess costs against the parent for such legal services in an amount deemed appropriate by the court under the circumstances of the case, considering such factors as the ability of the parents to pay and the nature and extent of the counsel's duties in the case. Such amount shall not exceed one hundred dollars.

When the court appoints counsel to represent a child pursuant to § 16.1-266 B and, after an investigation by the court services unit, finds that the parents are financially able to pay for the attorney in whole or in part and refuse to do so, the court shall assess costs in whole or in part against the parents for such legal services in an amount not to exceed \$100.

In determining the ability of the parents to pay for an attorney to represent the child, the court shall utilize the financial statement as required by §19.2-159.

In all other cases, counsel appointed to represent a child shall be compensated for his services pursuant to § 19.2-163 of the Code.

B. When the court appoints counsel to represent a parent, guardian or other adult pursuant to § 16.1-266, such counsel shall be compensated for his services pursuant to § 19.2-163 of the Code. (Code 1950, §16.1-173; 1956, c. 555; 1966, c. 709; 1968, c. 581; 1970, c. 87; 1973, c. 440; 1974, c. 513; 1975, cc. 465, 559; 1977, c. 559; 1981, c. 213.)

Comparative Analysis of Key Factors in Indigency Determination

I. Presumptive Tests for Indigency

A. For purposes of eligibility determination, a presumption of indigency exists if defendant:

1. Receives public assistance or grant from categorical aid program

2. Receives Medical Assistance or Medicaid

3. Receives Supplemental Security Income through U.S. Department of Human Services

4. Receives Unemployment Insurance Benefits and is without liquidable assets

5. Is unemployed and without liquidable assets

6. Is jailed (pre-trial incarceration) and is without liquidable assets

7. Has previously been appointed counsel

B. Presumption of ineligibility exists if defendant:

1. Owns property

2. Is ineligible for public assistance

3. Owns more than one car

4. Has been able to post bond

	Virginia	California	Colorado	Connecticut	Florida	Georgia	Illinois	Kentucky	Maryland	Massachusetts	Minnesota	New Jersey	New York	North Dakota	Pennsylvania	South Carolina	Wash. D.C.	Federal Courts	ABA	NAC	MLADA	NCS	
1. Receives public assistance or grant from categorical aid program		Y		Y						Y		Y	N		Y		Y						
2. Receives Medical Assistance or Medicaid										Y					Y		Y						
3. Receives Supplemental Security Income through U.S. Department of Human Services										Y					Y		Y						
4. Receives Unemployment Insurance Benefits and is without liquidable assets										Y					Y		Y						
5. Is unemployed and without liquidable assets					Y					Y		Y			Y		Y						
6. Is jailed (pre-trial incarceration) and is without liquidable assets					Y					Y		Y			Y		Y						
7. Has previously been appointed counsel															Y								
B. Presumption of ineligibility exists if defendant:																							
1. Owns property		Y								Y				N									
2. Is ineligible for public assistance										Y													
3. Owns more than one car										Y													
4. Has been able to post bond										Y										Y	Y		

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	Virginia	California	Colorado	Connecticut	Florida	Georgia	Illinois	Kentucky	Maryland	Massachusetts	Minnesota	New Jersey	New York	North Dakota	Pennsylvania	South Carolina	W. Va.	West Virginia	Federal Courts	ABA	NAC	MLADA	MSCS	
5. Has been released on bail in the amount of \$5,000 or less						Y																		
6. Owns in excess of \$500 in cash						Y						Y												

**II. Income Resources**

**A. Financial resources/factors considered in determining eligibility. What is income?**

**1. Gross income**

-Money, salary, wages before deductions		Y	Y	Y								Y	Y		Y	Y	Y	Y	Y			Y	Y
-Income from self-employment before or after deductions from business or farm expenses		Y													Y		Y		Y				
-Regular payments from social security, union funds, veteran's benefits, or other regular support from an absent family member		Y													Y		Y		Y				
-Public or private employee pensions, or regular insurance annuity payments		Y													Y		Y		Y				
-Income from dividends, interests, rents, estates, or trusts																	Y		Y				

**2. Net Income**

-Gross minus deductions required by law or as a condition of employment					Y		Y	Y				Y	Y								Y		
---	--	--	--	--	---	--	---	---	--	--	--	---	---	--	--	--	--	--	--	--	---	--	--

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-Disposable net income (after standard deductions and living expenses)

III. Non-Income Resources

A. Assets Generally

- 1. Any asset reasonably available for employment of private counsel
- 2. All assets readily convertible into cash except those exempt from attachment
- 3. Convertible into cash without causing substantial hardship or jeopardizing defendant/s ability to maintain home/employment

B. Cash

- 1. On hand/savings/bank accounts
- 2. Money owed defendant
- 3. Tax refunds coming to defendant

C. Stocks

D. Bonds

E. Certificates of deposit

F. Personal Property

- 1. Guidelines consider all personal property convertible to cash in a reasonable time except property exempt from attachment

	Virginia	California	Colorado	Connecticut	Florida	Georgia	Illinois	Kentucky	Maryland	Massachusetts	Minnesota	New Jersey	New York	North Dakota	South Carolina	Pennsylvania	Wash. D.C.	Federal Courts	ABA	NAC	MLADA	NCS	
-Disposable net income (after standard deductions and living expenses)										Y			Y										
1. Any asset reasonably available for employment of private counsel							Y	Y	Y					Y	Y		Y	Y		Y	Y		
2. All assets readily convertible into cash except those exempt from attachment				Y	Y													Y					Y
3. Convertible into cash without causing substantial hardship or jeopardizing defendant/s ability to maintain home/employment	Y	Y						Y				Y								Y	Y	Y	
1. On hand/savings/bank accounts	Y	Y			Y					Y		Y					Y	Y		Y		Y	Y
2. Money owed defendant																	Y			Y			
3. Tax refunds coming to defendant			Y																	Y			
C. Stocks	Y	Y	Y	Y						Y								Y	Y				Y
D. Bonds	Y	Y			Y					Y								Y	Y				Y
E. Certificates of deposit	Y																	Y	Y				
F. Personal Property																							N
1. Guidelines consider all personal property convertible to cash in a reasonable time except property exempt from attachment	Y				Y	Y	Y			Y		Y			Y			Y					

	Virginia	California	Colorado	Connecticut	Florida	Georgia	Illinois	Kentucky	Maryland	Massachusetts	Minnesota	New Jersey	New York	North Dakota	Pennsylvania	South Carolina	Wash. D.C.	West Virginia	Federal Courts	ABA	NAC	MLADA	KSCS
2. Only that which can be converted into cash within 7-30 days					Y																		
3. Cars, trucks, recreational vehicles			Y	Y											Y	Y			Y			Y	
4. Jewelry			Y																				
5. Livestock															Y								
<b>G. Real Estate</b>																							
1. Considered in terms of the amounts which could be raised by a loan on property	Y				Y	Y													Y				
2. Owned land or other real estate (including inheritance)			Y	Y				Y								Y	Y		Y			Y	Y
3. Equity value in real estate			Y		Y				Y				N	Y	Y	Y	Y	Y	Y				
<b>H. Factors Exempt from Consideration:</b>																							
1. Funds needed to secure bail			Y	Y					Y			Y	N		Y					Y	Y	Y	Y
2. Accused's only automobile				Y								Y											Y
3. Assets of any kind used to meet known legal representation other than present charge (previous legal expenses)					Y																		
<b>I. Assets, income and expenses of spouse considered as assets of defendant.</b>	Y	Y	Y	Y	Y	Y	N	Y		Y		Y	N		Y			Y	Y	N	N	N	Y
<b>J. Assets, income and expenses of parents, guardian, etc. considered as assets of defendant, if a minor.</b>	Y	N	Y	Y	Y					Y		Y	Y		Y		Y	Y	Y				N

V. Expenses and Liabilities

A. Income formula considers following expenses and liabilities:

	Virginia	California	Colorado	Connecticut	Florida	Georgia	Illinois	Kentucky	Maryland	Massachusetts	Minnesota	New Jersey	New York	North Dakota	Pennsylvania	South Carolina	Wash. D.C.	West Virginia	Federal Courts	ABA	NAC	MLADA	NSCS
1. Expenses and liabilities included as a general factor to consider								Y	Y			Y	N				Y	Y	Y	Y		Y	Y
2. Food/shelter/clothing			Y		Y					Y						Y	Y						
3. Utilities			Y													Y							
4. Transportation			Y													Y							
5. Credit Accounts					Y					Y													
6. Loan Payments			Y							Y													
7. Court ordered support payments/alimony			Y	Y	Y		Y			Y						Y							
8. Other judgments/court orders										Y													
9. Medical expenses			Y		Y											Y		Y	Y				
10. Debts owed by defendant																	Y						
11. Federal, state, local taxes					Y					Y						Y							
12. Child care payments					Y		Y									Y							
13. Education/employment payments										Y						Y							
14. Delinquent taxes			Y																				

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V. Use of Indigency Formulas

A. Eligibility decision made by applying defendant's income/assets/expenses and liabilities to a poverty level (income/household size) established by:

1. National poverty threshold (Bureau of Labor Statistics)
2. Legal Services Corporation
3. State or local poverty level
4. Formula developed locally by bar association or committee/other

B. Eligibility decision made by applying income/assets/expenses and liabilities to the costs of private representation based on:

1. Estimated cost of representation for type of charge (felony/misdemeanor, etc.)
2. Specific costs of representation determined by bar surveys of average fees for type of charge
3. Defendant's inability to receive representation by two private attorneys because of lack of funds
4. Defendant's inability to secure representation through an approved credit plan in which the local bar may be participating in a pre-paid legal services plan

	Virginia	California	Colorado	Connecticut	Florida	Georgia	Illinois	Kentucky	Maryland	Massachusetts	Minnesota	New Jersey	New York	North Dakota	Pennsylvania	South Carolina	Wash. D.C.	West Virginia	Federal Courts	ABA	NAC	NLADA	NCS
1. National poverty threshold (Bureau of Labor Statistics)		Y																Y	Y				Y
2. Legal Services Corporation				Y																			
3. State or local poverty level		Y			Y		Y											Y					
4. Formula developed locally by bar association or committee/other							Y					Y	Y										
1. Estimated cost of representation for type of charge (felony/misdemeanor, etc.)		Y			Y			Y		Y		Y	N						Y				Y
2. Specific costs of representation determined by bar surveys of average fees for type of charge					Y		N			Y								Y					
3. Defendant's inability to receive representation by two private attorneys because of lack of funds				Y																		Y	
4. Defendant's inability to secure representation through an approved credit plan in which the local bar may be participating in a pre-paid legal services plan						Y																	

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VI. Administration/Implementation

A. Guidelines/criteria for determining indigency for purposes of appointing counsel set forth in:

1. State Code

2. Supreme Court Rule or Policy

3. Administrative Agency

B. Predominant method for providing legal representation for indigents.

1. State administered public defender system

2. Locally administered public defender system

3. State or locally funded court appointed/assigned counsel

4. Other

C. Use of affidavit or sworn financial statement required in determination process.

D. Agency, if any, responsible for the investigation and verification of information provided by defendant:

1. Public defender's office

2. Probation staff

3. Magistrate's Office

4. Indigency screening unit

	Virginia	California	Colorado	Connecticut	Florida	Georgia	Illinois	Kentucky	Maryland	Massachusetts	Minnesota	New Jersey	New York	North Dakota	South Carolina	Pennsylvania	West Virginia	Federal Courts	ABA	NAC	MLADA	KSCS	
1. State Code	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y				
2. Supreme Court Rule or Policy				Y			Y				Y	Y			Y	Y		Y					
3. Administrative Agency					Y					Y									Y				
1. State administered public defender system				Y	Y	Y			Y	Y	Y	Y	Y								Y		
2. Locally administered public defender system		Y				Y		Y							Y	Y	Y						
3. State or locally funded court appointed/assigned counsel	Y	Y					Y			Y					Y	Y	Y		Y	Y			
4. Other														Y				Y					
C. Use of affidavit or sworn financial statement required in determination process.		Y	Y	Y	Y	N	N	Y	Y	Y		Y	Y	Y		Y	Y	Y	Y	Y	Y		
1. Public defender's office		Y			Y	Y			Y	Y		Y	Y				Y						
2. Probation staff		Y									Y	Y			Y								
3. Magistrate's Office																					Y		
4. Indigency screening unit				Y														Y					

	Virginia	California	Colorado	Connecticut	Florida	Georgia	Illinois	Kentucky	Maryland	Massachusetts	Minnesota	New Jersey	New York	North Dakota	Pennsylvania	South Carolina	Wash. D.C.	West Virginia	Federal Courts	ABA	NAC	MLADA	NCS	
E. Indigency determination procedure performed once and only once at lower court level.		N						N	Y	Y		N	N		N						N			Y
F. Guidelines provide specific procedures for defendant to appeal eligibility decision:																								
1. To review determination made by judge								Y	Y			Y	N				Y						Y	
2. To review determination made by public defender/staff					Y	Y																		
G. Partial/Marginal Indigency																								
1. State's guidelines provide specific procedures for those defendants determined partially or marginally indigent.		Y	Y			Y			Y			Y	N		Y		Y		Y				Y	
H. Recoupment/Reimbursement Procedures																								
1. Recoupment Generally By Courts								Y					Y				Y		Y		N	Y	Y	Y
2. Recoupment of some or all costs for representation specific responsibility of:																								
-Attorney General				Y																				
-Commonwealth's/District Attorney	Y											Y			Y									
-Court		Y	Y		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y							
-Private collection agency															Y									
-Department of Revenue or State General Fund		Y																					Y	
-Public Defender				Y					Y	Y			Y											
-Probation Office				Y						Y														

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## Footnotes

1. Evans, C., The Definition of Indigency: A Modern Day Legal Jabberwocky 4 ST. MARY'S L.J. 34, 35 (1972)
2. See, e.g., Gideon v. Wainwright, 372 U.S. 335 (1963); Argersinger v. Hamlin, 407 U.S. 27 (1972); In re Gault, 387 U.S. 1 (1967); Scott v. Illinois, 440 U.S. 367 (1979)
3. Aikman, A., Miller F, & Sipes, L., "Providing Legal Services to Indigents in Colorado" National Center for State Courts (December, 1982), p. 10
4. Van Duizend, R., "Guidelines for Determining Indigency in Criminal Cases," National Center for State Courts (July, 1980), p. 2
5. *Ibid.*, pp. 1-3 and Aikman, Miller & Sipes, *op.cit.*, pp. 10-29
6. Zepkin, J., The Constitution v. The Bench and Bar - A True Bill, to Wit: Violation of Due Process 10AM J. CRIM LAW 161, 162
7. *Ibid.*, p. 171
8. *Ibid.*, p. 165
9. Committee on Competent Counsel of the Supreme Judicial Court, "Counsel for Indigent Criminal Defendants - Draft Supreme Judicial Court of Massachusetts (December 1981) p. 32
10. *Ibid.*, p. 16
11. Office of Chief Public Defender, "Guidelines for Determining Financial Eligibility or Public Defender Services", Division of Public Defender Services (March, 1983) p. 7-4
12. Van Duizend, *op.cit.*, p. 3
13. Committee on Competent Counsel of the Supreme Judicial Court, *op.cit.*, p. 11
14. Aikman, Miller & Sipes, *op.cit.*, p. 12