

STANDARDS FOR DETERMINING INDIGENCE

The Georgia Indigent Defense Act, in O.C.G.A. § 17-12-8(b)(8) and O.C.G.A. § 17-12-24(a), requires the Standards Council to adopt a uniform standard and procedure that will be used by each Circuit Public Defender Office to determine whether a person is indigent and entitled to representation at public expense under the Act.

The Standards Council has adopted the following standards for determining indigence:

1. Definition of Indigence

An “indigent” is a person who has been arrested or charged with a crime punishable by imprisonment who lacks sufficient income or other resources to employ a qualified lawyer to defend him or her without undue hardship on the individual or his or her dependents.

2. Standards for Determining Indigence

Each Circuit Public Defender Office shall apply the following criteria in determining whether an individual is an indigent entitled to legal representation under the Georgia Public Defender Act:

(a) Persons Earning Less Than 150% of Federal Poverty Guidelines

A person who earns less than 150% of the Federal Poverty Guidelines is presumed to be indigent and entitled to legal representation in all cases covered by the Act unless there is evidence that the person has other resources that might reasonably be used to employ a lawyer without undue hardship on the person or his or her dependents.

(b) Persons Earning 150% or More of Federal Poverty Guidelines

(1) Misdemeanor, Probation Revocation, Juvenile Cases and Cases Involving Municipal or County Offenses

A person charged with a misdemeanor, violation of probation, or a municipal, county or juvenile offense punishable by imprisonment who earns or, in the case of a juvenile, whose parents earn, more than 150% of the Federal Poverty Guidelines is presumed to be ineligible for legal representation under the Act unless

the person can show, to the satisfaction of the Circuit Public Defender's Office, that he or she (1) earns less than 200% of the Federal Poverty Guidelines and (2) is unable to obtain qualified legal representation because of the extraordinary cost of the case, as compared to his or her disposable income or other resources, or that there are other reasons that make it impossible for the person to obtain qualified legal representation without undue hardship on the person or his or her dependents.

(2) Felony Cases

(A) Persons Earning Less than 200% of the Federal Poverty Guidelines

A person charged with a felony who earns or, in the case of a juvenile, whose parents earn, less than 200% of the Federal Poverty Guidelines is presumed to be indigent and entitled to legal representation in all cases covered by the Act unless there is evidence that the person has other resources that might be used to employ a lawyer without undue hardship on the person or his or her dependents.

(B) Persons Earning Between 200% and 300% of the Federal Poverty Guidelines

A person charged with a felony who earns or, in the case of a juvenile, whose parents earn, more than 200% but less than 300% of the Federal Poverty Guidelines is presumed to be ineligible for legal representation under the Act unless the person can show, to the satisfaction of the Circuit Public Defender's Office, that he or she is unable to obtain qualified legal representation because of the extraordinary cost of the case, as compared to his or her disposable income or other reasonably available resources, or that there are other reasons that make it impossible for the person to obtain qualified legal representation without undue hardship on the person or his or her dependents.

3. Close Cases Should Be Resolved in Favor of the Applicant

The Circuit Public Defender Offices should use a common sense approach in making a determination of indigence in keeping with the overall purpose of "assuring that adequate and effective legal representation is provided . . . to indigent persons who are entitled to representation under this chapter" and under the federal and state Constitutions. O.C.G.A. § 17-12-1(c). The Circuit Public Defender Offices should consider all the person's circumstances, such as extraordinary medical expenses or child support, and the presence or absence of other assets, and not earnings alone in determining whether the person is an indigent. Doubtful cases should be resolved in favor of representation under the Act.

4. Appeal by a Person Denied Representation

A person who is deemed by the Circuit Public Defender to be ineligible for representation under the Act may apply to the assigned Judge of the Court in which his or her case is pending, or to a presiding judge of such Court in the event there is no assignment system in such Court, for an order appointing the Office of the Circuit Public Defender to represent him or her in the case. If the Court finds that the person is unable to employ a qualified lawyer without undue hardship on the person or the person's dependents, notwithstanding the contrary determination by the Circuit Public Defender, the Court shall order the Circuit Public Defender Office to provide representation under the Act.

Commentary: For example, a person could rebut the presumption of ineligibility by obtaining fee quotations from at least two qualified attorneys in the circuit and by showing that he or she, because of health problems, child support obligations or other circumstances, would be unable to afford a qualified attorney without undue hardship.

In juvenile cases, if a determination is made that there is a conflict of interest between the child and the parent or when the parent is not available or refuses to complete the required paperwork, then the determination of indigence should be based on the child's financial resources, not the parent's.¹

Legal Authority: O.C.G.A. § 17-12-8(b)(8); O.C.G.A. § 17-12-24(a).

Adopted in principle by the Georgia Public Defender Standards Council on November 21, 2003 and ratified on August 27, 2004.

¹ Commentary added on January 28, 2005.