



# 2018 REPORT ON INDIGENCY STANDARDS

SESSION LAW 2017-57, §18A.3

PREPARED BY  
NORTH CAROLINA ADMINISTRATIVE OFFICE OF THE COURTS  
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**About the North Carolina Judicial Branch**

The mission of the North Carolina Judicial Branch is to protect and preserve the rights and liberties of all the people as guaranteed by the Constitutions and laws of the United States and North Carolina by providing a fair, independent and accessible forum for the just, timely and economical resolution of their legal affairs.

**About the North Carolina Administrative Office of the Courts**

The mission of the North Carolina Administrative Office of the Courts is to provide services to help North Carolina's unified court system operate more efficiently and effectively, taking into account each courthouse's diverse needs, caseloads, and available resources.

## Executive Summary

While there are 50 states in the country, there are many more ways that courts determine a defendant's eligibility for indigent defense services given the local autonomy of non-unified court systems and the role an individual determinant's discretion often plays in the process. Thirty years ago, if a defendant walked into court in one of eight North Carolina pilot counties, a court employee called an indigency screener would meet with the defendant to discuss court-appointed counsel options and verify the information that a defendant provided to inform the judge about the determination of eligibility. Today, indigency screener positions no longer exist, and research suggests that having positions dedicated to verifying defendant information has not proven cost effective.<sup>1</sup> Instead, North Carolina's judges, like most others in the country, make determinations of indigency based on the information presented by defendants. The varied landscape throughout the country for determining indigency recently led the Criminal Investigation and Adjudication Committee of the North Carolina Commission on the Administration of Law and Justice to include implementation of uniform indigency standards among its recommendations to improve the indigent defense system in the state.<sup>2</sup> While specifically declining to recommend implementation of standardized verification procedures, the Committee researched these issues using the work of the Brennan Center for Justice on this topic as a foundational element.<sup>3</sup> Less than five months later, the North Carolina General Assembly tasked the North Carolina Administrative Office of the Courts (NCAOC) and the North Carolina Office of Indigent Defense Services (IDS) with the study and development of specific statewide standards.<sup>4</sup>

Through this study, the following implementation plan has been developed:

- Indigent Defense Services will revise the *Affidavit of Indigency* (form number AOC-CR-226) and statewide use will begin January 1, 2019. This task is underway and will be tested in at least one judicial district before a statewide rollout.
- Indigent Defense Services will develop a bench card that includes information judges might find beneficial when reviewing eight factors for each defendant: income and expenses, assets and debts, case factors and costs associated with securing an attorney, current federal poverty guidelines and a local living wage calculator, receipt of need-based government benefits, recent appointed counsel in another case, residence in a correctional or mental health facility, and inability to post bail or bond. This task is also underway to ensure the new document is complementary to the revised *Affidavit of*

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<sup>1</sup> Neeley, Elizabeth and Tomkins, Alan J., "Evaluating Court Processes for Determining Indigency" (2007). *Court Review: The Journal of the American Judges Association*, 9-10.

<sup>2</sup> North Carolina Commission on the Administration of Law and Justice. Criminal Investigation and Adjudication Committee. *Appendix D: Improving Indigent Defense Services*. 2016. 208-56.

<sup>3</sup> Ibid.

<sup>4</sup> Appropriations Act of 2017, S.L. 2017-57, Section 18A.3 (North Carolina General Assembly 2017).

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*Indigency.* The bench card will be tested in at least one judicial district before rollout on January 1, 2019.

- Clerks of superior court will receive training and information encouraging them to enter denial of counsel information and the defendant's attorney type into the Criminal Case Indexing System (CCIS). The NCAOC will work with the Clerk Resource Committee to explore strategies for increasing the entry of this data into CCIS-CC by January 1, 2019.

Statewide implementation of these three items is not currently expected to create significant new recurring costs for the Judicial Branch. In addition to these items, this report also describes alternative scenarios and cost estimates for each.



## Introduction

Section 18A.3 of Session Law 2017-57 provides as follows:

**Section 18A.3.** The Administrative Office of the Courts, in conjunction with Indigent Defense Services, shall study and develop specific statewide standards for determining indigency for defendants. The study shall include a review of the practices of other states regarding determination of indigency, analysis of the cost-effectiveness of alternatives to the status quo, and implementation plans for the standards agreed upon. The standards may take local expenses and cost-of-living into account. The implementation plans should include procedures for auditing future indigency determinations to ensure that the new standards are working as intended. The Administrative Office of the Courts and Indigent Defense Services shall issue a report to the chairs of the Joint Legislative Oversight Committee on Justice and Public Safety by February 1, 2018.

NCAOC respectfully submits this report pursuant to the legislative mandate.

## Study Design

Based on the guidance provided in Section 18A.3 of S.L. 2017-57, staff from the NCAOC's Research, Policy, & Planning Division and IDS (collectively "the Indigency Workgroup") inventoried laws and procedures for how other states define and determine indigency. Information was collected through a review of other states' statutes and case law, dialogues with court personnel from other states, literature reviews of previous studies of indigency determination, and interactions with staff and members of the National Center for State Courts (NCSC).

The Indigency Workgroup developed and distributed an online survey to 272 district court judges and 109 superior court judges. Approximately 25% of the judges (n=96) who received the hyperlink for the online survey subsequently provided a response during the 16-day period the survey link was active.<sup>5</sup> Of the 96 respondents, 59 identified themselves as district court judges, representing at least 29 judicial districts.<sup>6</sup> The remaining 37 respondents identified themselves as superior court judges, and they represented all superior court divisions and at least 23 judicial districts.<sup>7</sup> Because statewide standards for determining indigency do not exist in North Carolina, the survey was designed to document examples of factors that judges might already use in the determination process and the degree to which there may be consistency in the usage of those factors. Judges were also asked to identify additional information, beyond that which is already captured from defendants, which might be helpful in their determination process. After collecting survey responses, research staff hosted a small focus group of judges, from a subset of survey respondents. The focus group discussion was used to solicit additional detailed information that was not conducive to a survey format. When possible, information

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<sup>5</sup> North Carolina Administrative Office of the Courts and Indigent Defense Services. *Standards for Indigency Survey*. Report. Raleigh, NC: The North Carolina Administrative Office of the Courts Research, Policy, and Planning Division, 2017.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.





reported by North Carolina's judges was compared to other state standards and recommended best practices.

The Indigency Workgroup also consulted with the NCAOC Financial Services Internal Audit Division to learn about existing audit procedures, consulted with the North Carolina Department of Health and Human Services to learn about information sharing opportunities, and reviewed details from private vendor-based solutions who provide income and employment verifications.

## **Current Practice in North Carolina**

### *Defining Indigency*

In 1963, in *Gideon v. Wainwright*, the United States Supreme Court held that any person who is “too poor to hire a lawyer” must be provided counsel to defend against criminal charges.<sup>8</sup> The Court did not define “too poor to hire a lawyer.”

N.C.G.S. 7A-450 defines an indigent person as one “. . . who is financially unable to secure legal representation and to provide all other necessary expenses of representation in an action or proceeding.” This determination is made by the court for 18 enumerated actions and proceedings, outlined in N.C.G.S. 7A-451, so that the “. . . services of counsel begin as soon as feasible after the indigent is taken into custody or service is made upon him of the charge, petition, notice or other initiating process.” *Gideon* did not use the term “indigent” and, to the extent the term implies a defendant must be impoverished in order to qualify for a court-appointed lawyer, it is misleading. While there is little case law on the issue of how poor someone must be to be entitled to counsel, two guiding principles emerge from case law. First, you are entitled to court appointed counsel when you cannot hire a private lawyer without undermining your ability to provide the necessities of life for yourself and your dependents.<sup>9</sup> Second, indigence is a relative concept under which the ability to muster some resources – such as money for bail – should not disqualify you for appointed counsel.<sup>10</sup>

### *Affidavit of Indigency*

In most judicial districts, a person who is seeking appointed counsel in a criminal case often designates that intent by completing form number AOC-CR-226, titled the *Affidavit of Indigency*, at the first appearance before a judge. It should be noted that local jurisdictions are not currently required to use AOC-CR-226 and may create their own form. The number of districts who use a local form is not currently known.

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<sup>8</sup> 372 U.S. 335 (1963).

<sup>9</sup> *Adkins v. E.I. Du Pont de Nemours Co.*, 335 U.S. 331 (1948). Addressing indigency in the context of a statute that allowed a litigant to bring a claim in federal court without prepayment of fees or costs upon a showing that of inability due to poverty, the Court held that a litigant need to be “absolutely destitute to enjoy the benefit of the statute.” Rather, the question is whether the litigant could pay the costs and “still be able to provide himself and dependents with the necessities of life.”

<sup>10</sup> *Hardy v. United States*, 375 U.S. 277 (1964).



Instructions on AOC-CR-226 point the defendant to read three notices before completing the blank fields. In both the Indigency Workgroup's survey and focus group, judges indicated that the literacy level for defendants is a barrier to completing the form, and therefore, the extent to which the notices are read or understood cannot be determined.

The first notice requests that the defendant not discuss the case with the interviewer. The second notice provides the following information regarding costs associated with court-appointed counsel:

"A court-appointed lawyer is not free. If you are convicted or plead guilty or no contest, you may be required to repay the cost of your lawyer as a part of your sentence. The Court may also enter a civil judgment against you, which will accrue interest at the legal rate set out in G.S. 24-1 from the date of the entry of judgment. Your North Carolina Tax Refund may be taken to pay for the cost of your court-appointed lawyer. In addition, if you are convicted or plead guilty or no contest, the Court must charge you an attorney appointment fee and may enter this fee as a civil judgment against you pursuant to G.S. 7A-455.1."<sup>11</sup>

The final notice references N.C.G.S. 7A-456(a) which indicates that "a false material statement made by a person under oath or affirmation in regard to the question of his indigency constitutes a Class I felony."<sup>12</sup> It also states that information "may be verified," and with a signature, any listed creditor, employer, family member, or governmental agency can be contacted by the court and release financial information.<sup>13</sup>

The reverse side of AOC-CR-226 contains a variety of blank fields. The form collects basic identifying information including name, address, date of birth, and social security number. A field is also available to designate a court-appointed attorney from any pending charge(s). There are fields to enter monthly income from personal and spousal employment as well as other income such as welfare, food stamps, social security, and pensions. The form has fields to capture the number of dependents and monthly expenses such as shelter, food, utilities, health care, vehicle payments, vehicle expenses, support payments, and any other monthly expenses. Fields also exist to collect information about assets and liabilities by detailing cash on hand and in bank accounts, money owed to the defendant, motor vehicle value(s), real estate and personal property value(s), and outcomes from the last filed income tax.

### *Interview*

The first note listed on the *Affidavit of Indigency* references an "interviewer" who presumably refers to an abolished position titled indigency screener, which is discussed later in this report as part of the analysis of the cost-effectiveness of alternatives to the existing indigency

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<sup>11</sup> *Affidavit of Indigency* (AOC-CR-226) available at <http://www.nccourts.org/Forms/Documents/687.pdf>

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.



determination process. The “interviewer” also may represent a more general reference to someone who would act in a role to ensure the requestor understands the questions and completes all blank fields noted above. During the focus group, one district reported that depending on the type of case, either a probation officer, a deputy clerk, or the provisional attorney may help complete the form.<sup>14</sup> In at least one jurisdiction, a pretrial services division funded by a local county government performs a similar function for certain defendants.<sup>15</sup> However, it is not a consistent statewide practice to provide assistance in the completion of the *Affidavit of Indigency* form. One judge commented that the affidavit “. . . is filled out by persons who for the most part can barely read and write,” and “when I tell the person they have not filled the application out correctly the second try is no better.”<sup>16</sup> While similar sentiments were shared by other survey respondents, all 96 responding judges noted that they typically use the completed form as a factor in the determination process, and 24% of respondents indicated that they do not need any additional information to be collected from the defendant beyond that which is captured on the *Affidavit of Indigency*.<sup>17</sup> The majority of survey respondents conduct a verification process to resolve questions they have after reviewing a completed form.<sup>18</sup> For most judges, that verification process involves direct questioning of the person requesting counsel. One judge commented, “I ask who supports them. If everything is \$0, I require the defendant to review their answers.”<sup>19</sup>

#### *Judge-Utilized Factors for Indigency*

In addition to the *Affidavit of Indigency*, survey respondents also frequently cited the use of three other factors when making a determination of indigency. As reflected in Table 1 below, more than half of responding judges weigh the type of case, receipt of need-based government benefits, and personal knowledge of local attorney fees.<sup>20</sup>

<b>Table 1. Factors Typically Considered for Indigency Determination</b>	
<b>Factor Used</b>	<b>Percentage of Respondents</b>
<i>Affidavit of Indigency</i>	100.0%
Type of case (misdemeanor, felony, etc.)	77.1%
Receipt of need-based government benefits	60.0%
Personal knowledge of local attorney fees	53.1%
Personal knowledge of defendant	24.0%
County living wage or self-sufficiency wage	11.5%

<sup>14</sup> North Carolina Administrative Office of the Courts and Indigent Defense Services, *Indigency Survey*.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.





Approximately, 11.5% of judges indicated that they typically consider a county's living wage or self-sufficiency wage.<sup>21</sup> Judges also referenced the use of factors such custody status, cognitive impairment, physical and mental ability.<sup>22</sup> While the research staff did not measure the time required for the determination process, survey responses indicate that judges spend an estimated 2.16 of minutes of court time to determine indigency after receiving the *Affidavit of Indigency*.

Both the type of case and receipt of need-based government benefits are fields that can be captured on the *Affidavit of Indigency*, which underscores the importance of obtaining a fully completed form from the person requesting counsel. A judge's use of personal knowledge of local attorney fees suggests an attempt to quantify, as the defining statute describes, "all other necessary expenses of representation in an action or proceeding." Similarly, a judge's use of personal knowledge of the defendant may be linked to previous cases where the defendant has appeared before the judge, based on focus group discussions.<sup>23</sup>

#### *Existing Technologies and Tracking of Judge Determinations*

The Indigency Workgroup was not able to identify any helpful data from existing Web-based case indexing systems currently used by trial courts to document when a person requested appointed counsel but was found not indigent or denied counsel. NCAOC's Criminal Case Indexing System (CCIS) does offer an opportunity to designate denial of counsel, but the designation is not a required entry and the database only had one case with such a designation. The *Order of Assignment or Denial of Counsel* (AOC-CR-224) form can capture individual denials of request for appointed counsel, but this information would be available only by reviewing all paper-based files for criminal cases in a particular district. Similarly, CCIS offers an opportunity to designate the attorney type with court-appointed attorney, public defender, waived or privately retained (self), but this too, is currently an optional entry.

#### *Estimated Percentage of Defendants Determined Indigent*

The survey asked judges to provide an estimate for the percentage of defendants who are determined to be indigent after completing the affidavit. The group's reported average was 85.9% of defendants in misdemeanor cases and 91.9% of defendants in felony cases.<sup>24</sup> Assuming all other defendants in these referenced misdemeanor and felony cases were found not indigent and resulted in the denial of appointed counsel, this produces denial rates of 8.1% and 14.1% in 2017. A denial of counsel rate between 5% and 14% was documented approximately 30 years before during a previous study of indigency screening, and that will be discussed in more detail in the analysis of cost-effectiveness for alternatives.

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<sup>21</sup> North Carolina Administrative Office of the Courts and Indigent Defense Services, *Indigency Survey*.

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*



A judge's determination of indigency status and even the appointment of counsel is not necessarily the final step in the process and is subject to reevaluation. N.C.G.S. 7A-450(c) provides that "(t)he question of indigency may be determined or redetermined by the court at any stage of the action or proceeding at which an indigent is entitled to representation." Presumably, this statute could provide a person who was found not indigent and denied appointed counsel the opportunity to request a reassessment of indigency status. G.S. 7A-450(d) specifically provides as follows:

If, at any stage in the action or proceeding, a person previously determined to be indigent becomes financially able to secure legal representation and provide other necessary expenses of representation, he must inform the counsel appointed by the court to represent him of that fact. In such a case, that information is not included in the attorney client privilege, and counsel must promptly inform the court of that information.

Due to limitations with existing data, survey respondents were asked to estimate the number of defendants, in a three-year period, who were found indigent and then subsequently determined not indigent, and approximately 60% of respondents estimated zero defendants.<sup>25</sup>

## Review of Other States

### Eligibility Factors

Not all states have a unified court system like that of North Carolina, but most states (47) have specifically outlined at least one factor which is used when making a determination of a defendant's eligibility for appointed counsel. Table 2 below lists factors used by at least one-third of all states in the country.

Table 2: Common Categories of Factors From Other States	
1	Income of person requesting counsel
2	Assets of person requesting counsel
3	Federal poverty guidelines
4	Costs associated with securing an attorney
5	Debts of person requesting counsel
6	Receipt of need-based government benefits

While the categories listed in Table 2 represent the most frequently cited factors used by states, there are variations in the details provided by individual states. Appendix A provides an inventory of factors that other states use in determinations of indigency.

One example of this variation is in the use of federal poverty guidelines. At least 26 states use the federal poverty guidelines in their determination process, but only four states use the actual federal poverty guidelines rate, or 100% of the rate, for the requesting person's household. Most states have established multipliers of the federal poverty guidelines that are

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<sup>25</sup> North Carolina Administrative Office of the Courts and Indigent Defense Services, *Indigency Survey*.



used for indigency determinations much like multipliers of the federal poverty guidelines are used to determine eligibility for certain need-based government benefits. The most common multiplier found for indigency determinations was 125%, but the maximum of the range was 250%. Some states choose to use one multiplier of the federal poverty guidelines and others establish a tiered system with several multipliers of the federal poverty guidelines. For example, Alabama uses a 125% multiplier with no qualifiers, 125% - 200% with hardship, and greater than 200% with hardship and a felony charge.<sup>26</sup>

State usage of federal poverty guidelines also can be an example of the extent to which states explicitly prescribe how the person determining indigency will use the factors. More than half of the states that use the federal poverty guidelines as a factor do so in a way that presumes eligibility for appointed counsel if the defendant does not exceed the federal poverty guidelines multiplier that has been established to determine indigency in the state.

### Presumptive Eligibility

At least 10 states also presume eligibility for appointed counsel if the requesting individual receives need-based government benefits. Other states presume eligibility if the defendant is imprisoned or committed to a mental health facility. Some states treat presumptive eligibility factors as rebuttable while other states do not.

The overall impact of using presumptive eligibility is not known. Using presumptive eligibility might decrease the time to determine indigency, but it is also possible that having specific income limits in mind leads the judge or other determiner to use additional time questioning the defendant to ascertain if the income threshold is met. It is unclear whether using presumptive eligibility has any bearing on the number of people who are found to be indigent and receive court-appointed counsel.

## **A Review of the Cost-Effectiveness of Alternatives**

### *Previous Screening Efforts in North Carolina*

In 1985, the NCAOC implemented an indigency screening pilot project in Buncombe, Durham, and Gaston counties, which was discussed in a 1989 report prepared by the NCAOC.<sup>27</sup> The project created two types of positions, an indigency screener I and an indigency screener II, responsible for investigating the financial background of defendants who request court-appointed counsel.<sup>28</sup> The positions were charged with “interviewing criminal defendants potentially entitled to counsel by N.C.G.S. 7A-451 to obtain pre-determined data elements, completing the affidavit of indigency and verifying qualifying data which forms the basis for

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<sup>26</sup> Code of Alabama §15-12-1(4)(a,b,c)

<sup>27</sup> North Carolina Administrative Office of the Courts, Research and Planning Division, *The Scope and Determination on an Indigent Person's Right to Counsel in North Carolina*, by Richard S. Kane (Raleigh, NC: Chief Justice's Advisory Committee on Defense of Indigents, 1989).

<sup>28</sup> Ibid, A19-A22



court-appointed counsel.”<sup>29</sup> The indigency screener II position had additional duties such as, recommending bond reductions to the court, monitoring orders for payment of attorney fees for the partially indigent, recommending pretrial release, arranging language interpreters, assessing defendants with “obvious mental/emotional problems” and referring to appropriate personnel, and preparing the first appearance calendar.<sup>30</sup>

#### *Cost-Effectiveness of North Carolina’s Pilot*

During the pilot, the NCAOC gathered data to evaluate the indigency screening program. A comparison of assigned counsel costs for the district and the cost of indigency screener salary and fringe benefits determined that only one district actually showed sufficient savings to justify the costs of the screening.<sup>31</sup> The pilot revealed that “in numerous low case volume counties, an indigency screener cannot be justified on the basis of avoiding assigned counsel costs.”<sup>32</sup>

Findings also indicated that “indigency screener counties tended to experience greater increases in assigned counsel cases and expenditures than did counties without an indigency screener.”<sup>33</sup> One possible explanation for the increase in defendants appointed counsel is that indigency screener positions may have been placed in counties with a high perceived need. In addition, “by advising defendants of their rights, explaining the procedures, and helping to complete the affidavit, there may be indigent persons in need of counsel who otherwise would have waived counsel.”<sup>34</sup>

While cost savings were minimal, there were anecdotal reports that screeners assisted in the reduction of defendants’ “no shows” for court by explaining procedures and hearing dates, made judges aware of defendants with mental disorders, reduced wait times for assigned counsel by assigning the same lawyer to multiple cases scheduled for the same trial date, and helped ensure an expedient appointment of the same lawyer already appointed to represent the defendant in another case.<sup>35</sup>

A 1989 report prepared by NCAOC research staff, *The Scope and Determination of an Indigent Person’s Right to Counsel in North Carolina*, indicates that the General Assembly funded indigency screening positions in eight counties by 1987: Buncombe, Catawba, Durham, Forsyth, Mecklenburg, New Hanover, Robeson, and Wake.<sup>36</sup> While position descriptions were standardized, the counties designed an indigency screening program to meet local needs. Differences in local program practices meant defendants might be interviewed before first

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<sup>29</sup> NCAOC, *Scope and Determination on an Indigent Person’s Right to Counsel*, A19-A22

<sup>30</sup> Ibid, A19-A22

<sup>31</sup> Ibid, 16.

<sup>32</sup> Ibid, 16.

<sup>33</sup> Ibid, 18.

<sup>34</sup> Ibid, 18.

<sup>35</sup> Ibid, 19.

<sup>36</sup> Ibid, 14.



appearances, after first appearances, and in some counties all eligible defendants were interviewed even though they had not expressed an interest in appointed counsel. During the 1987-88 study, a total of 35,725 individuals were screened in the eight counties. Criminal cases comprised 98% of screened cases.<sup>37</sup>

Of the total individuals screened, 41% did not request counsel (which includes decisions to waive counsel and retain counsel), 9% were denied counsel by a judge, and 50% received court-appointed counsel.<sup>38</sup> The range of denials for each of the eight counties was between 5% and 14%, and the report noted that “data on denials does not necessarily purport to be denials because of screening.”<sup>39</sup> Ultimately, the indigency screening programs ended when the General Assembly eliminated funding effective July 1, 1995.

### Indigency Screening Efforts in Other Jurisdictions

#### *Lancaster County, Nebraska*

Lancaster County, Nebraska implemented a three-year screening pilot project in 2001. Researchers from the University of Nebraska Public Policy Center concluded that the project led to “increased consistency in indigency appointments by ensuring that the same financial information was collected for each defendant and that each judge was provided with the same information regarding each defendant.”<sup>40</sup> In addition, collecting financial information outside of the hearing setting did “increase efficiency of the process by reducing in-court time for judges, attorneys, and defendants,” and the private setting “seemed comforting to defendants.”<sup>41</sup> The researchers also found “that in a typical month, 5% of defendants provided inaccurate or false information to the court.”<sup>42</sup>

Of the 5% of defendants who provided false information, 4% gave details that might increase the likelihood of appointed counsel, and the other 96% of the subset provided false information that could decrease the likelihood of appointed counsel.<sup>43</sup> As a result, 0.2% of all defendants were found to provide false information that could have led to appointed counsel.<sup>44</sup> Ultimately, there was “no indication that the program was impacting (reducing) the number of defendants receiving court-appointed attorneys, and there was no indication of a cost savings from verification.”<sup>45</sup> The screening project was cut from the county’s budget in 2005, and the money was reinvested in the Public Defender’s office to fund an additional attorney.

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<sup>37</sup> NCAOC, *Scope and Determination on an Indigent Person's Right to Counsel*, 14.

<sup>38</sup> *Ibid*, B2.

<sup>39</sup> *Ibid*, B2.

<sup>40</sup> Neeley, Elizabeth and Tomkins, Alan J., "Evaluating Court Processes for Determining Indigency" (2007). *Court Review: The Journal of the American Judges Association*, 9.

<sup>41</sup> *Ibid*, 9-10.

<sup>42</sup> *Ibid*, 9.

<sup>43</sup> *Ibid*, 9.

<sup>44</sup> *Ibid*, 9.

<sup>45</sup> Neeley, Elizabeth and Tomkins, Alan J., "Evaluating Court Processes for Determining Indigency" (2007). *Court Review: The Journal of the American Judges Association*, 9.





### *State of Massachusetts*

Today, states with codified rules for dedicated staff to conduct prescreening or verification of a defendant's financial status are difficult to find, but one such example is Massachusetts. For approximately six years, the Massachusetts Probation Service has been tasked with the responsibility for verifying details provided by individuals requesting court-appointed counsel. Following a judge's initial appointment of counsel, probation staff have up to seven days to complete a review of the defendant's information by querying up to three databases: the state's Department of Revenue, Department of Transitional Assistance (similar to North Carolina's Department of Health and Human Services), and the Registry of Motor Vehicles.<sup>46</sup>

To limit the court's access to information, agencies like the Department of Revenue created a database in an attempt to meet the needs of the court. However, as one Massachusetts court official noted, the Department of Revenue's site may not have that wage information if an individual works in a neighboring state. Once probation staff completes a review of information and submits it to the judge, the judge may reverse the original appointment decision or can determine an amount the defendant can pay toward representation.

A 2013 evaluation of the screening process showed that employees spent an average of 14 minutes per defendant in the screening and verification process up to the point when the judge received information.<sup>47</sup> The evaluation also revealed that only an estimated 1.15% of defendants "misrepresented their incomes."<sup>48</sup> The report consequently concluded that there is "very little opportunity for the Commonwealth to save or recoup any significant costs through indigency verification," and the Commonwealth "would need to reduce the scope of indigency verification procedures, not seek to identify fraudulent indigency claims" to reduce overall costs.<sup>49</sup>

### Implications for North Carolina

#### *Limited Potential for Cost-Savings*

Given the number of unknown variables, it is difficult to measure the cost-effectiveness of renewing an indigency screener project in North Carolina. In the 1980s, indigency screeners were tasked with contacting agencies such as the Department of Social Services (DSS) to determine if a defendant was receiving need-based government benefits. At that time, the process might have involved phone calls or even more labor-intensive procedures. A new indigency screener project might be able to use technology that wasn't previously available in the verification process.

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<sup>46</sup> Commonwealth of Massachusetts, Office of the Commissioner of Probation, Determining Eligibility for Public Defender Representation in Massachusetts Courts: Estimating Resource Requirements, by Douglas McDonald, Yuli Almozlino, and Sarah Jalbert (Cambridge, MA: Abt Associates, Inc., 2014), 1.

<sup>47</sup> Ibid, 11.

<sup>48</sup> Ibid, 17.

<sup>49</sup> Ibid, 23-26.



Today, local DSS employees query online databases to determine an individual's eligibility for benefits, and agencies like the Department of Revenue and Employment Security Commission also maintain electronic databases. The Department of Health and Human Services (DHHS) provides batch reports of certain information types to the Department of Public Instruction, based on the authority provided G.S. 108A-80 (b1), for purposes related to free and reduced school lunch programs. The DHHS also has limited view access available for at least one agency to see if a person receives a specific type of need-based benefits. All current information-sharing examples provided by DHHS have underlying federal authorizations and further research would be required by all parties to determine what could be made available due to the confidential nature of the information.

Many North Carolina counties publish property tax records online in a format that is searchable by name so this may also provide another tool for screeners. If electronic queries were available in North Carolina, and the screening process also took approximately 14 minutes, then Table 3 represents a range for the number of indigency screener full-time equivalents (FTEs). Based on the number of minutes available in a year for case-related work in the clerk of superior court workload formula (factors in holidays, vacation, sick leave, etc.), each full-time indigency screener would be expected to complete 6,045 verifications per year. Since screeners would need to be available during sessions of court where first appearances are made, a minimum of 20 hours per week (0.5 FTE) per county was established as a base standard.

<b>Table 3: Estimated Indigency Screener Need</b>		
<b>Location</b>	<b>Estimated Number of Indigency Screeners Needed (at 9% above FY 2015-16 IDS cases)</b>	<b>Estimated Number of Indigency Screeners Needed (at 50% above FY 2015-16 IDS cases)</b>
Statewide FTE	52.50 FTE	97.00 FTE
Statewide FY 2017-18 Cost of FTE	\$3,324,142.50	\$6,141,749.00

The number of defendants who would require screening is an unknown variable. Table 3 attempts to provide a range of the number of defendants who may be screened using FY 2015-16 case figures from Indigent Defense Services. IDS reflects the number of cases with private assigned counsel (PAC) using the number of payments (fee applications) made by IDS for appointed attorneys. For public defender offices, cases are the number of indigent persons whose cases were disposed by public defenders during FY 2015-16. For contractors, the numbers are dispositions reported per contract requirements. While these FY 2015-16 numbers may include appointments for non-criminal cases, the majority represent criminal cases.

The FY 2015-16 IDS case numbers were multiplied by a 9% dismissal rate, based on the findings from the previous study of the North Carolina indigency screener project. The same case numbers were also multiplied by 50%, which includes both the 9% dismissal rate with the 41%



request withdrawn rate. These figures were used to create a low and high range of potential defendants for screening. The FTE need is rounded to the nearest .25FTE.

The NCAOC does not have a current position description or compensation study for an indigency screener position. If it is assumed that such a position would be similar to a judicial assistant I, then the FY 2017-18 recurring position cost would be estimated at \$59,881, with an additional \$3,436 in nonrecurring costs. While part-time positions without fringe benefits would have a lower annual cost, the FTE count is used for simplicity of calculation. The FY 2017-18 total estimated cost for indigency screener positions statewide would be between \$3,324,142.50 and \$6,141,749.00 depending on the 9% or 50% workload rate. The FY 2018-19 recurring cost would be estimated between \$3,181,552.50 and \$5,878,297.00, assuming a consistent number of defendants to be screened. Estimates in Table 3 do not account for other screener duties that may be assigned or additional supervisory staff that may be required.

Table 4 below reflects the potential decrease in costs if North Carolina indigency screeners identified misrepresented income at the same 1.15% rate as Massachusetts screeners, and that led to additional denials of appointed counsel. The table also reflects the number of screeners defrayed costs by case reductions, if we assume a workload at 9% above the most recent number of IDS cases.

<b>Table 4: Potential Costs Offset by Discovery of Misrepresented Information</b>		
<b>Location</b>	<b>Estimated Cost Decreased with 1.15% cases (at 9% above FY 2015-16 cases)</b>	<b>Equivalent Number of Indigency Screeners That Defrayed Counsel Costs Might Support (at 9% above FY 2015-16 cases)</b>
Statewide	\$1,152,647.71	18.20 FTE

In the cumulative analysis of all judicial districts in the state, the anticipated reduction in cases would not offset costs of an indigency screener's work. The defrayed costs might fund approximately 18.20 FTE, while the overall estimated statewide need is 52.50 FTE. Given North Carolina's existing recoupment efforts related to costs of court-appointed counsel, which are paid to the General Fund, the misrepresentation rate may actually need to be higher than 1.15% to realize the estimated cost decreases reflected in Table 4. With an estimated indigency screener workload at 50% above FY 2015-16 cases, the cost deficit becomes even greater.

#### *Court Time and Other Implications*

Another consideration of re-implementing an indigency screener project in North Carolina is the potential non-financial impact to the time of judges, clerks of superior court, assistant district attorneys, public defenders, bailiffs, private attorneys, and others who play a role in the life of an individual defendant's case. Anecdotes from the previous North Carolina indigency screener pilot sites suggest one scenario which might create possible efficiencies in court processes. In the 1980's, there were individual reports that indicated a reduction in defendant



“no shows” for court and an increase in courtroom efficiencies. If such benefits were true, measurable, and consistent across districts, then some cost savings might be accomplished with a new indigency screener project.

Other non-financial benefits that have been connected to screener positions include consistency in capturing financial details, and the possibility that defendants feel more comfortable providing financial details to an individual rather than in open court. Screeners were also previously used to informally help the court better assess the mental state of a defendant. It is also possible that investing time in screening before an appointment might slow the process for first appearances or other hearings.

As previously noted, judges indicated that the average time to make an indigency determination is 2.16 minutes after receiving the *Affidavit of Indigency*. If each defendant screening added 14 minutes to the court’s process, this could create additional staffing needs for judges, clerks of superior court, district attorneys, and public defenders. Additional FTEs in these offices would add to the overall implementation and recurring costs of an indigency screener initiative. Although not the recommendation of this study, if an indigency screener initiative were launched, such an endeavor should be piloted to further explore what impact screening might have on the court’s overall time so that staffing needs of court officials could be more thoroughly evaluated and included in the estimated cost of statewide implementation.

### Third-Party Verification

An additional alternative that research staff explored is the use of a private vendor to verify certain elements of financial information. One company which offers such a service is Equifax Inc., which advertises “the nation’s largest database of instantly available employment information.” Equifax offers “employment records contributed by more than 5,500 employers nationwide, including over 75% of the Fortune 500 and the majority of federal government civilian employers.”<sup>50</sup> Equifax’s Work Number database is searchable by social security number and updated every payroll cycle. In addition to real-time employment verification, Equifax offers employment history searches which may be of some use in a retrospective audit process. Equifax notes that users include credit card issuers, property managers, and social service agencies among others.

The cost of a verification would vary based on the volume of requests. For example, the estimated cost could be \$15.00 - \$16.00 per request without a high volume contract with the company. With a contract for 20,000 verifications per year, the cost decreases to approximately \$9.00 - \$10.00 per search. Table 5 shows estimated costs using the lowest number of verifications anticipated as well as the lowest cost per verification. The percentage of cases that

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<sup>50</sup> Equifax. *Employment Verification*, found at [https://assets.equifax.com/assets/wfs/efx-ws-0013\\_verification\\_of\\_employment.pdf](https://assets.equifax.com/assets/wfs/efx-ws-0013_verification_of_employment.pdf).



would need to be reduced across the state to offset costs exceeds the 1.15% rate of misrepresented income found in Massachusetts and the 0.2% rate found in Nebraska.

<b>Table 5: Cost Estimates for Vendor-Based Employment Verification (assuming lowest \$9 rate)</b>			
<b>Location</b>	<b>Verification Cost at \$9.00 Per Request (assuming 9% increase of FY 2015-16 cases)</b>	<b>IDS Costs Minus Recoupment in FY 2015-16</b>	<b>Estimated Percentage of Cases That Would Need to be Screened Out to Offset Vendor Costs</b>
Statewide	\$2,889,524.18	\$100,230,235.23	2.88%
Note: Additional staff time would be required to process verification queries (see indigency screener and internal auditor FTE estimates provided in cost-effectiveness of alternatives).			

Before any private vendor could be used for such purposes, the NCAOC likely would need to conduct a request for proposals to fully explore the potential market of service providers and establish the most cost-effective contract possible. However, based on a cursory review of the market, the information obtained from an instant search of this type would be limited to income and employment data. The database would not have information from all potential employers, so a search by defendant's social security number may find no information. Furthermore, defendants without social security numbers would be excluded from the verification process. During the study of the Massachusetts program, the indigency status of nearly 5% of defendants requesting assistance could not be verified as the defendant "may have lacked a social security number, may have been undocumented workers, or [may have been] persons employed 'off the books.'" While the Massachusetts verification relies on queries of information administered by government agencies, there is evidence to suggest that a private vendor-based solution could yield similar 'unable to verify' results.

A vendor-based search of this type could be considered as one tool for indigency screeners, or it could be a stand-alone resource in the initial indigency determination process for existing Judicial Branch employees. However, if these searches were adopted as a stand-alone resource to be used by existing Judicial Branch employees, there would likely be training and FTE resource implications for whomever assumes the responsibility for conducting searches and reporting findings. That scenario is not a recommendation of this study as the annual cost of that approach would exceed \$3 million, with no realistic expectation of significant offset.

One other possibility for using a private vendor solution would be to utilize the search as part of an audit process after determinations have been made. Presumably, the audit would pull a sample of cases and then conduct a social security search for verification purposes. One limitation to using the verification system in an audit capacity is the fact that a defendant's financial information at the time counsel is appointed may change once the verification check is performed. Also, depending on the sample size of the audit, the cost per defendant search may be at a higher rate.





### Retrospective Audit

If the General Assembly determines that an ongoing annual audit is needed to ensure the statewide standards are working as intended, the NCAOC's Internal Audit Division ("IAD") has experience in this field. The IAD staff already performs reviews related to IDS, and some of these audits include the examination of documents in case files. The division examines the frequency that paper files contain fee applications and orders assigning counsel. In the most recently completed audit, testing of cases for convicted defendants who were assigned public defenders found a 98% compliance rate for the inclusion of a completed and approved *Order of Assignment or Denial of Counsel* form (AOC-CR-224).

The general IAD practice is to determine a sample size and contact clerks of superior court requesting they find and send needed documents. Auditors could use a similar technique to perform audits of the recommended statewide standards for determining indigency. Auditors might also review and attempt to verify information that a defendant provided at the time an indigency determination process took place. The auditors could examine files of both defendants who received counsel as well as those who had appointed counsel denied due to a judge's determination of not indigent.

Because months will pass between the time a defendant completes an *Affidavit of Indigency* and the time an audit is conducted, an attempt at verification of information will have limitations. If the auditor is able to use one or more online databases, whether through a private vendor or state agency interfaces, there may be occasions when a defendant-based search produces no results. The audit also could look at the extent to which the proposed eight bench card factors are used in each county.

If the NCAOC IAD is directed to perform an ongoing statewide audit, additional auditor resources would be required to adequately perform the new duties. The number of additional internal auditor staff would be dependent on the number of cases that will be audited and the subsequent time invested in each case file's audit. If the appropriate technology existed to electronically query information for the audit, and the other document reviews were limited in scope, then an allocation of 60 minutes per case file audit would allow one full-time internal auditor to review more than 2,000 cases each year.

The annual recurring cost for an internal auditor position is estimated to be \$117,073 for FY 2018-19, with nonrecurring costs of \$17,452. If the audit required the use of a private vendor solution for financial verification, rather than access to information from other state agencies, then the additional cost would be estimated at \$16.00 per defendant search. If the audit was not automated in any way, provided for a more time-intensive examination of each file, or required the review of more cases each year, then the IAD staffing needs and associated costs would increase. Similarly, depending on the number of case files manually pulled for the audit, there might be additional staffing needs for the offices of clerks of superior court who would pull case files, find the appropriate documents, and send them to the internal auditor.



## Implementation Plan

### Revise *Affidavit of Indigency*

In order to develop consistent statewide standards, one *Affidavit of Indigency* form should be used in all jurisdictions. Using one document helps ensure the same information is requested and obtained for all judges in all judicial districts. Based on survey and focus group results, the current *Affidavit of Indigency* (AOC-CR-226) is viewed as too complex for the education level of many defendants, and this may have contributed to local variations of the form. The complexity of the existing form also may impact the accuracy of the information provided by defendants if they don't understand the questions asked. As a result, IDS has begun the process of revising the *Affidavit of Indigency*. The current form will be evaluated and edited with feedback from local court users to ensure it adequately captures information in a way that meets the needs of jurisdictions, in a format that is understandable for defendants. IDS also will evaluate the need for additional standard written instructions that defendants read or have read to them. This too may increase the amount of meaningful information that is collected on the revised form. Revisions will be tested in at least one judicial district and the estimated statewide rollout will be January 1, 2019.

### Develop a Companion Bench Card

To complement the revised form, Indigent Defense Services is working on an informational bench card to provide a standard set of factors for judges across the state to review as they make an indigency determination. These factors would not presume eligibility for any defendants, but would provide a tool for judges to uniformly evaluate indigency. The bench card would contain factors selected by research staff following a review of current North Carolina practices, other states' statutes and procedures, and the best practices of the Brennan Center for Justice. Table 6 identifies the recommended factors.

Table 6: Factors for Review During Indigency Determinations	
1	Income and expenses
2	Assets and debts
3	Case factors and costs associated with securing an attorney
4	Current federal poverty guidelines and county-based living wage information
5	Receipt of need-based government benefits
6	Has, or recently had, appointed counsel in another case
7	Resides in a corrections facility or a mental health facility
8	Unable to post bail or bond

Feedback from judges will be used to determine what information they would find most helpful to know about each factor. IDS will test the new bench card in at least one judicial district prior to the anticipated January 1, 2019 statewide rollout.



The following details highlight some of the findings related to the identified factors during the course of this study.

- **Income and Expenses:** At least 42 states explicitly outline the use of income when making indigency determinations, with at least 14 states specifically referencing monthly expenses. Of the North Carolina judges who responded to the study survey, 100% indicated that they used the *Affidavit of Indigency* which already captures a defendant's income and expenses. The Brennan Center for Justice suggests ". . . income in the form of means-tested public assistance benefits should also be considered unavailable" as well as "the portion of the defendant's income that the defendant needs to pay for the expenses of daily living and to maintain employment."<sup>51</sup> Examples of these expenses include "food, housing, clothing, medical care, child or other dependent care, and transportation."<sup>52</sup> The Center also concludes that ". . . it may be acceptable to treat certain third parties' resources as available to the defendant" such as a spouse or parent, but cautions against considering this as income "when those resources are not under the direct control of the defendant."<sup>53</sup>
- **Assets and Debts:** At least 32 states specifically outline the use of assets and 20 states outline the use of debts or outstanding obligations. Again, this information is captured today in North Carolina on the *Affidavit of Indigency*. Virginia considers "all assets of the accused which are convertible into cash within a reasonable period of time without causing substantial hardship or jeopardizing the ability of the accused to maintain home and employment."<sup>54</sup> The Brennan Center for Justice suggests that assets used for "daily living" or "to maintain employment . . . such as a defendant's primary residence, household furnishings, and clothing, and the car a defendant uses to get to work" should be deemed unavailable, and "because counsel must be appointed quickly, jurisdictions should also consider unavailable all assets that cannot be converted to cash within days after an arrest."<sup>55</sup>
- **Case factors and cost associated with securing an attorney:** The type of case and the cost of securing an attorney often go hand-in-hand. At least 22 states make a specific reference to the costs of private attorneys in their consideration of indigency, and 10 states use case factors such as the nature of the offense, the estimated length of the case, the potential for imprisonment, and the anticipated complexity of the case. In North Carolina, 77.1% of judges who responded to the

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<sup>51</sup> Brennan Center for Justice, *Eligible for Justice: Guidelines For Appointing Defense Counsel*, <https://www.brennancenter.org/sites/default/files/legacy/publications/Eligibility.Report.pdf>, (New York, NY: 2008), 14-15.

<sup>52</sup> *Ibid*, 15.

<sup>53</sup> *Ibid*, 18.

<sup>54</sup> Va. Code Ann. §19.2-159(B)(2)

<sup>55</sup> Brennan Center for Justice, *Eligible for Justice: Guidelines For Appointing Defense Counsel*, <https://www.brennancenter.org/sites/default/files/legacy/publications/Eligibility.Report.pdf>, (New York, NY: 2008), 15-16.

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study survey indicated they already use case type as a factor, and 53.1% of respondents use their “personal knowledge of attorney fees.” The Brennan Center for Justice notes the importance of the differences in retaining private counsel and receiving court-appointed counsel, noting “that most privately retained criminal defense attorneys require payment of a substantial retainer fee, or even of the attorney’s full fee, up front,” and those same attorneys are usually compensated at a higher rate than their court appointed counterparts.<sup>56</sup>

- **Current federal poverty guidelines and county-based living wage information:** The federal poverty guidelines are widely used to determine eligibility for need-based government benefits, and at least 26 states use the federal poverty guidelines in some fashion for indigency determinations. Many states use a multiplier of the guidelines, consistent with the Brennan Center for Justice’s recommendations. Research indicates there may be limitations to using federal poverty guidelines in the evaluation of a person’s ability to afford counsel because the underlying formula was based on providing food for a family and does not take local cost variations into account.<sup>57</sup> Other guidelines attempt to determine a self-sufficiency wage or a living wage. One such example is a living wage model created by a Massachusetts Institute of Technology (MIT) professor of economic geography and regional planning. MIT maintains a website where anyone can view county level living wage estimates. The “model is an alternative measure of basic needs. It is a market-based approach that draws upon geographically specific expenditure data related to a family’s likely minimum food, childcare, health insurance, housing, transportation, and other basic necessities (e.g. clothing, personal care items, etc.) costs. The living wage draws on these cost elements and the rough effects of income and payroll taxes to determine the minimum employment earnings necessary to meet a family’s basic needs while also maintaining self-sufficiency.”<sup>58</sup>
- **Receipt of need-based government benefits:** This factor is used in at least 18 states, and 60% of North Carolina judges who responded to the study survey indicate they use this in their determination process. Defendants currently are asked to report combined income received from receipt of such benefits on the *Affidavit of Indigency*, but the form does not allow the defendant to distinguish the type or amount received from the particular benefit. Eligibility for these benefits comes with independent verification from the agency that administers the program. Often the threshold for eligibility uses a multiplier of the federal poverty guidelines.

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<sup>56</sup> Brennan Center for Justice, *Eligible for Justice: Guidelines For Appointing Defense Counsel*, <https://www.brennancenter.org/sites/default/files/legacy/publications/Eligibility.Report.pdf>, (New York, NY: 2008), 14.

<sup>57</sup> Gross, John P., *Too Poor to Hire a Lawyer but Not Indigent: How States Use the Federal Poverty Guidelines to Deprive Defendants of their Sixth Amendment Right to Counsel*, 70 WASH. & LEE L. REV. 1173 (2013), <http://scholarlycommons.law.wlu.edu/wlulr/vol70/iss2/11>, 1204-1206.

<sup>58</sup> Glameier, Amy K., *Living Wage Calculator*, <http://livingwage.mit.edu/pages/about>, (Massachusetts Institute of Technology: 2018)



- **Person requesting counsel currently has, or recently had, appointed counsel in another case; Person requesting counsel resides in a mental health or corrections facility; Person requesting counsel is unable to post bail or bond:** When inventorying the rules and procedures for other states, these three remaining factors were not referenced at the same frequency as the first five factors. States that list these factors usually prescribe presumptive eligibility for the defendant if these factors are present. The Brennan Center for Justice notes that “the vast majority of people incarcerated in a correctional institution are indigent,” and “likewise, jurisdictions should consider providing counsel automatically to all defendants housed in a mental health facility.”<sup>59</sup> In general, however, the Brennan Center for Justice suggests that “when it proves too expensive to engage in screening precise enough to identify every ineligible, it may be more reasonable to rely on certain presumptions of eligibility.”<sup>60</sup> During this study, there was no indication that the current screening process is “too expensive,” and therefore, the recommendation is for judges to consider these factors in an overall evaluation of the defendant’s financial status rather than prescribe that judges automatically presume indigency based on one of these factors.

#### Provide Training and Information to Court Personnel

Staff from the offices of clerks of superior court should receive training and information encouraging them to enter when counsel has been denied to a defendant and whether a defendant’s attorney is court appointed, public defender, waived or privately retained (self). These fields are currently available in CCIS-CC, but the field is not a required entry.

In order to ensure successful implementation, each relevant group of court personnel will need training to better understand the new tools and changes in process. There may be an adjustment period following implementation, but ultimately, neither tool is expected to increase the average length of time that an indigency determination takes. Survey and focus group participants raised concerns about any change in process that would impede the court’s docket or slow the time before a defendant could receive an attorney. Testing these new elements in at least one judicial district will be important to ensure the standards are working as intended or if any significant delays are created by implementing the changes. Testing also likely will show that the new bench card, revised *Affidavit of Indigency*, and entry of additional information into CCIS can be implemented without new significant recurring costs.

#### **Conclusion**

Many of North Carolina’s judges are basing determinations of indigency on a similar set of factors, and many judges consider factors that judges from other states use consistently. The current indigency determination process in North Carolina has remained fundamentally

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<sup>59</sup> Brennan Center for Justice, *Eligible for Justice: Guidelines For Appointing Defense Counsel*, <https://www.brennancenter.org/sites/default/files/legacy/publications/Eligibility.Report.pdf>, (New York, NY: 2008), 22-23.

<sup>60</sup> Ibid, 13.





unchanged since a small group of counties piloted the use of indigency screener positions. Those positions were not cost effective and subsequently were eliminated.

Most of North Carolina's judicial districts use an *Affidavit of Indigency* that may not account for the education level of those attempting to outline their financial history in a few minutes of court. Developing a new bench card and revising the *Affidavit of Indigency* represent immediate actions already underway to ensure judges will have additional tools at their disposal when making indigency determinations. These tools provide statewide standards, and training clerks of superior court to enter additional information for each case also creates greater uniformity of process. Based on North Carolina's past experience and lessons from other states, ongoing formal audits and indigency screeners do not appear to be cost-effective ways to achieve additional efficiencies in the indigency process. However, if the General Assembly requires ongoing formal audits or indigency screeners, dedicated funding will be required to provide the additional resources necessary to implement those services.



# ATTACHMENT A

## State Inventory of Factors Used in Indigency Determinations



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Attachment A: State Inventory of Factors Used in Indigency Determinations

All U.S. States (except N.C.)	Income	Federal Poverty Guideline	Assets	Property Owned	Disposable Income	Nature of Offense	Length of Case	Complexity of Case	Outstanding Obligations	Number of Dependents	Age of Dependents	Release on Bail	Potential for Imprisonment	Bank Accounts	Social Security	Unemployment	Disability	Private Attorney Costs	"Substantial Hardship"	Medical Expenses	Health Insurance	Child Support	Child Care	Food Stamps	Monthly Expenses	Borrowing Capacity	Attempted to get Private Counsel	Correctional Facility	Mental Health Facility	Unethical Transfer of Property	Spouse or Parents can pay Attorney's Fees	Spouse's Income & Assets	Previously received Court-Appointed Counsel
Alabama	X	X	X		X	X	X	X																									
Alaska	X			X					X	X	X																						
Arizona																																	
Arkansas													X																				
California	X	X													X																		
Colorado																																	
Connecticut	X	X																															
Delaware	X			X									X	X	X	X	X																
Florida	X	X		X														X	X														
Georgia	X	X	X																	X		X											
Hawaii	X	X	X																					X	X	X	X						
Idaho	X	X		X					X	X	X	X									X		X	X				X	X				
Illinois	X	X													X			X	X			X		X									
Indiana	X		X		X	X		X										X															
Iowa	X	X		X		X												X							X			X	X				
Kansas	X	X	X															X							X					X			
Kentucky	X		X	X			X		X			X						X															
Louisiana	X	X				X									X		X	X						X	X								
Maine	X		X						X											X						X							
Maryland			X		X	X	X	X																		X							
Massachusetts	X	X	X										X																X	X			
Michigan	X	X																	X										X	X			
Minnesota	X		X	X																				X						X			
Mississippi	X			X						X																			X		X		
Missouri	X	X	X						X						X	X	X															X	
Montana	X	X	X		X							X						X	X														
Nebraska	X	X														X			X										X	X			
Nevada																			X														
New Hampshire	X		X															X								X							
New Jersey	X	X	X	X	X							X			X	X	X	X									X				X		
New Mexico	X		X	X					X	X	X	X							X														
New York	X	X	X	X					X			X						X				X						X		X		X	
North Dakota	X		X	X		X	X		X		X				X	X	X	X	X	X	X	X										X	
Ohio	X	X	X			X	X	X	X	X	X		X					X							X		X	X	X			X	
Oklahoma	X		X	X	X				X	X		X													X	X						X	
Oregon	X		X	X					X	X	X			X											X							X	
Pennsylvania													X																				
Rhode Island	X		X															X							X		X					X	
South Carolina	X	X							X	X	X		X					X							X							X	
South Dakota	X			X		X			X	X				X	X	X	X	X							X	X	X						
Tennessee	X			X					X	X	X	X						X								X	X	X					
Texas	X		X															X							X							X	
Utah	X	X	X	X		X	X	X	X	X	X				X	X	X	X	X	X				X		X	X			X			
Vermont	X	X	X	X					X	X	X	X																					
Virginia	X	X	X	X	X									X	X					X	X	X	X	X		X					X	X	
Washington	X	X	X		X													X							X		X		X				
West Virginia	X	X	X						X		X	X	X					X		X	X	X	X				X						
Wisconsin	X	X	X	X	X							X		X				X															
Wyoming																		X									X						
TOTALS	42	26	28	20	9	9	6	5	17	12	11	11	7	5	11	7	7	22	10	5	3	6	3	6	14	6	10	6	9	3	5	8	1

**North Carolina Administrative Office of the Courts**

P.O. Box 2448

Raleigh, NC 27602

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