

AFFIDAVIT OF IMPECUNIOSITY

AMENDMENTS

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: John E. Swallow

This act modifies a provision of the Code of Criminal Procedure concerning indigent defendants. The act requires that defendants claiming indigency inform the court of any changes in circumstances that affect their indigency. The act also makes it a class B misdemeanor to make false statements on an affidavit of impecuniosity.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

77-32-202, as last amended by Chapter 171, Laws of Utah 1998

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **77-32-202** is amended to read:

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 felony 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; and

(v) other relevant factors.

(4) Upon making a finding of indigency, the court shall enter the findings on the record and enter an order assigning defense counsel to represent the defendant in the case. The clerk of the court shall send a copy of the affidavit and order to the prosecutor.

(5) If the county or municipality providing the defense counsel has any objections to or concerns with the finding of indigency and assignment of defense counsel or the continuing of indigency status and assignment of a public defender, 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.

(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 defense counsel.

(b) Subsection (6)(a) does not affect any restitution required of the defendant by the court pursuant to Title 77, Chapter 32a, 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.