

Office of the Ohio Public Defender

County Indigent Fee/Cost Recoupment Programs



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. Recoupment may be assessed by a judge whether or not the County has established a program as described below.

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, usually by the Court Clerk, amounts should be identified as such when forwarded to the County Auditor. The County Auditor 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 35 percent, the county must pay the Ohio Public Defender \$35.00 of the \$100.00 collected.

The government entity tracking and collecting payments may vary by county. What works best is that the collecting agent be the Court, in light of the application fee (which the clerk of court collects). The only prohibition is that funds cannot be paid directly from a client to private appointed counsel (OAC 120-1-05). When the court transfers recoupment or application fee funds to the County Auditor, amounts must be identified as to the source of the funds since the percent owed to the Ohio Public Defender differs.

There are several options for County 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 where gross income is above 187.5% but the individual qualifies for assigned counsel due to expenses or is a Juvenile. 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. No recoupment shall be assessed against an indigent defendant whose gross income is less than 125% of the Federal Poverty Guidelines.

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, 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, Esq., Reimbursement Administrator, 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. However, no recoupment shall be assessed against an individual whose gross income is less than 125% of the Federal Poverty level. Enforcement may not include jail.
4. Persons shall pay according to the following schedule, determined by the highest degree of offense charged: (example)

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

5. 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 and transfers.

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 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 (above 125 percent of the poverty threshold). In appropriate cases all counsel fees may be assessed unless it creates an undue burden.

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

