

**\$25.00 Indigent Application Fee
Frequently Asked Questions (FAQ's)
Updated 11/17/2006**

1. Q. What is the effective date of the new fee?

A. *The original law was codified as Ohio Revised Code Section 120.36, and became effective September 29, 2005. The law was subsequently amended in by H.B. 530 the budget correction bill. The amendments included in H.B. 530 became effective July 1, 2006. The text of the application fee law, as amended by H.B. 530 is available on the Ohio Public Defender Web Site.*

2. Q. What is the purpose of the \$25.00 Fee?

A. *The fee was created as a way to generate revenue for providing indigent defense services and, along with recoupment programs, to address the issue of clients contributing to the cost of their defense. Eighty percent of the funds collected are retained by the county and are to be used to offset the cost of providing indigent defense representation. Twenty percent is remitted to the Ohio Public Defender, and are used for the operations of the Office of the Ohio Public Defender. Ohio is now among about 20 other states that use up-front indigent application fees.*

3. Q. Who does the client (i.e., the indigent person) pay?

A. *The client pays the clerk of court of the court that assessed the fee.*

4. Q. At what point is the fee assessed?

A. *The individual becomes subject to assessment of the fee upon submitting a Financial Disclosure/Affidavit of Indigency Form to the court, the public defender, the appointed attorney or any other party who will make a determination regarding the person's indigency. If the individual claims indigency, requests counsel, but withdraws their request prior to filing the affidavit of indigency, no fee should be assessed.*

If a person becomes indigent while the case is pending, or returns to the court to request a public defender subsequent to having retained, (or attempting to retain) private counsel, they

should complete an affidavit of indigency, and the fee should be assessed at that time.

5. Q. If a person files a financial disclosure form, and is found not-indigent, do they still owe the fee?

A. *Yes. This is an application fee and it applies to all persons who request or receive counsel, not just those who are ultimately found to be indigent. The point of assessment is described in number (4) above.*

6. Q. Where should the money be remitted?

A. *The clerk of court remits all (100 percent) of the funds collected to the county treasurer. By the last day of each month, the county auditor remits 20 percent of the funds collected in the previous month to the State Public Defender. The Monthly Auditor Remittance Forms and Instructions are available on the OPD's web site at www.opd.ohio.gov.*

7. Q. The law says to charge one fee per case. What is the definition of "per case?"

A. *"Case" is defined in R.C. 120.36(A)(7) and is as follows:*

"...For purposes of assessing the application fee, a case means one complete proceeding or trial held in one court for a person on an indictment, information, complaint, petition, citation, writ, motion, or other document initiating a case that arises out of a single incident or a series of related incidents, or when one individual is charged with two or more offenses that the court handles simultaneously...."

Accordingly, the fee is independent from the number of case numbers assigned by the clerk.

8. Q. Does the fee apply to municipal ordinance violations?

A. *Yes. R.C. 120.36(A)(2) includes violations of violations of municipal ordinances for which the potential penalty includes loss of liberty.*

9. Q. In municipal ordinance violations, how is the \$25.00 distributed?

A. *The cost of providing representation in ORC offenses is the responsibility of the county. The cost of providing representation in municipal ordinance violations is the responsibility of the municipality. Municipalities that wish to*

receive reimbursement from the state for providing representation in municipal ordinance cases must contract with the county commissioners [R.C. 120.33(A)(4)] and/or the county public defender commission[120.14(E)]. (Model contracts for this arrangement are available from the Office of the Ohio Public Defender.)

All money collected by the clerk of court must be remitted to the County Treasurer. The sharing of the \$25.00 fee for municipal ordinance cases should be handled in the same manner as the sharing of state reimbursement for these cases. With regard to sharing the \$25.00 fee, the terms of the negotiated contract can provide for the county to return a share of these funds to the city or village.

10.Q. Is there a form letter or notice to give to clients regarding this new fee?

A. *Yes, a suggested Client Information Sheet is available on the OPD's web site at www.opd.ohio.gov. Local authorities are encouraged to distribute this sheet with the financial disclosure/affidavit of indigency form and to post the notice in courts and areas where clients will be screened for indigency.*

11.Q. Which courts are affected?

A. *Any court where a person may request and be entitled to counsel for a criminal or juvenile matter. This includes Common Pleas, County, Municipal, Juvenile, Probate, and Domestic Relations courts. In Probate and Domestic courts, the application fee is effective only for only contempt charges where the court may impose a term of imprisonment.*

12.Q. When do the clerks remit the money to the county treasurer?

A. *The clerks can remit the funds no less than monthly. At their discretion, clerks may remit the funds daily, weekly, bi-weekly, or on any other schedule so long as it is remitted at least once per month.*

13.Q. Does this affect or negate recoupment programs?

A. *No. The application fee is independent from recoupment, contribution, partial payment, and marginally indigent programs. It is also independent from instances where persons are ordered to pay a portion of their defense costs pursuant*

to R.C. 2941.51(D). Such costs may be assessed in addition to the the \$25.00 application fee.

14.Q. When do the reporting requirements for the clerk of court take effect?

- A. The changes in H.B. 530 enacted new reporting requirements for the Clerk of Court. Beginning February 20, 2007, clerks must begin reporting monthly. By the 20th day of each month, Clerks are to remit a report for the previous month's information. Also, on February 20, 2007, a single report covering the information for calendar year 2006 is due to the State Public Defender. Clerks who have already voluntarily reported monthly for the entire year of 2006 do not need to also file an annual report.

Clerks must use the Clerk of Court Indigent Application Fee Reporting Form. Clerks may use either the original form or the revised form to report monthly. The revised form includes data for bindover/transfer cases and uncollectible write-offs.

15.Q. Is the Financial Disclosure Form being updated to reflect the new law?

- A. Yes A new Financial Disclosure Form/Affidavit of Indigency has been issued in conjunction with the implementation of the new fee.

16.Q. Can the fee be assessed at the end of each case instead of up-front?

- A. Unlike other costs and fines, the application fee is intended to be collected up-front, prior to or simultaneous with the commencement of representation for the indigent person. Assessing the fee at the end of the case negates the benefit of the up-front collection. The provision in the revised code regarding assessing the fee at the end of the case was done only as a way of dealing with those persons who did not pay the fee within the seven day initial period. It was not intended as the primary method of collection.

17.Q. When can the fee be waived?

- A. The court has the discretion to waive the fee any time it determines that the individual lacks the financial resources to pay the fee or if payment of the fee would result in an undue hardship on the individual. This can occur at the time of

assessment, while the case is pending, or after the case has concluded. R.C. 120.36(C) prohibits blanket waivers of all cases by a court. Cases may be waived on a case-by-case basis only.

18.Q. Is there a model or suggested motion for waiver of the fee?

A. *The Ohio Public Defender has provided model motions the clients and/or the client's attorneys may complete and file with the court requesting the fee be waived or reduced. One is a full motion, the other a modified and abbreviated motion similar in format to the attorney Motion, Entry and Certification form. It is up to the local court to determine which format is acceptable. Model motions for waiver of the \$25.00 fee are available on the OPD's web site.*

20.Q. How do clerks of courts handle and report cases that originate in Municipal or County Court and are bound over to Common Pleas (or higher) Court?

A. *The fee should be assessed in the court where the case is initially filed. For felonies in municipal or county court, the municipal court should assess the fee. If the case is bound over or transferred from one court to another, and the application fee has not been paid, the court that initially assessed the fee shall remove the assessment, and the court to which the case is transferred shall assess the fee.*

21.Q. The law says the County Auditor must remit 20 percent of the funds to the State Public Defender each month. What is the deadline/timetable for this?

A. *R.C. 120.36(D) indicates that no later than the last day of each month, county auditors shall remit 20 percent of the funds collected in the previous month to the State Public Defender. For example, by January 31, 2006, the county auditor should remit all funds collected in December 2005.*

22.Q. Who is the payee for the check/warrant from the County Auditor to the State Public Defender?

A. *The check or warrant from the County Auditor to the State Public Defender may be made out to either "Ohio Public Defender" or "Treasurer-State of Ohio." The important factor is*

that County Auditor send the check to the Office of the Ohio Public Defender, not the State Treasurer.

For convenience, and to avoid confusion, we recommend the payee on the check read "Ohio Public Defender." That way the payee matches up with where the check is being sent.

23.Q. When a child has been appointed a GAL/attorney, is the child assessed the application fee?

A. *If charged with unruly, delinquency or juvenile traffic offense, then yes. Do not charge again for the Guardian Ad Litem appointment. Also, do not assess an application fee for a child who is alleged to be or has been adjudicated abused, neglected, and/or dependent where the child's GAL is appointed as counsel. In an abuse/dependency/neglect case and the GAL is not an attorney but there is a need for an attorney to represent the child, do not assess the child an application fee for said attorney.*

24.Q. How are community control violations (formerly probation violations) handled?

A. *R.C. 120.36(A)(5)(a) outlines the provisions for assessing the application fee in a probation (community control) violation. If a person is charged with a probation violation, it should be considered a separate course of conduct, and therefore subject to assessment of the \$25.00 fee. However, persons committing PV's should not be charged double if the conduct that resulted in the PV also becomes a new or separate case. For example, if a person is violated for testing positive for drug use, but is not charged with a drug abuse offense, then they would be assessed a \$25.00 for the PV. If they are also charged with a drug abuse offense, they would be assessed a \$25.00 for the drug abuse case, but not the PV. Charging them for both would essentially make them pay double for the same action or course of conduct.*