



FACT SHEET

WYOMING LEGISLATIVE SERVICE OFFICE

INDIGENT DEFENSE: FINANCIAL ELIGIBILITY GUIDELINES

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Below are financial eligibility guidelines for appointed counsel in criminal cases. The states identified are: Colorado, Idaho, Montana, Nebraska, South Dakota, and Utah.

Colorado

Definition: An indigent person is one whose financial circumstances prevent the person from having equal access to the legal process. [Colorado Chief Justice Directive 04-04](#) (Last amended July 2018, income eligibility amended Jan. 2019).

Income Guidelines: Eligible if income is less than 125% of the Federal Poverty Guidelines and may be eligible if income is between 125% and 218%. Ineligible if income is above 218% of the Federal Poverty Guidelines. [Directive 04-04](#), Att. A.

Gross Income: Gross income from all members of the household who contribute monetarily to the common support of the household. Income categories include: wages, including tips, salaries, commissions, payments received as an independent contractor for labor or services, bonuses, dividends, severance pay, pensions, retirement benefits, royalties, interest/investment earnings, trust income, annuities, capital gains, Social Security Disability (SSD), Social Security Supplemental Income (SSI), Workman's Compensation Benefits, Unemployment Benefits, and alimony. [Directive 04-04](#), Att. A.

Public Benefits: See above in definition of gross income. Gross income does not include Temporary Assistance for Needy Families (TANF) payments, food stamps, subsidized housing assistance, and veteran's benefits earned from a disability, child support payments or other public assistance programs [Directive 04-04](#), Att. A.

Repayment: In any case when a court determines that a defendant is able to repay all or part of the expense of state-supplied or court-appointed counsel or any ancillary expenses incurred in representing such defendant, the court shall assess such fees or costs against such defendant. [Colo. Stat. § 21-1-106](#).

Idaho

Definition: “Indigent person” means a person who, at the time his need is determined, is unable to provide for the full payment of an attorney and all other necessary expenses of representation. [Idaho Code § 19-851\(7\)](#).

Income Guidelines: A defendant is presumed to be indigent if his monthly income does not exceed one hundred eighty-seven percent (187%) of the Federal Poverty Guidelines. [Idaho Code § 19-854\(2\)\(a\)](#).

Gross Income: No definition found. But see Ada County, [Application for Public Defender](#) (Household Monthly Income: Take-home wages, Aid to Families with Dependent Children (AFDC), Social Security, SSI, SSD, Unemployment Insurance, Veterans Benefits, Retirement/Pension, Child Support/Alimony.)

Public Benefits: Defendants are presumed to be indigent if they receive, or their dependents receive, public assistance in the form of food assistance, health coverage, cash assistance or child care assistance. [Idaho Code § 19-854\(2\)\(b\)](#).

Repayment: Upon conviction for any crime an indigent person who receives the services of an attorney provided by the county may be required by the court to reimburse the county for all or a portion of the cost of those services related to the conviction, unless the requirement would impose a manifest hardship on the indigent person. The current inability of the indigent person to pay the reimbursement shall not, in and of itself, restrict the court from ordering reimbursement. [Idaho Code § 19-854\(7\)](#).

Montana

Definition: A defendant is indigent if the defendant’s (1) gross household income is at or less than 133% of the Federal Poverty Guidelines, or (2) disposable income and assets are insufficient to retain competent private counsel without substantial hardship to the applicant or the members of the applicant’s household. Mont. Code § 47-1-111(3)(a), (b). (2019 Statutes are not online. See [H.B. 117](#) (2019) for changes to this section.)

Income Guidelines: A defendant is indigent if the defendant’s gross household income is at or less than 133% of the Federal Poverty Guidelines.

Gross income: See [Application Form](#). Central Services Division of Office of Public Defender shall ensure that determinations based on presumptive eligibility, income and assets, and substantial hardships are done consistently statewide. Mont. Code § 47-1-111(6). (2019 Statutes are not online. See [H.B. 117](#) (2019) for changes to this section.)

Public Benefits: See [Application Form](#). “Other Monthly Income for Household” includes social security, SSI/SSDI, veterans’ benefits and disability.

Repayment: The court shall determine whether a convicted defendant should pay the costs of counsel assigned to represent the defendant as follows: a plea of guilty to one or more misdemeanor charges is \$250; a plea of guilty to one or more felony charges is \$800. Mont. Code § 46-8-113(1)(a). If the case goes to trial, the defendant shall pay the costs incurred by the office of state public defender for providing the defendant with counsel in the criminal trial. Mont. Code § 46-8-113(1)(b). The court shall question the defendant as to ability to pay costs and shall take into account the defendant’s financial resources and the burden imposed. [Mont. Code § 46-8-113](#) (4).

Nebraska

Definition: Indigent shall mean the inability to retain legal counsel without prejudicing one’s financial ability to provide economic necessities for one’s self or one’s family. [Neb. Stat. § 29-3901\(3\)](#).

Defendants are considered indigent if (1) their annual gross income is less than 125% of the Federal Poverty Guidelines, (2) they receive certain types of public assistance (e.g., AFDC, Emergency Aid to Elders, Disabled and Children (EAEDC), food stamps, SSI); (3) they reside in a public mental health facility; (4) they are serving a sentence in a correctional institution or held in jail and have no available funds; or (5) the court determines that they are unable to retain legal counsel without prejudicing the party's ability to provide economic necessities for the party or the party's family based on a comparison of the party's available funds and anticipated cost of counsel. District Court Local Rule [3-13\(B\)\(7\)](#).

Income Guidelines: Defendants are considered indigent if their annual gross income is less than 125% of the Federal Poverty Guidelines.

Income: Income means salary, wages, interest, dividends, rental income, and other earnings and cash payments such as amounts received from pensions, annuities, Social Security, and public assistance programs, and child support, alimony, and other support payments. "Available Funds" shall mean a party's "liquid assets" and "disposable net monthly income" calculated after provision is made for the party's bail obligations. For the purpose of determining "available funds," the following definitions shall apply:

"Basic Living Costs" shall mean the average amount of money spent each month for reasonable payments, including loan payments, toward living costs such as shelter, food, utilities, health care, transportation, clothing, education and child support, alimony, or other support payments.

"Disposable Net Monthly Income" shall mean the income remaining each month after deducting amounts paid for income taxes, Social Security taxes, contributory retirement, union dues, and basic living costs. District Court Local Rule [3-13](#).

Public Benefits: Social security, unemployment benefits and other forms of public assistance may be considered as “income.” District Court Local Rule [3-13\(B\)\(5\)](#).

Repayment: Whenever any court finds subsequent to its appointment of the public defender or other counsel to represent a **felony** defendant that its initial determination of indigency was **incorrect** or that during the course of representation by appointed counsel the felony defendant has become

no longer indigent, the court may order such felony defendant to reimburse the county for all or part of the reasonable cost of providing such representation. [Neb. Stat. § 29-3908](#) (emphasis added).

South Dakota

Definition: An indigent defendant does not have sufficient money, credit, or property to employ counsel and pay for the necessary expenses of his representation. S.D. Codified Laws [§ 23A-40-6](#).

Income guidance: N/A. Indigency should be considered without resort to artificially pre-determined standards or guidelines, such as poverty guidelines used to determine eligibility for public assistance. *State v. Dale*, [439 N.W.2d 112](#) (S.D. 1989) (lists the type and nature of information which should be furnished); *but see* [Application for Court-Appointed Attorney](#) (defendants who indicate they receive certain pre-determined financial assistance are not required to provide any additional information).

Public Benefits: Income from whatever source, social security, and unemployment income should be considered when determining eligibility. See *State v. Dale*, [439 N.W.2d 112](#) (S.D. 1989) *See also* 11/2018 [Application for Court-Appointed Attorney](#).

Repayment: If the court finds that funds are available from a defendant for payment to carry out provisions of this chapter, the court may order that the funds be paid as a reimbursement either during the time a charge is pending or after the disposition of the charge, regardless of whether the defendant has been acquitted or the case has been dismissed by the prosecution or by order of the court. The court may also order payment in installments or by wage assignments. S.D. Codified Laws [§ 23A-40-10](#). A public defender's lien shall be set by a judge at a reasonable amount for services rendered. S.D. Codified Laws §§ [23A-40-12 through -16](#).

Utah

Definition: A court shall find an individual indigent if the individual: (1) has an income level at or below 150% of the U.S. Poverty Guidelines; or (2) has insufficient income or other means to pay for counsel and the necessary expenses of representation without depriving the individual or the individual's family of food, shelter, clothing, or other necessities. Utah Code [§ 78B-22-202](#).

Income Guidelines: A court shall find an individual indigent if the individual has an income level at or below 150% of the U.S. Poverty Guidelines. Utah Code [§ 78B-22-202](#).

Income: None found. *But see* [Public Defender Application](#) (Kane County, UT); Salt Lake Legal Defenders: [FAQ](#)

Public Benefits: Financial assistance from state and federal programs may be considered when determining eligibility. *See State v. Vincent*, [883 P.2d 278](#) (Utah 1994).

Repayment: The court may require a verified statement of time and expenses from appointed counsel or the nonprofit legal aid or other association providing counsel to convicted indigent defendants in order to establish the costs, if any, which will be included in the judgment. Utah Code § [77-32a-110](#).

Wyoming

Definition: “Needy person” means a person who, at the time his need is determined, is unable to provide for full payment of an attorney and all other necessary expenses of representation. Wyo. Stat. § [7-6-102 \(iv\)](#); see also [Wyo. R. Crim. P. 44](#) (d). A defendant requesting appointed counsel must submit a financial affidavit or provide sworn testimony on the record detailing income, expenses, assets and liabilities and may be required to update the affidavit or testimony from time to time. [Wyo. R. Crim. P. 44](#) (b) (2).

Income Guidelines: Income level not found.

Income: In making a determination of eligibility, the judicial officer shall consider: (1) The probable cost of representation given the number and severity of the offenses charged and the factual and legal complexity of the case. (2) The defendant’s **income from all sources** and the defendant’s capacity to earn income. (3) The expenses of the defendant’s household and whether a spouse or roommate contributes or ought to contribute to those expenses. (4) The defendant’s responsibility for the support of others. (5) The defendant’s assets whether held individually or with others. (6) The defendant’s debts and the periodic payments due on the debts. (7) The defendant’s capacity to borrow money. [Wyo. R. Crim. P. 44](#) (d) (emphasis added).

Public Benefits: “Income for all sources” includes social security, government assistant programs, and disability. See [Wyoming Public Defenders - Affidavit of Indigency](#).

Repayment: In every case in which a person has received services under W.S. 7-6-104, “the presiding judge shall determine whether the person...is able to provide any funds towards payment of part or all of the cost associated with such services. If the court determines the person...is able to provide any amount as reimbursement, the court shall order the person...to reimburse the state for all or part of the costs of the services provided or shall state on the record the reasons why an order for reimbursement was not entered.” Where a person is initially provided with counsel pursuant to W.S. 7-6-105(a), but subsequently retains private counsel, the court may order the person to reimburse the state for the services already provided. Wyo. Stat. § [7-6-106 \(c\)](#); see also [Wyo. R. Crim. P. 44](#) (b) (3)-(4).

If the court orders release on bail pending trial or appeal, probation before sentence, suspended sentence or probation, the court shall order the needy person as a condition of bail, sentence or probation to repay the state for expenses and services provided by appointed attorneys pursuant to the state public defender’s standard fee schedule if the court determines the defendant has an ability to pay or that a reasonable probability exists that the defendant will have an ability to pay. Wyo. Stat. § [7-6-106 \(e\)](#).

Source: LSO summary of information provided by state legislature websites and the National Conference of State Legislatures.