



2018 REPORT ON INDIGENCY STANDARDS

SESSION LAW 2017-57, §18A.3 (as amended by Session Law 2018-5, §18A.4)

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.

Introduction

Section 18A.3 of Session Law 2017-57, as amended by §18A.4 of Session Law 2018-5, 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 an interim report to the chairs of the Joint Legislative Oversight Committee on Justice and Public Safety by February 1, 2018, and a final report by October 1, 2018.

NCAOC respectfully submits this final report pursuant to the legislative mandate, incorporating by reference the February 1, 2018 report (“interim report”) in its entirety.

Overview of Implementation Plan

The interim report offered a review of the practices of other states and explored the cost-effectiveness of various alternatives. Based on an analysis of alternatives, NCAOC and IDS identified three action items to improve indigency determinations in state courts: amend the *Affidavit of Indigency* (AOC-CR-226); create a bench card for judges; and provide training and information to court personnel.

A review of statutory and secondary resources for judicial officials in the other states, online judicial surveys, and focus group input identified eight factors commonly used in indigency determinations. Table 1 below identifies those factors.

Table 1: 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



These factors are not intended to create a presumption of indigent status, but rather to serve as a tool for judicial officials. IDS is using these factors to enhance the judge's ability to make an accurate determination using a revised *Affidavit of Indigency*. IDS also will use these factors to create a companion bench card that will serve as a navigational guide for judicial officials as they make determinations of indigent status.

As detailed in the interim report, North Carolina and other states have not identified significant cost savings using formal auditing processes. NCAOC and IDS consequently do not recommend an auditing process for indigency determinations and will defer to the information provided in the interim report for additional information about such auditing processes.

Affidavit of Indigency

Most judicial districts rely on the AOC-CR-226 (*Affidavit of Indigency*) as the basis for a determination of indigency. IDS consequently is in the process of redesigning the form to enhance its value in the indigency determination process. Because judges indicated that the literacy level for defendants is a barrier to completing the form, the form redesign will include consideration of the applicants' ability to read and understand the form.

Since the interim report was disseminated, IDS has identified North Carolina judicial districts that use a local form rather than the NCAOC promulgated form, identified possible judicial districts for piloting a revised *Affidavit* and reviewed affidavits from other jurisdictions. Many states collect the same essential information while using simple if / then questions. For example, the affidavit used in Alabama simply asks, "Do you have a job or work for yourself?" If the applicant answers yes, he is prompted to give his employer's name. It also asks, "How much does it cost you to live each month?" then provides a table of common expenses such as loans, credit cards, mortgage or rent, child support, and car loan. Other affidavits ask about the size of the applicant's family, number of children living in his house, take home pay, things he owns (also with a table listing common real and personal property), and child support.

In North Carolina, the *Affidavit of Indigency* collects monthly income, monthly expense, and a description of assets and liabilities. Although parentheticals explain that "Monthly Income" means money you make and "Monthly Expenses" means money you pay out, there is little by way of explanation on the form. Further, the information is arranged in a series of tables that some stakeholders have described as "busy." At least one jurisdiction uses a local form in district court because judicial officials have found the *Affidavit of Indigency* to be too cumbersome and time consuming. IDS is reviewing local forms and responding to input from local officials in creating the revised *Affidavit*.

Based on this review, IDS has developed a revised version of the Affidavit. The next step will be a survey of stakeholders seeking comments and recommendations for the revised *Affidavit*. Based on survey results, IDS will design draft *Affidavit(s)* to be reviewed with multiple focus groups. The focus groups will include a diverse group of stakeholders, including district and



superior court judges, public defenders, private assigned counsel, criminal justice advocates, and, if possible, former clients. The final step will be to present the final draft to the Criminal Subcommittee of the NCAOC Forms Committee for consideration and adoption. NCAOC and IDS expect that a revised standard form will capture information in a way that meets the needs of all jurisdictions, in a format that is understandable for defendants.

Bench Card

Because the *Affidavit of Indigency* does not provide guidance on how to evaluate the information collected, IDS is developing a bench card that will track the revised *Affidavit of Indigency*. The bench card will include information judges may find beneficial when reviewing the eight factors detailed in Table 1. In addition to addressing income, expenses, assets and debts, the bench card will include other factors that may be relevant to a determination of indigent status. These factors may include case factors and costs associated with securing an attorney, current federal poverty guidelines living wage calculators, and methods of verifying need-based government benefits. The bench card likely will include a table illustrating the federal poverty guidelines and multipliers thereof, a link to a living wage calculator, and case law on indigency.

Education and Training

The interim report indicated the need for clerks of court to 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). Although NCAOC initially planned to work with the Clerk Resource Committee to explore strategies for increasing the entry of this data into CCIS-CC, NCAOC is moving toward an Integrated Case Management System (ICMS) that will replace CCIS-CC.

As a result, NCAOC deems it impractical to invest resources into making significant changes to the structure of CCIS-CC or revising existing training for the data keyed into CCIS-CC. An ICMS will be configured to meet the needs of the North Carolina Judicial Branch, and therefore, the NCAOC will work with the selected vendor to ensure the state's ICMS has the capability to capture information for assignment or denial of counsel as well as the type of counsel. Once ICMS is implemented, court personnel will be trained to utilize tools capturing assignment or denial of counsel and identifying all attorneys by type, such as court-appointed, public defender, waived or privately retained (self).

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

NCAOC and IDS are addressing three action items designed to improve indigency determinations in state courts. IDS is in the process of amending the *Affidavit of Indigency* and creating a bench card for judges, while NCAOC will provide training and information to court personnel once the ICMS is operational. Both the revised *Affidavit* and the bench card should enhance efficiency in indigency determinations without significant costs. While there may be an adjustment period following implementation of the revised *Affidavit* and bench card, the new resources are not expected to impede the court's docket or slow the time before a defendant is assigned an attorney.



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