

**Office of the Ohio Public Defender**

**County Indigent Fee/Cost Recoupment Programs**

(2006)



## **Indigent Client Recoupment Programs**

Ohio law contemplates that persons receiving appointed legal counsel may have to pay for all or a portion of the costs of such representation. Payments from clients for such representation are done through programs referred to as recoupment, contribution, partial payment, or marginally indigent programs.

Pursuant to Ohio Revised Code section 2941.51(D), if a person who receives appointed counsel or a public defender has, or reasonably may be expected to have, the means to meet some part of the cost of the services rendered to the person, the person shall pay the county an amount the person reasonably can be expected to pay.

Ohio Administrative Code section 120-1-03 (J) requires establishment of such programs for counties who provide counsel for persons whose incomes fall between 125 percent and 187.5 percent of the poverty threshold. Ohio Administrative Code section 120-1-05 indicates the Ohio Public Defender Commission supports the development of such programs in all counties.

When such funds are collected, the county must remit a portion of the funds to the State Public Defender. Ohio Revised Code section 120.33(A)(4) states that the county shall pay to the State Public Defender a percentage of the payment received from the person in an amount proportionate to the percentage of the costs of the person's case that were paid to the county by the State Public Defender pursuant to this section. Therefore it is the responsibility of the county auditor to reimburse the state a portion of the funds collected. The amount should be proportionate to the percentage of the costs of the cases which were reimbursed by the state. Such funds should be remitted to the Office of the Ohio Public Defender by check or warrant payable to "Treasurer, State of Ohio".

Example: If a county collects \$100.00 from a client for an appointed counsel or public defender case which was reimbursed by the state at 33 percent, the county must pay the Ohio Public Defender \$33.00 of the \$100.00 collected.

The government entity tracking and collecting payments may vary by county. In counties that have public defender offices, Ohio Revised Code section 120.15(B)(3) indicates the county public defender shall collect such funds. There is no prohibition on other county officials or officers collecting the funds. The collecting agent could be the Court, probation department, county treasurer, or county auditor. In light of the recently passed application fee (which the clerk of court collects), it would be a logical extension if they collected recoupment funds too. The only prohibition is that funds cannot be paid directly from a client to private appointed counsel (OAC 120-1-05).

There are several options for recoupment plans Any system that meets the statutory requirements is acceptable. A few examples are referenced below which may be used in all or in part by a county.

- The county may adopt a plan that requires a marginally indigent person to pay a fixed nominal fee, for example \$75.00, for a court appointed attorney or public defender.
- The county may adopt a plan where marginally indigent persons pay based on sliding scale by offense. A sample schedule is listed below.

Felony 1	\$250.00
Felony 2	\$200.00
Felony 3	\$150.00
Felony 4	\$100.00
Misdemeanor 1	\$100.00
Misdemeanor 2	\$75.00
Misdemeanor 3	\$50.00
Misdemeanor 4	\$25.00

The dollar amounts could be adjusted or the scale simplified by grouping categories. For example, charge all felonies \$100 and all misdemeanors \$50.

- Income verification fees were another option, however, the \$25.00 application fee which is assessed against individuals seeking assigned counsel or a public defender, unless waived by the court, (ORC 120.36), has supplanted the need of a separate income verification fee as part of any recoupment policy. NOTE: The County's Recoupment policy is separate, distinct and IN ADDITION TO the application fee.

In some cases, depending on the circumstances the defendant may be required to repay the entire attorney bill. Each Judge can make such a determination on a case by case basis. In all cases, the Judge may also waive any and all fees if it is determined that a client is unable to pay or that such payment would result in undue hardship on the client.

Generally, the process of establishing a plan involves the following:

- County officials and judges meet to determine the kind of plan that will be implemented (e.g., flat fee, sliding scale, income verification).
- The county agrees on and designates an entity as the tracking and collecting agent(s).
- The county drafts a written recoupment plan and submits it to the Office of the Ohio Public Defender for approval.
- Upon approval by the Ohio Public Defender, the County Commissioners pass a resolution adopting and implementing the recoupment plan.

A sample policy, resolution, income verification release form, reimbursement agreement, and suggested monthly remittance forms are included in this packet. The Office of the Ohio Public Defender can help in the development and implementation of a recoupment plan. Please contact Kathryn Smith at 614-466-5394 for assistance.

# SAMPLE RECOUPMENT POLICY

\_\_\_\_\_ County

## Indigent Defense Fee/Cost Recoupment Policy

1. The Court shall review each defendant's indigent status and determine if recovery of assigned counsel fees or public defender costs is appropriate. The Court may waive the fees if it is determined that the imposition of such would result in an undue hardship on the client.
2. The recoupment policy is IN ADDITION TO the \$25.00 application fee contained in ORC 120.36.
3. The Court shall order when the recoupment amount is due.
4. The Court may request that the defendant sign an agreement regarding the recoupment amount. The agreement form to be used is attached to this policy.
5. Persons shall pay according to the following schedule, determined by the highest degree of offense charged:

Felonies	\$100.00
Misdemeanors	\$ 50.00
Abuse/Dependency/Neglect Cases	\$100.00
Other Juvenile Cases	\$ 50.00

6. Payments shall be remitted to the Clerk of Court in which the proceeding is heard. The Clerk shall transfer such recoupment amounts to the county treasurer, at least on a monthly basis. The auditor shall then transmit the appropriate amount to the Ohio State Public Defender. This amount is to be a separate line item from the application fee collections.

AGREEMENT TO REIMBURSE LEGAL COSTS/FEEES

I, \_\_\_\_\_ hereby request counsel to represent my interests in \_\_\_\_\_ Court; Case No(s). \_\_\_\_\_.

I certify that the financial information contained in the Financial Disclosure Statement attached hereto is true and accurate to the best of my knowledge.

I further certify that I have been unable to retain private counsel and hereby request the \_\_\_\_\_ County Public Defender or assigned counsel to represent my interests herein.

I agree that I may reasonably be expected to reimburse \_\_\_\_\_ County for some part of the costs of representation and, as consideration for said representation. I hereby agree to pay \$\_\_\_\_\_ by cash, certified check or money order payable to the Clerk of Court of \_\_\_\_\_ County, \_\_\_\_\_ Court, as recoupment for the costs of the legal services rendered to me.

I agree said amount is reasonable based on my income and/or assets and further agree said amount shall be paid as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I also understand that if it is determined by the \_\_\_\_\_ County Public Defender, State Public Defender, assigned counsel or by the Court, that I was not entitled to the legal representation provided to me, I may be required to reimburse the County for the full costs thereof.

Date: \_\_\_\_\_ Signed: \_\_\_\_\_

Witness: \_\_\_\_\_

## SAMPLE RESOLUTION

Whereas, the Office of the Ohio Public Defender has by Rule OAC 120-1-03 adopted regulations for the appointment of counsel for the indigent; and,

Whereas, pursuant to this rule, the Board of County Commissioners needs to adopt a plan to recoup all or part of the cost of counsel for persons who meet certain income guidelines.

It is hereby resolved that:

The Courts of this county shall make the appointment of counsel, either private assigned counsel or the County Public Defender, in accordance with the rules established by the Ohio Public Defender Commission and the State Public Defender to enable this county to receive reimbursement from the state for a part of the indigent defense costs.

The Courts of this county assigning indigent defense counsel shall, in accordance with OAC 120-1-03, order that a part or all of counsel fees be repaid to the County where appointment is made and the defendant falls into the income guidelines set forth in the rule (currently 125 percent to 187.5 percent of the poverty threshold).

Payments shall be made pursuant to the \_\_\_\_\_ County Indigent Defense Fee/Cost Recoupment Policy, a copy of which is hereby attached to this resolution.

This resolution shall be effective for all cases with an appointment date of \_\_\_\_\_ or later.

Board of County Commissioners

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VERIFICATION OF INCOME  
AUTHORIZATION FOR RELEASE OF INFORMATION

TO WHOM IT MAY CONCERN:

I am unable to provide all necessary background information pertinent to my case now pending in \_\_\_\_\_ County. I, therefore, authorize and direct the \_\_\_\_\_ COUNTY PUBLIC DEFENDER or my ASSIGNED COUNSEL \_\_\_\_\_ to contact the following sources for additional information: (attorney name)

- |                                      |   |
|--------------------------------------|---|
| _____ Employer                       | _____ Internal Revenue Service          |
| _____ Financial Institutions         | _____ Physicians & Medical Institutions |
| _____ Insurance Companies            | _____ Any agency of the State of Ohio   |
| _____ Law Enforcement Agencies       | _____ Any agency of _____ County        |
| _____ Military                       | _____ Schools                           |
| _____ Employers                      | _____ Correctional Facilities           |
| _____ Veterans Administration        | _____ Other                             |
| _____ Social Security Administration | _____ Payee/Trustee/Guardian            |

I hereby authorize and direct those sources checked above to release any and all information requested by the agents of the County Public Defender or my above named assigned counsel.

It is my understanding that all information concerning me will be regarded as confidential. This document has been read by me/to me and its purpose explained to my satisfaction.

NAME: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

DOB: \_\_\_\_\_ SS# \_\_\_\_\_

Signature: \_\_\_\_\_

Witnessed: \_\_\_\_\_

Date: \_\_\_\_\_

Information requested:

\_\_\_\_\_  
\_\_\_\_\_

Return information to:

**Ohio Public Defender**  
**Indigent Client Eligibility Guidelines**  
**2006**  
**ALL FIGURES BASED ON GROSS INCOME**

Household Size	Annual Income			Monthly Income		Bi-Weekly Income		Weekly Income	
	100%	125%	187.5%	125%	187.5%	125%	187.5%	125%	187.5%
<b>1</b>	\$ 9,800	\$ 12,250	\$ 18,375	\$ 1,021	\$ 1,531	\$ 471	\$ 707	\$ 236	\$ 353
<b>2</b>	\$ 13,200	\$ 16,500	\$ 24,750	\$ 1,375	\$ 2,063	\$ 635	\$ 952	\$ 317	\$ 476
<b>3</b>	\$ 16,600	\$ 20,750	\$ 31,125	\$ 1,729	\$ 2,594	\$ 798	\$ 1,197	\$ 399	\$ 599
<b>4</b>	\$ 20,000	\$ 25,000	\$ 37,500	\$ 2,084	\$ 3,125	\$ 962	\$ 1,442	\$ 481	\$ 721
<b>5</b>	\$ 23,400	\$ 29,250	\$ 43,875	\$ 2,438	\$ 3,656	\$ 1,125	\$ 1,688	\$ 563	\$ 844
<b>6</b>	\$ 26,800	\$ 33,500	\$ 50,250	\$ 2,791	\$ 4,188	\$ 1,288	\$ 1,933	\$ 644	\$ 966
<b>7</b>	\$ 30,200	\$ 37,750	\$ 56,625	\$ 3,146	\$ 4,719	\$ 1,452	\$ 2,178	\$ 726	\$ 1,089
<b>8</b>	\$ 33,600	\$ 42,000	\$ 63,000	\$ 3,500	\$ 5,250	\$ 1,615	\$ 2,423	\$ 808	\$ 1,212
<b>each additional</b>	\$ 3,400	\$ 4,250	\$ 6,375	\$ 354	\$ 531	\$ 163	\$ 245	\$ 82	\$ 123

**Based on poverty guidelines determined by the U.S. Dept. of Health & Human Services**

SOURCE: <http://aspe.hhs.gov/poverty/06poverty.shtml>

The Office of Ohio Public Defender disclaims liability for any errors or omissions. For questions, comments or suggestions contact the [Webmaster](#).