

Repealed 5/14/2019

77-32-202 Procedure for determination of indigency -- Standards.

- (1) A determination of indigency or continuing indigency of any defendant may be made by the court at any stage of the proceedings.
- (2)
 - (a) Any defendant claiming indigency who is charged with a crime the penalty of which is a class A misdemeanor or serious offense shall file with the court a fully complete affidavit verified by a notary or other person authorized by law to administer an oath and file a copy of that affidavit with the prosecuting entity. The affidavit shall contain the factual information required in this section and by the court.
 - (b) A defendant claiming indigency who is charged with a crime the penalty of which is less than a class A misdemeanor is not required to comply with the requirements of Subsection (2)(a) and Subsection (4).
- (3)
 - (a) "Indigency" means that a person:
 - (i) does not have sufficient income, assets, credit, or other means to provide for the payment of legal counsel and all other necessary expenses of representation without depriving that person or the family of that person of food, shelter, clothing, and other necessities; or
 - (ii) has an income level at or below 150% of the United States poverty level as defined by the most recently revised poverty income guidelines published by the United States Department of Health and Human Services; and
 - (iii) has not transferred or otherwise disposed of any assets since the commission of the offense with the intent of establishing eligibility for the appointment of counsel under this chapter.
 - (b) In making a determination of indigency, the court shall consider:
 - (i) the probable expense and burden of defending the case;
 - (ii) the ownership of, or any interest in, any tangible or intangible personal property or real property, or reasonable expectancy of any such interest;
 - (iii) the amounts of debts owned by the defendant or that might reasonably be incurred by the defendant because of illness or other needs within the defendant's family;
 - (iv) number, ages, and relationships of any dependents;
 - (v) the reasonableness of fees and expenses charged to the defendant by the defendant's attorney and the scope of representation undertaken where the defendant is represented by privately retained defense counsel; and
 - (vi) other factors considered relevant by the court.
- (4)
 - (a) Upon making a finding of indigence, the court shall enter the findings on the record and enter an order assigning a defense services provider to represent the defendant in the case.
 - (b) Upon finding indigence when the defendant has privately retained counsel, the court, subject to Section 77-32-303, shall enter the findings into the record and issue an order directing the county or municipality to coordinate the providing of defense resources as appropriate.
 - (c) The clerk of the court shall send a copy of the affidavit and order to the prosecutor and to the county clerk or municipal recorder.
- (5) If the county or municipality providing the defense services provider has any objections to or concerns with the finding of indigency and assignment of a defense services provider or the continuing of indigency status and assignment of a defense services provider, it shall file notice with the court and a hearing shall be scheduled to review the findings and give the county or

municipality the opportunity to present evidence and arguments as to the reasons the finding of indigency should be reversed and the court shall proceed as provided in Section 77-32-302.

- (6)
- (a) If the trial court finds within one year after the determination of indigency that any defendant was erroneously or improperly determined to be indigent, the county or municipality may proceed against that defendant for the reasonable value of the services rendered to the defendant, including all costs paid by the county or municipality in providing the legal defense.
 - (b) Subsection (6)(a) does not affect any restitution required of the defendant by the court pursuant to Chapter 32a, Criminal Accounts Receivable and Defense Costs.
 - (c) A defendant claiming indigency has a continuing duty to inform the court of any material changes or change in circumstances that may affect the determination of his eligibility for indigency.
 - (d) Any person who intentionally or knowingly makes a material false statement or omits a material fact in an affidavit for indigency is guilty of a class B misdemeanor.