



**DETERMINING ELIGIBILITY
FOR APPOINTED COUNSEL
IN NEW YORK STATE**

**A Report from the
Public Defense Backup Center**



NEW YORK STATE DEFENDERS ASSOCIATION, INC.



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TO:

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The Honorable Judith S. Kaye
The Honorable G. Oliver Koppell
The Honorable H. Carl McCall

This report is submitted pursuant to NYSDA's contract with the State of New York to review, assess and analyze the state's public defense system and to make recommendations for improvements to the Governor, the Legislature, the Judiciary and other appropriate instrumentalities.

The report represents the first comprehensive examination of the processes used to determine financial eligibility for appointed counsel in New York's 62 counties. Unfortunately, the study reveals a pattern of constitutionally defective eligibility practices across the state which seriously undermines the fundamental state and federal right to appointed representation.

Almost 30 years have passed since the Legislature established New York's public defense system. Constitutionally defective eligibility practices are one aspect of many long-standing deficiencies in public defense representation in this state. As you review this report and consider its recommendations, please recognize that the hour is late and that reform of this state's public defense system is long overdue.

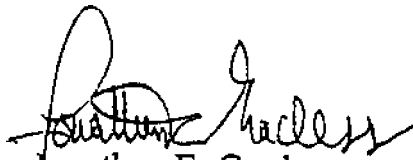

Jonathan E. Gradess
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I. INTRODUCTION

The responsibility of the judiciary to appoint counsel to all criminal defendants who are financially unable to hire a lawyer, is a principle of fundamental constitutional import.¹ The right to appointed representation is not, however, self-executing. Determination of financial eligibility for public defense representation is a necessary prerequisite to appointment by the court. While New York State has a long-standing tradition of scrupulously safeguarding the counsel rights of all those charged with crimes, the courts have been less than attentive to their role in ensuring the implementation of those rights. The constitutional guarantee of counsel depends upon the prompt and accurate determination of eligibility for appointed representation.

The integrity of the eligibility decision-making process is critically important to both the individual facing criminal charges and to the criminal justice system as a whole. Proper and reliable determinations of eligibility for assigned counsel ensure that the relatively scant public resources currently devoted to public defense services are expended appropriately.²

During the 15 years that the New York State Defenders Association (NYSDA) has studied the public defense system in New York State,³ it has learned that the procedures and standards employed for appointment of counsel: 1) vary widely from county to county; 2) are inconsistently applied even within the same jurisdiction; 3) often entail the illegal delegation of eligibility decision-making; 4) frequently employ standards so stringent they illegally disqualify eligible defendants from appointed representation; 5) fail to properly consider factors critical to an appropriate eligibility determination, and; 6) frequently consider, or rely exclusively on factors wholly irrelevant to an accurate assessment of eligibility.⁴

The integrity of the eligibility decision-making process is critically important to both the individual facing criminal charges and to the criminal justice system as a whole.

¹ *People v. Witek*, 15 N.Y.2d 392 (1965); *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963).

² Government officials and the media generally focus on the perceived problem of ineligible criminal defendants receiving "free" counsel. Concern over the possible abuse of the public fisc recently prompted an eligibility experiment in Queens County. The purpose of the experiment is to determine whether the implementation of eligibility guidelines will affect the number of defendants in Queens County receiving court-appointed counsel. NYSDA's research and work in the area of eligibility support the opposite conclusion—current eligibility practices have the effect of excluding legitimately eligible individuals, rather than accomplishing the desired goal of screening out defendants able to retain private counsel.

³ Under its contract with the State of New York, NYSDA is obligated to "review, assess and analyze the public defense system, identify problem areas and propose solutions in the form of specific recommendations to the Governor, the Legislature and the Judiciary and other appropriate instrumentalities."

⁴ In its 1989 *Annual Report*, the New York State Commission on Judicial Conduct echoed this concern:

The Commission has become aware of varying and often confusing practices around the state as to whose responsibility it is to determine the financial eligibility of a particular defendant for assigned counsel. There are also varying standards as to the eligibility requirements themselves. Because the guidelines are vague, the results may be arbitrary. Different officials of the same county often cite different standards.

New York State Commission on Judicial Conduct, *Annual Report*, 51 (1989).

In 1991, the problems associated with eligibility and assignment practices persisted, and were still the focus of concern for the Commission on Judicial Conduct, which again commented on them in its 1992 *Annual Report* [New York State Commission on Judicial Conduct, *Annual Report*, 16 (1992)].

In their zeal to contain the increasing costs of public defense services, many jurisdictions also attempt to illegally recover the cost of representation from defendants legitimately unable to afford counsel. Moreover, the complete lack of meaningful accountability for eligibility decision-making makes it difficult to collect the data necessary to assess the full extent to which counties fail to provide constitutionally required appointed counsel in criminal cases.

The following examination of the eligibility practices employed in counties throughout New York State is based on empirical data collected by NYSDA through a comprehensive, statewide survey, as well as information obtained while assisting public defense providers and county officials with eligibility-related issues.⁵ NYSDA's in-depth research and analysis of the disparate and frequently irrational eligibility standards and practices employed across the state highlight the critical need for meaningful reform of our public defense system. The empirical survey data confirm what our experience has long revealed—the inequitable, disparate and arbitrary methods used for determining eligibility for public representation in counties throughout the state critically undermine the right to counsel of all criminal defendants. The defective eligibility practices currently employed in New York fail to ensure that eligible defendants receive constitutionally mandated legal representation.

The goal of this report is to identify the grave deficiencies that characterize eligibility decision-making in New York State, and to outline a course of action that will both end these illegal practices and guarantee appointed representation to all individuals charged with crimes who are financially unable to retain counsel.

II. METHODOLOGY

In July 1993, a survey regarding issues related to eligibility for the appointment of counsel was sent to public defense providers in New York State (n=81), representing all 62 counties in the state. A copy of the survey can be found at Appendix at 242–246. In jurisdictions with more than one formal public defense provider, a survey was sent to each public defense office (public defender, legal aid society director or assigned counsel administrator) in the county. Approximately one month later, a follow-up survey was sent to those offices who had yet to respond. Those offices which failed to respond to the follow-up survey received telephone calls requesting the survey information. Ultimately, 73 percent (n=59) of the public defense providers responded either by mail or through a telephonic interview with NYSDA research staff. These respondents represent 89 percent (n=55) of the counties in New York State.

County Eligibility Profiles (Appendix at 66–241) were developed from the survey data and from any other information (e.g., written eligibility standards,

⁵ Examples of some of the work NYSDA has previously undertaken on this issue include: NYSDA, *Eligibility for Public Defense Representation: The High Risks of Being Unable to Afford Counsel in New York State*, (March 1986); Hall and Gradess, "Determining Client Eligibility for Appointed Counsel: A Strategy for Reform in New York State," *N.Y.U. Rev. L. and Soc. Change*, Vol. XIV, No. 1 (1986); and NYSDA, *Public Defense Services in Schenectady County: An Assessment of the Assigned Counsel Program* (March 1984).

eligibility forms, income guidelines) submitted in response to the survey. Each of the programs that responded to the survey was sent a copy of its Profile for verification.⁶ Eligibility Profiles were similarly completed for those counties that did not respond to the survey by using data previously collected by NYSDA through informal telephone surveys and a review of written documents pertaining to eligibility. Each of the programs that did not respond to the survey received their county's Profile developed from eligibility data on file at NYSDA's Public Defense Backup Center, together with another copy of the eligibility survey. Offices were asked to either complete the survey or verify the information contained in the Profile. Public defense providers were advised that if NYSDA did not receive a completed survey or modifications to the Profile, it would assume that the information in the Profile was current and accurate.

Thus, NYSDA's current data on eligibility represent 100 percent of the counties in New York State, thereby providing a comprehensive picture of the public defense eligibility practices, procedures and problems in the state. The data in the Profiles were used to compile the county eligibility charts which are located at Appendix at I-65.

III. THE CONSTITUTIONAL AND STATUTORY RIGHT TO APPOINTED COUNSEL

The right to counsel guaranteed to every American citizen accused of a crime is embodied in the Sixth Amendment to the United States Constitution, and made applicable to the states through the Fourteenth Amendment. An integral component of the right to counsel is the right to court-appointed counsel for those unable to hire an attorney. *Gideon v. Wainwright*, 372 U.S. 335 (1963); *Argersinger v. Hamlin*, 407 U.S. 25 (1972); *Scott v. Illinois*, 440 U.S. 367 (1979). The right to appointed counsel is also guaranteed under the New York State Constitution. N.Y. Const. art. I § 6.

New York's parallel statutory authority implementing the constitutional right to appointed counsel likewise emphasizes that it is financial inability to retain counsel and not "indigency" which governs the determination of eligibility for court-appointed representation. N.Y. County Law § 722 (McKinney 1991) ("financially unable to obtain counsel"); N.Y. Crim. Proc. Law §§ 170.10(3), (4), 180.10(3)(c), 210.15(2)(c) (McKinney 1993). This distinction is a critical one, since many people accused of crimes who are not "indigent," are nonetheless without sufficient means to retain private counsel.⁷

⁶ One office, the Albany County Public Defender, specifically declined to verify the information in its Profile, indicating that it was in the process of revising its eligibility guidelines. Thus, the reported eligibility data for that office may no longer be current as a result of the implementation of new guidelines.

⁷ Article 18-B of New York's County Law and 18 U.S.C. § 3006A (1989), its federal counterpart, as well as the legislative history of both statutes, specify that the proper standard to be employed in determining eligibility for appointed counsel is financial inability to afford counsel, not "indigency." N.Y. County Law Art. 18-B, Letter in Support, The Judicial Conference of the State of New York, Governor's Bill Jacket L. 1965, c. 878; Memorandum of the Attorney General, reprinted in *New York*

... many people accused of crimes who are not "indigent," are nonetheless without sufficient means to retain private counsel.

Thus, an appropriate eligibility inquiry requires an assessment of the individual's financial ability to obtain counsel. N.Y. County Law § 722 (McKinney 1991). This eligibility determination, which so directly affects access to legal representation, and is therefore of critical constitutional import, is, under current law, a responsibility expressly reserved to the judiciary. *See* N.Y. County Law § 722 (McKinney 1991); *Matter of Stream v. Beisheim*, 34 A.D.2d 329, 333 (2d Dept. 1970); *People v. Wheat*, 80 Misc. 2d 844 (Suffolk County Ct. 1975). The appointment of counsel is made "in the exercise of the trial court's inherent power and in the discharge of its constitutional and statutory duty to furnish counsel to every indigent defendant charged with a crime . . ." *Matter of Stream v. Beisheim*, 34 A.D.2d at 333 (2d Dept. 1970).

While the ministerial function of financial data collection may at times be delegated to an outside entity, the ultimate obligation to make eligibility determinations rests with the court. *Powell v. Alabama*, 287 U.S. 45, 72-73 (1932); *Matter of Stream v. Beisheim*, 34 A.D.2d at 333 (2d Dept. 1970); N.Y. Crim. Proc. Law §§ 170.10 (3)(c), (4)(c); 180.10 (3)(c), (4); 210.15 (2)(c), (3).

The necessity for prompt and accurate judicial determinations of eligibility for appointed counsel cannot be over-emphasized. It is beyond dispute that the Sixth and Fourteenth amendment right to counsel generally, and to court-appointed counsel for those unable to retain private counsel, attaches at arraignment. *Powell v. Alabama*, 287 U.S. at 57 (1932); *Kirby v. Illinois*, 406 U.S. 682, 688-89 (1972). This means that the defendant has the right to counsel, assigned or retained, during the arraignment as well as at all subsequent proceedings. *People v. Witenki*, 15 N.Y.2d 392, 396 (1965); *People v. Marincic*, 2 N.Y.2d 181, 183-84 (1957); *See also* N.Y. Crim. Proc. Law §§ 170.10 (3); 180.10 (3); 210.15 (2).

Effective representation of the accused, which includes the constitutional right to present a defense, compels the appointment of counsel at the earliest possible stage of the proceedings. Indeed, all professional standards for the provision of defense services recommend that counsel be provided as soon as feasible after custody begins, and in fact contemplate intervention of counsel even before the defendant's first appearance before a judicial officer or the filing of formal charges. *ABA Standards for Criminal Justice, Providing Defense Services*, 5-6.1 (1990); *National Advisory Commission [hereinafter NAC] on Criminal Justice Standards and Goals, Courts* 13.1 and Commentary (1973); *National Study Commission [hereinafter NSC] on Defense Services*, 1.2-1.4 (1976); *National Legal Aid*

State Legislative Annual, 1965, p. 32; Communication of President John F. Kennedy to House Speaker John W. McCormack, reprinted in 1964 U.S.C.C.A.N. 2993.

Consequently, the frequent use by the courts of the term "indigency" signifies either the erroneous application of an illegally stringent standard, or use of the term "indigency" to mean "legal" indigency, that is, inability to afford counsel, as opposed to pecuniary indigency or complete destitution. (*See e.g., Gideon v. Wainwright*, 372 U.S. 335, 340, 344 (1963) (interchangeable use of "indigent," "unable to employ counsel" and "too poor to hire a lawyer"); *Powell v. Alabama*, 287 U.S. 45, 71, 72 (1932) ("indigent" and "unable to employ counsel" used interchangeably); *Matter of Stream v. Beisheim*, 34 A.D.2d 329, 331, 333 (2d Dept. 1970) ("indigent" and "financially unable to retain counsel" used synonymously); (*People v. Berkowitz*, 97 Misc.2d 277, 279-80 (Sup. Ct. Kings County 1978); ("indigency" and "financial inability to pay" used interchangeably).

and Defender Association [hereinafter NLADA] *Standards for Defender Services*, II 2b, II 2e (1976); *NLADA Standards for the Administration of Assigned Counsel Systems*, 2.5 (1989).

From a practical standpoint, the constitutional right to early intervention of counsel would be meaningless if the court was not required, upon the defendant's first appearance before it, to inform the defendant of his right to assignment of counsel and to take affirmative steps to effectuate that right.⁸ Moreover, the court's continuing obligation to safeguard these rights is recognized as an integral component of the right to counsel. *People v. Witenski*, 15 N.Y.2d 392 (1965); *People v. Powenski*, 29 A.D.2d 629 (4th Dept. 1967).

IV. IMPROPER DELEGATION OF ELIGIBILITY DECISION-MAKING TO THIRD PARTIES

The constitutional and statutory obligation of the judiciary to insure the proper determination of eligibility for appointed counsel is thus beyond dispute. However, in a vast majority of jurisdictions throughout the state, the judiciary does not fulfill this mandate, and instead delegates the initial eligibility determination, in its entirety, to public defense providers. In 40 percent of the counties, the public defender, legal aid society, or assigned counsel program is solely responsible for determining eligibility (Appendix at 1-65). However, in some of these counties, the task of making eligibility assessments is delegated further to non-legal staff such as secretaries (e.g., Columbia and Genesee—Appendix at 1-2), investigators (e.g., Broome and Chautauqua—Appendix at 1), and typists (e.g., Cortland—Appendix at 1).

The judiciary is exclusively responsible for determining eligibility in only 34 percent of the counties. In another 21 percent of counties, the judiciary and the public defense provider share eligibility decision-making (Appendix at 1-65).

In three counties (five percent), the eligibility inquiry is delegated to an outside agency, which, in theory, collects financial data and makes recommendations to the court (Appendix at 3, 5). In Nassau County, the Defense Counsel Screening Bureau (DCSB), an agency created by the County Executive, and housed in the office of the Commissioner of Accounts, conducts all eligibility screening and

⁸ The New York Legislature, wisely recognizing the critical role of the judiciary in guaranteeing the right to early entry of assigned counsel, has provided a statutory mechanism to insure that the defendant's right to assigned counsel is scrupulously enforced. N.Y. Crim. Proc. Law § 170.10(3) provides, in relevant part, that:

The defendant has the right to the aid of counsel at the arraignment and at every subsequent stage of the action. If he appears upon such arraignment without counsel, he has the following rights:

(c) [to have counsel assigned by the court if he is financially unable to obtain the same . . . N.Y. Crim. Proc. Law § 170.10(3)(c) (McKinney 1993) (emphasis supplied).

Subdivision 4 (a) of § 170.10 further mandates that the court inform the defendant:

Of his rights as prescribed in subdivision three; and the court must not only accord him opportunity to exercise such rights but must itself take such affirmative action as is necessary to effectuate them. N.Y. Crim. Proc. Law § 170.10(4)(a) (McKinney 1993).

The plain meaning of the statute dictates that the court's obligation to inform the defendant of his right to assigned counsel and to do whatever is necessary to effectuate that right, arises when the defendant first appears to be arraigned, and continues until that judicial responsibility is fulfilled.

recommends to the court whether to appoint or deny counsel. In Queens County, the New York City Criminal Justice Agency (CJA), a nonprofit city agency, conducts eligibility screening in conjunction with the pre-trial release screening program.⁹ Finally, in Suffolk County, the "ROR Unit" of the probation department is responsible for eligibility decision-making.¹⁰

The practical danger inherent in all these delegation arrangements is that the courts will "rubber stamp" the decision made by the screening agency without making any independent assessment of the applicant's eligibility for appointed counsel. Indeed, the court's exclusive reliance on the recommendation of the screening bureau is virtually assured in Nassau County, where some judges routinely receive from DCSB only its single page "recommendation," without any of the underlying financial information on which its decision is based.¹¹

In many jurisdictions, often the only involvement by the judiciary in the eligibility determination process is to review the decision of the public defense provider if the defendant challenges an unfavorable eligibility determination (Appendix at 62-65). But even this role is often performed by a party other than the court. In at least eight counties where the public defense provider makes the initial eligibility decision, the review of that decision is conducted by the same office¹² (Appendix at 62-65). Therefore, in many counties, the courts cannot adequately perform their constitutionally mandated obligation to safeguard the counsel rights of criminal defendants, since their involvement in the eligibility determination process is minimal and quite often nonexistent.

V. LACK OF UNIFORM PRACTICES AND STANDARDS

Further confusing the eligibility determination process is the lack of uniform procedures and standards for insuring proper and consistent decision-making. Just as the entity who makes the eligibility decision varies from county to county, so too do the procedures followed for reaching the decision (Appendix at 1-6). In some counties, the court requires each applicant to fill out a form. In others, no written forms are used, and the eligibility decision is based solely on an in-court, verbal inquiry by the judge. In yet other counties, the court refers defendants to the public defense provider who either requires the completion of a written form, conducts eligibility interviews by phone, or delegates the task in its entirety to

⁹ As part of an experimental program initiated in April 1993, the CJA began screening Queens County defendants to determine eligibility for appointed counsel. Following a practice similar to the pre-trial release program, CJA provides the court with both the financial information obtained from each defendant-applicant, and CJA's recommendation regarding entitlement to appointment of counsel. The court's decision is based on this information.

¹⁰ The Suffolk County Legal Aid Society indicates that in a few cases it screens defendants directly.

¹¹ In *People v. Edward McKiernan*, No. 92-6072N (Sup. Ct. App. Term, April 28, 1993), a Nassau County case now pending before the New York Court of Appeals, the trial court improperly relied on the Defense Counsel Screening Bureau's bare recommendation to deny Mr. McKiernan appointed counsel, without making any independent judicial inquiry concerning his financial status.

¹² For example, in Putnam County, a defendant has 10 days to appeal an adverse eligibility determination. The review is conducted by members of the Legal Aid Society's Board of Directors (Appendix at 25).

office staff such as law students or paralegals. In some counties, such as Cayuga, the courts and the assigned counsel administrators alternatively make the determinations (Appendix at 1).

There are also no uniform guidelines for counties to follow while implementing the disparate procedures for making eligibility determinations. Consequently, the guidelines actually employed vary greatly from county to county. Several counties, such as Allegany, Cattaraugus and Chemung, have no written guidelines (Appendix at 1). Some have no guidelines at all, either informal or in writing, and make all eligibility determinations on an *ad hoc* basis, premised on unspecified criteria. Significantly, there are counties which characterize their own eligibility practices as "arbitrary" (Appendix at 1).

Even when fairly detailed guidelines do exist, there is frequently no indication as to the relative weight to be accorded the numerous factors considered in the process. Thus, there is a real danger that even when substantial information concerning financial status is gathered, the ultimate eligibility determination will be based only on a single factor, such as income, without sufficient consideration accorded to other highly relevant criteria.

... there are counties which characterize their own eligibility practices as "arbitrary."

VI. THE ELIGIBILITY DETERMINATION: THE APPROPRIATE INQUIRY

Despite the clear legal standard for appointment of counsel, no uniform guidelines for assessing eligibility for appointed counsel exist in New York State. Professional standards for the provision of defense services do, however, delineate criteria that should be applied in making every eligibility determination. These standards all concur that eligibility determinations must be made on a case-by-case basis, and therefore must not be premised solely on any single factor. The standards uniformly call for assessment of each case on its individual merits, with substantial consideration given to the assets and debts of the defendant, the seriousness of the charge, the complexity of the case, and the cost of privately retained counsel in the jurisdiction where the representation will occur. See *ABA Standards for Criminal Justice, Providing Defense Services* 5-7.1 (Commentary) (1990); *NAC on Criminal Justice Standard and Goals, Courts* 13.2 (1973); *NSC on Defense Services, 1.5* (1976); *NLADA Standards for the Administration of Assigned Counsel Systems, 2.3* (Commentary) (1989).

VII. THE STANDARD: "UNABLE TO AFFORD COUNSEL," NOT "INDIGENCY"

The eligibility determination must be premised on an assessment of whether or not the accused is financially unable to afford counsel, not on whether he is "indigent." See N.Y. County Law § 722 (McKinney 1991); 18 U.S.C. § 3006A (1989). As mentioned previously, many defendants who do not fall at or below the poverty level are nevertheless without sufficient financial resources to retain private counsel. See *ABA Standards for the Criminal Justice, Providing Defense Services* 5-7.1 (Commentary) (1990).

Accordingly, use of social service, public assistance, or any other government benefit standards as income cut-offs for determining eligibility in criminal cases is wholly inappropriate, since such standards assess only whether the applicant is "indigent" or "poor"—a more stringent standard than that which qualifies a criminal defendant for appointed counsel. Income guidelines may at most be considered as one factor in the eligibility analysis, and may never be the sole determining factor. Moreover, recipients of public assistance should be deemed presumptively eligible for appointed counsel. See *ABA Standards for Criminal Justice, Providing Defense Services 5-7.1 (Commentary) (1990)*.¹³

Despite the clear mandate of law, many jurisdictions in New York State nonetheless transmute the standard of "inability to afford counsel" into one of absolute poverty. Many counties employ the inappropriately stringent "indigency" standard by premising eligibility decisions on public assistance, social service,¹⁴ or other government benefit standards, thus excluding legitimately eligible defendants from public defense services.

Moreover, the income guidelines utilized in seventeen counties are so low that defendants must earn significantly less than the current federal poverty level (\$6,970 per year) to be eligible for appointed representation. For example, in Otsego County, single defendants earning more than \$75.00 per week, or 56 percent of the federal poverty guideline, are not eligible for appointed counsel. In St. Lawrence County, a single defendant earning more than \$91.00 per week, or 68 percent of the federal poverty level, cannot receive public defense services. The income guidelines used in the remaining 15 counties range between 75 and 97 percent of the federal poverty guideline (Appendix at 7-14).

Despite the clear mandate of law, many jurisdictions in New York State nonetheless transmute the standard of "inability to afford counsel" into one of absolute poverty.

VIII. DIVERGENT AND INCONSISTENT INCOME GUIDELINES

a. Diverse Origins of Income Guidelines

At least 75 percent of New York state counties have developed income guidelines which are used in determining eligibility for appointed counsel. The diverse origins of these guidelines highlight the chaotic disarray which characterizes New York State's public defense system (Appendix at 7-14).

For example, some counties acknowledge that they do not know the origin of their income guidelines or when they were established. Others report that their guidelines are based simply on local practice or past experience.

Otsego County employs income guidelines that were promulgated by the Appellate Division, Third Department, 17 years ago, and have not been updated since. These guidelines were initially created by the then-director of administration for the Third Department, in an effort to assist the judiciary and public defense providers in the appointment of counsel. In 1977, the income guidelines were:

¹³ Some public defense providers report that defendants receiving public assistance benefits are considered presumptively entitled to appointed counsel.

¹⁴ Chenango, Columbia and Herkimer counties indicate that their income guidelines are based on social services standards (Appendix at 7. 9).

\$75.00 net income per week for an individual; \$100.00 net income per week for an individual with one dependent; and \$15.00 net income per week for each additional dependent. Although the cost of living, as measured by the consumer price index, has risen more than 121 percent¹⁵ in the fifteen years since their creation, these same monetary guidelines are still used in Otsego county.

The most prevalent source of income guidelines used by counties in New York State are the Legal Services Corporation (LSC) poverty guidelines¹⁶ which were established to determine eligibility for free legal assistance in civil cases. The LSC guidelines are updated annually according to the official poverty threshold as defined by the United States Department of Health and Human Services. Generally, the LSC's maximum income level is 125 percent of the official poverty level. This level can be exceeded if the defendant's unique financial situation warrants exceptional treatment.

In 1980, a Legal Aid Society in an upstate urban jurisdiction using LSC guidelines for its civil representation carried over the guidelines to its criminal representation. Thereafter, the LSC guidelines were adopted by several other jurisdictions in the state. Currently, at least 21 jurisdictions use income guidelines that can be traced to the LSC standard. However, many of these counties have failed to adopt the LSC procedures requiring civil legal service programs to conduct annual reviews of their eligibility income guidelines and make appropriate modifications based on changes in the poverty threshold.

Despite the annual updating of the LSC guidelines, only 11 of the 21 jurisdictions using these civil standards for determining eligibility in criminal cases are using the current (1993) LSC guidelines.¹⁷ The remaining 10 counties employ outdated LSC income guidelines from various years past: e.g., St. Lawrence—1980, Genesee—1985, Orleans—1986, Jefferson—1989, and Clinton and Livingston—1991 (Appendix at 7-14).¹⁸

The anomalous consequence of the widespread use of grossly outdated LSC guidelines is that in many counties a person eligible for counsel free of charge in a civil case would not be eligible for constitutionally required representation if charged with a crime in the same jurisdiction.

Use of outdated and inappropriate guidelines that determine "indigency" rather than the ability to afford counsel, inevitably results in rejection of applicants who are plainly eligible for appointed counsel.

¹⁵ New York State Department of Economic Development, Bureau of Policy and Research (May, 1994).

¹⁶ Poverty guidelines of the Legal Services Corporation are set forth in 45 C.F.R. Part 1611, et. seq.

¹⁷ The LSC income guidelines are generally updated in March or April of each year, but as of the publication of this report the 1994 figures have not yet been published.

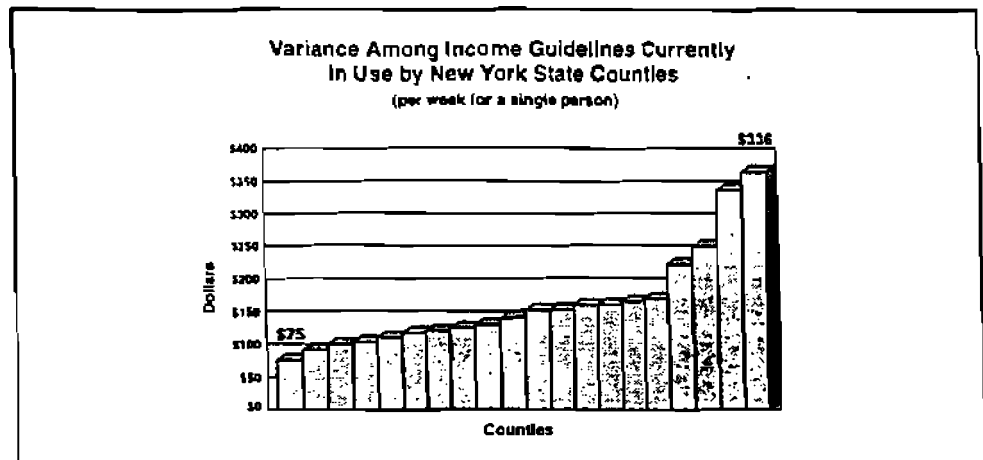
¹⁸ Further illustrating the disorganized state of the eligibility process in New York, Warren County reported that its guidelines were based on a standard promulgated by the National Institute of Justice (NIJ), which had not been updated in several years. Upon closer examination, NYSDA learned that the guidelines actually employed in Warren County were the LSC guidelines from 1986, which had been published in a 1986 NIJ report. Warren County is now using the current (1993) LSC guideline.

b. Variance Among Income Guidelines

The monetary thresholds comprising the income guidelines are as diverse as their sources. There are counties, such as Otsego, currently using income guidelines as low as \$75.00 per week for a single individual while Queens County uses a guideline of \$336.00 per week for a single person accused of a felony (Appendix at 7-14). This amounts to a differential of \$261.00 per week. Even substantial geographical differences in cost of private representation cannot justify use of such widely divergent criteria.

The lack of any consistency and uniformity in the disparate income guidelines used throughout New York State creates irrational and anomalous results. For example, a criminal defendant with an income of \$135.00 per week would be eligible for appointed counsel in approximately 20 counties, but would be denied counsel in 13 other jurisdictions within the same state.¹⁹

... a criminal defendant with an income of \$135.00 per week would be eligible for appointed counsel in approximately 20 counties, but would be denied counsel in 13 other jurisdictions within the same state.



IX. CONSIDERATION OF INAPPROPRIATE FACTORS

a. Non-Liquid Assets

In examining the net assets of the defendant, only available liquid assets should be considered. Non-liquid assets, such as a home used as a primary residence, an automobile necessary to sustain employment, and reasonable household furnishings, should be excluded from the net asset inquiry. *NSC on Defense Services*, 1.5(a) (1976). However, as can be seen in the Appendix at 18-29, nearly all jurisdictions that use an eligibility form include an "Assets" section to collect information on the value of a defendant's home and automobile.

The consideration of these assets can result in undue hardship for defendants who may lose their homes, or their jobs if they are unable to get to work without an automobile. Also, the potentially protracted delay associated with liquidating assets such as a house or car can in turn cause lengthy delays in securing legal repre-

¹⁹ It cannot be determined whether a person earning this amount would be eligible for appointed counsel in the remaining counties, since they either do not use income guidelines or provided insufficient data to make this assessment.

sentation, a result which seriously undermines the defendant's constitutional right to prompt appointment of counsel, as well as the right to present a defense. See *ABA Standards for Criminal Justice, Providing Defense Services* 5-6.1, 5-7.1, (Commentary) (1990).

b. Ability to Post Bail

Professional Standards also proscribe denial of appointed counsel premised on the ability of the defendant, or of friends and family, to post bail. See *ABA Standards for Criminal Justice, Providing Defense Services* 5-7.1 and Commentary (1990); *NAC on Criminal Justice Standards and Goals, Courts* 13.2 (1) (1973); *NLADA Standards for Defender Services*, II, 1b (1976); *NSC on Defense Services*, 1.5 (a) (1976); *NLADA Standards for the Administration of Assigned Counsel Systems*, 2.3 (Commentary) (1989). This illegal practice forces the defendant to choose between two constitutional rights—the right to pretrial liberty and the right to appointed counsel. *ABA Standards For Criminal Justice, Providing Defense Services* 5-7.1 (Commentary).

Moreover, since the constitutional guarantee of counsel is a personal right, the ability of the defendant's friends or relatives to muster sufficient resources to post bail should not disqualify him or her from eligibility for appointed counsel. See *Hardy v. United States*, 375 U.S. 277, 289 n.7 (1964); *Fullan v. Commissioner of Corrections of State of N.Y.*, 891 F.2d 1007, 1011 (2d Cir. 1989).

Despite the unconstitutionality of forcing a defendant to choose between the right to court-appointed counsel and the right to pretrial liberty (see *ABA Standards for Criminal Justice, Providing Defense Services* 5-7.1 [Commentary] [1990]); many jurisdictions consider bail posted by or for a defendant as an asset (e.g., Chautauqua, Cortland, Dutchess, Fulton, Monroe and Nassau), which may often result in denial of appointed counsel (Appendix at 30-33). This practice also violates the personal nature of the right to counsel.

Some courts openly acknowledge that they set high bail, and then inform defendants that if they make bail, they will not be eligible for appointed counsel. New York State Commission on Judicial Conduct, *Annual Report* 51-52 (1989).

Notably, only four counties indicate that they consider bail in a manner favorable to the defendant—that is, inability to post bail as presumptive eligibility for appointment of counsel (i.e., Madison, Oneida, Suffolk, and Wayne) (Appendix at 30-33).

c. Parental Assets of Minor Defendants

Another factor which implicates the defendant's personal right to counsel, and must therefore not be considered in the eligibility determination, is the parental income of minors charged with crimes. The personal nature of the right to court-appointed counsel is equally applicable to minor defendants as to their adult counterparts. See N.Y. Penal Law § 30.00 (McKinney 1987); N.Y. Crim. Proc. Law §§ 170.10, 180.10, 210.15 (McKinney 1993). Conditioning appointment of counsel to minors on the financial resources of parents directly contravenes the personal nature of the right, and consequently is condemned by professional standards

... the ability of the defendant's friends or relatives to muster sufficient resources to post bail should not disqualify him or her from eligibility for appointed counsel.

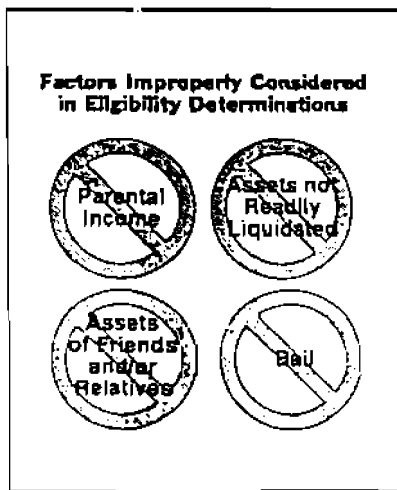
governing the provision of defense services. *ABA Standards for Criminal Justice, Providing Defense Services* 5-7.1 (1990); *NLADA Standards for Defender Services* II 1b (1976); *NAC on Criminal Justice Standards and Goals, Courts* 13.2(1) (1973).

Premising a child's eligibility for court-appointed counsel on parental assets opens the door to a host of unconstitutional abuses. Delays in appointment of counsel, occasioned by efforts to force parental cooperation, deprive minors of early entry of counsel, the legal right to prompt investigation of the charges, the ability to obtain pretrial release, and the guarantee of a speedy trial. See *ABA Standards for Criminal Justice, Providing Defense Services* 5-6.1 and Commentary (1990).

Moreover, the coerced disclosure of criminal charges to parents, a necessary prerequisite of such eligibility inquiries, implicates several important privacy interests of minor defendants. In some cases, minors are emancipated. Others have interests adverse to their parents, or may wish to avoid familial or personal shame. No law of this state condones such institutionalized and egregious interference with the privacy rights of persons entitled to appointed counsel.

In addition, the legal obligation of parents to supply their minor children with "necessaries" cannot be used to justify an unconstitutional practice which undermines the child's right to counsel.²⁰

Despite the personal nature of the constitutional right to counsel, at least 93 percent of the counties in New York State improperly consider the financial resources of a minor defendant's parents in assessing the child's eligibility for appointed counsel (Appendix at 34-42). This illegal practice has been highlighted by the New York State Commission on Judicial Conduct (*1989 Annual Report* at 52).²¹ These practices can result in unconscionable delays in appointment of



²⁰ Historically, the responsibility of parents to provide unemancipated children with the essentials of life, such as food, clothing, and medical care became recognized as a legally cognizable claim aimed at ensuring the physical and emotional well-being of children. See F.C.A. § 413; D.R.L. § 32.

The interpretation of "necessaries" to encompass legal fees arose in the context of civil cases, often where the issue in litigation was the child's right to support, and the party being sued was one or both parents. See *Mathews v. Mathews*, 30 Misc. 2d 681 (Sup. Ct. Nassau Co. 1961); *Fanelli v. Barclay*, 100 Misc. 2d 471 (Dist. Ct. Nassau Co. 1979). In these cases, the child's ability to enforce her support rights against her parents in court depended on the assurance that counsel representing her interests would be compensated.

Meager and unpersuasive attempts to apply the civil concept of "necessaries" to criminal cases are erroneous and unconstitutional. These poorly reasoned decisions employ the very concept intended to protect and benefit children in the civil arena, to deprive children of their constitutional rights in the criminal forum. See e.g., N.Y.S. App. Gen'l. Inf. Op. 44 (1989) (misplaced reliance on flawed reasoning of a Family Court decision, *Matter of Cheri H.*, 121 Misc. 2d 973 [Family Ct. Bronx Co. 1983] holding that parental assets can be considered to determine minor eligibility for appointed counsel in Family Court juvenile delinquency cases).

Such a result is neither supported by logic, nor is it constitutionally permissible. Oddly, the examination of parental resources in determining eligibility for appointed counsel in the context of a criminal case actually harms the child, turning the traditional concept of "necessaries" on its head.

²¹ Another method employed in more than 25 percent of New York State counties to compel parents to pay for the cost of counsel appointed to represent their minor children, is to seek recovery of the fee from the parents (Appendix at 34-42). This practice is unauthorized under County Law § 722-d, since the court's jurisdiction is only over the child and does not extend to her parents. See *People v. Clemson*, 149 Misc. 2d 868 (Newark Village Ct., Wayne Co. 1991).

counsel to minors, who may remain incarcerated without benefit of counsel to advocate for pretrial release, reduced bail or dismissal of unfounded charges. See *ABA Standards for Criminal Justice, Providing Defense Services 5-6.1* (Commentary) (1990).

d. Defendants Charged Solely with Violations

A pervasive and persistent abuse documented by the Commission on Judicial Conduct is the routine failure of many courts to appoint counsel to defendants charged solely with violations. New York State Commission on Judicial Conduct, *Annual Report 15-16* (1992). This problem is widespread throughout the state, despite the clear mandate of New York law that all defendants, including those charged with violations, are entitled to appointed counsel if they are unable to hire an attorney. N.Y. Crim. Proc. Law § 170.10 (3) (McKinney 1993).

Judges have candidly revealed that they do not assign counsel in violation cases because, although required to do so by law, their counties do not make counsel available in such cases. New York State Commission on Judicial Conduct, *Annual Report 16* (1992). There also appears to be widespread ignorance concerning entitlement to counsel in these cases.²²

The uniform, decade-long denial of counsel in violation cases in Allegany County illustrates the severity of the under-representation problem throughout the state. In 1990, NYSDA conducted a study of appointment practices for violation cases in Allegany County. An extensive review of local court records, sheriff department records, and records maintained by OCA, the state comptroller and other government entities, revealed that during the preceding ten years, unemployed, impoverished defendants had been routinely jailed without counsel. See Kane and Chermak, "An Analysis of Violation Data in Allegany County 1980-1990" (NYSDA 1990).

X. FAILURE TO CONSIDER APPROPRIATE FACTORS

Just as many counties base eligibility determinations on irrelevant or inappropriate factors, many likewise fail to consider factors highly relevant to the eligibility assessment. For example, although directly related to the cost of counsel, and therefore a defendant's ability to retain an attorney, few counties report that they take into account the nature and seriousness of the charge or the complexity of the particular case in making eligibility determinations (Appendix at 18-29).

Moreover, the eligibility forms used in at least six counties (Cattaraugus, Livingston, Queens, St. Lawrence, Schenectady and Suffolk) solicit virtually no

Moreover, numerous legal obstacles prohibit cost recovery from parents, including the dictates of minimal due process, possible exemptions from responsibility where the parent is the complainant, and the possible liability of non-custodial parents.

²² One city court judge told the Commission on Judicial Conduct that, although he had done a substantial amount of assigned counsel work before taking the bench, he was unaware that defendants charged with violations were entitled to assigned counsel. New York State Commission on Judicial Conduct, *Annual Report 17* (1992).

data concerning the defendant's debts and expenses²³—information obviously critical to an accurate assessment of financial status.

Another factor integral to an appropriate eligibility determination, but inadequately addressed in most counties in New York State, is the cost of private representation in the relevant jurisdiction. While a handful of counties report that the cost of private representation is a relevant factor in the eligibility determination, to our knowledge, only Tompkins and Otsego Counties have undertaken a formal study to assess the cost of private representation for a variety of different criminal charges.²⁴ The cost associated with representing a defendant on a particular charge should be a component of all eligibility inquiries.

XI. INAPPROPRIATE RELIANCE ON A SINGLE FACTOR SUCH AS INCOME

As noted previously, professional standards governing the provision of defense services all concur that eligibility determinations must be made on a case-by-case basis, and therefore must not be premised solely on any single factor. The standards uniformly call for assessment of each case on its individual merits, with substantial consideration given to the assets and debts of the defendant, the seriousness of the charge, the complexity of the case, and the cost of privately retained counsel in the jurisdiction where the representation will occur.

However, courts and public defense providers, faced by time and resource constraints and a lack of essential data, are frequently forced to forego a case-by-case analysis in favor of a quick assessment based predominately on the defendant's income. Thus, while income should be used as a starting point for a financial inquiry, all too often a defendant's income is afforded disproportionate consideration in the eligibility determination.²⁵

XII. VERIFICATION OF FINANCIAL STATUS MAY UNDERMINE TIMELY APPOINTMENT OF COUNSEL

Procedures for verifying financial information provided by defendants seeking appointed counsel can result in extended delay in appointment and

²³ The eligibility forms used in Cattaraugus and St. Lawrence Counties solicit no data concerning debts and expenses. The eligibility form used in Queens County only requests information on mortgage or rent payments. The eligibility forms used in Livingston and Schenectady Counties only require information on the amount of child support payments, while Suffolk County's form only inquires about the defendant's rent, mortgage and car payments (Appendix at 18–24).

²⁴ Four other counties utilize this factor only when a defendant has already been denied appointed counsel and seeks review of that decision. These counties require the defendant to contact three private attorneys within the jurisdiction and determine how much each would charge to represent him (e.g., Cortland, Dutchess, Sullivan and Wyoming) (Appendix at 62, 65).

²⁵ As can be seen in Appendix at 15–17, most counties, when specifically asked whether income guidelines are the sole determinant of the eligibility assessment, responded negatively. However, while most counties collect a variety of financial information on their eligibility applications, no county has disclosed a method used for weighing the financial data when determining eligibility. Given the absence of any method or formula for assessing the data, and based on NYSDA's extensive work in the area of eligibility, it appears that those determining eligibility frequently accord disproportionate weight to a defendant's income or employment status.

denial of appointment to defendants ultimately determined to be eligible. The desire to verify financial data should never interfere with the timely appointment of counsel.²⁶

A national study on eligibility²⁷ conducted in 1986 concluded that verification of all financial information in each application for appointed counsel wastes scarce resources and causes unnecessary delay in the proceedings. The study recommended that eligibility information be verified only when financial data is missing or when there are legitimate grounds to suspect it is inaccurate.

XIII. ILLEGAL COST RECOVERY

In addition to employing unduly stringent income guidelines to contain the cost of providing defense services, many jurisdictions have also apparently adopted unauthorized and illegal cost recovery procedures to further limit the expense associated with public defense representation (Appendix at 43–52).

Two methods currently used in New York State to recover all or part of the cost of representation from criminal defendants are partial payment, a practice narrowly circumscribed by statute, and recoupment, unauthorized under New York State law.²⁸

Partial payment—requiring “partially” eligible defendants to contribute to the cost of their representation before disposition of the case—is a practice codified in County Law § 722-d, but intended to be of very limited scope.

The plain language of the statute indicates that it is within the sole discretion of defense counsel whether to disclose to the court changes in a client’s financial ability to afford counsel. Case law interpreting 722-d likewise provides that a court order to terminate an assignment or to require partial payment can only be triggered by the report of defense counsel. *Matter of Legal Aid Society v. Samenga*, 39 A.D.2d 912 (2d Dept. 1972).

The statute further provides that only the court is permitted to terminate an assignment or direct partial payment. Significantly, the court’s obligation in this regard, like defense counsel’s, is purely discretionary and guided by the “interests of justice” (N.Y. County Law § 722-d [McKinney 1991]).

Since the intended application of 722-d is thus quite narrow, creation and implementation of routine, administrative partial payment plans are unauthorized under New York law. Such illegal fee collection schemes tend to impose stricter eligibility standards than are legally permissible. That is, defendants with minimal

²⁶ In *People v. Edward McKiernan*, No. 92-6072N (Sup. Ct. App. Term, April 28, 1993), denial of appointed counsel was premised not on Mr. McKiernan’s financial ineligibility, but rather on his purported failure to provide verification of the financial information he supplied to the Defense Counsel Screening Bureau. *Supra* at p. 6, n. 11.

²⁷ National Institute of Justice, *Containing the Costs of Indigent Defense Programs: Eligibility Screening and Cost Recovery Procedures* (September 1986).

²⁸ While the eligibility survey conducted by NYSDA carefully distinguished between the concepts of partial payment and recoupment, the responses indicate that some public defense providers treat the two concepts as synonymous (Appendix at 245–246).

financial resources, who would otherwise be eligible for appointed counsel without charge, may nonetheless be required to pay for a portion of their representation.²⁹

Moreover, there is substantial doubt that partial payment procedures are an effective means of containing the cost of public defense representation. There is evidence that the amount that can be collected under partial payment programs is negligible. When the administrative cost of collection is taken into account, there is considerable doubt that such programs are cost effective. *See ABA Standards for Criminal Justice, Providing Defense Services 5-6.2 and Commentary (1990); NLADA Standards for the Administration of Assigned Counsel Systems, 2.4 (1989).*

A particularly egregious misapplication of the limited authority conferred by County Law § 722-d occurs in Nassau County, where defendants determined to be partially eligible for appointed counsel are required to sign partial fee agreements stating that they will pay a designated amount directly to their appointed attorney (Appendix at 45). Attorneys are encouraged to aggressively attempt to collect their fees from these clients (Appendix at 45). Active involvement by appointed counsel in collection of fees from clients is problematic since it may interfere with the integrity of the attorney-client relationship and implicitly encourages assigned counsel to give preference to clients who pay their fees. *ABA Standards For Criminal Justice, Providing Defense Services, 5-7.2 (Commentary) (1990).* *See* N.Y. County Law § 722-d; N.Y. Judiciary Law § 35 (2).

Recoupment involves compelling defendants who are fully eligible for appointed counsel to reimburse the county for the cost of their representation after the case is concluded. This practice may require an eligible defendant, who acquires some meager financial resources after the disposition of his case, to make payments long after the representation is over. Recoupment schemes, which are wholly unauthorized under New York law (*see* N.Y.S. Atty Gen'l Inf. Op. 78 [1985]), are condemned as improper since they may discourage defendants from exercising their right to counsel, interfere with defendants' rehabilitation, and hinder defendants' efforts to become financially independent. *See ABA Standards for Criminal Justice, Providing Defense Services 5-7.2 (Commentary) (1990); NLADA Standards for the Administration of Assigned Counsel Systems, 2.3 and Commentary (1989).* Although there is neither statutory nor decisional authority for recoupment plans, many counties indicate that they nonetheless employ them (Appendix at 49-52).

Most jurisdictions that employ recovery procedures seeking partial payment or recoupment initially require the public defense provider to attempt to collect the fee directly from the client. Clients are generally required to submit payment either

²⁹ Moreover, although 722-d contemplates partial payment only after the eligibility determination and appointment of counsel have already been made, the concept of partial payment is frequently employed as a factor in the eligibility determination itself. Indeed, nearly half the jurisdictions in New York State have a partial payment provision. Clearly, some of these counties improperly employ partial payment schemes as part of their eligibility determinations (Appendix at 43-48).

Many counties also erroneously employ the concepts of partial payment and recoupment interchangeably (Appendix at 43-52), issuing an order (mistakenly invoking the authority of 722-d) requiring the defendant to make payments for all or part of the representation either directly to the county or to the assigned attorney. *Id.*

... there is substantial doubt that partial payment procedures are an effective means of containing the cost of public defense representation.

to the county treasurer's office, or to the public defense office, which then forwards it to the county treasurer (Appendix at 43-52).

In some counties, the collection process ends there, whether or not the client has made payment. In other counties, if the client fails to pay, the matter is turned over to the county attorney for collection. At least two counties report that the county attorney may commence a lawsuit in order to recover the money (Appendix at 43-52).

Most counties do not aggressively seek cost recovery because they recognize that such practices are simply not cost-effective. The amount of money collected from low-income people is generally far surpassed by the resources required to enforce collection.³⁰ The data reveal that the majority of jurisdictions who report having partial payment and/or recoupment provisions, in fact recover no money. Of those that report actually collecting fees from clients, the median amount collected is \$500 (Appendix at 43-52).

XIV. CONFIDENTIALITY OF FINANCIAL INFORMATION IS NOT ADEQUATELY SAFEGUARDED

Although information disclosed by defendants during the eligibility assessment process is frequently protected by the attorney-client privilege, the survey revealed that the majority of jurisdictions in New York do not safeguard the confidentiality of this information. In most counties in New York State, the forms used to elicit financial information from defendants seeking appointed counsel do not include a statement that the information contained therein is confidential (Appendix at 53-55). Only one county uses a form containing such a confidentiality statement (Appendix at 53). The forms used in five counties explicitly indicate that the information contained in the form is not confidential (Appendix at 53-55). In other counties where there is no express statement regarding the confidentiality issue, routine practices, such as providing the District Attorney with a copy of each defendant's application, clearly demonstrate that the information is not treated as confidential (e.g., Queens County).

The effect of these *ad hoc* policies, at least in counties where the public defense provider makes the eligibility assessment, is to foster routine violations of the attorney-client privilege. It is well-settled that "when the eligibility inquiry and determination are made by the defender, assigned counsel or contractor, the attorney-client privilege protects the information disclosed to the lawyer." *ABA Standards for Criminal Justice, Providing Defense Services 5-7.3 and Commentary* (1991); see *Matter of Klein*, NYLJ 5/15/89, p. 35, col. 1 (Putnam County Ct.)

³⁰The Onondaga County Bar Association Assigned Counsel Program, for example, reported that in previous years the cost of collecting monies from partial payments was four to five times the amount of money actually collected. During the past year, the county has required the assigned counsel program to implement enhanced collection procedures. While these enhanced procedures have increased the amount of monies collected, they have also significantly increased the cost of collection. In fact, the procedures now used for collecting partial payments cost Onondaga County as much as the amount of money recovered.

("information secured by the Legal Aid Society from their clients or prospective clients in connection with determining eligibility is protected by the attorney-client privilege unless that privilege is waived by the client. Section C.P.L.R. 4503").

The attorney-client privilege "exists to ensure that one seeking legal advice will be able to confide fully and freely in his attorney, secure in the knowledge that his confidences will not later be exposed to public view to his embarrassment or legal detriment." *Matter of Priest v. Hennessy*, 51 N.Y.2d 62, 67-68 (1980). To safeguard the integrity of this legally protected relationship, all information provided by prospective clients to public defense providers for the purpose of eligibility determinations must be considered confidential.

The attorney-client relationship is further undermined by the requirement in virtually every county in New York State that the defendant sign an affidavit attesting to the truthfulness of the information contained in the eligibility form (Appendix at 56-58). This practice places public defense providers in the legally and ethically untenable position of participating in the prosecution of their own clients for perjury. The prospect of such scenarios is more than a hypothetical possibility. District Attorneys in several jurisdictions (e.g., Jefferson, Tompkins, Schenectady) have attempted to, or succeeded in, subpoenaing eligibility applications from public defense offices.

At minimum, all information disclosed by a defendant to a public defense provider for the purpose of determining eligibility for appointed counsel should be treated as confidential.

XV. WIDE AND UNEXPLAINED VARIATIONS IN RATES OF ADVERSE ELIGIBILITY DETERMINATIONS

As can be seen in the Appendix at 59-61, the percentage of defendants denied appointed counsel varies widely from county to county within New York State. For example, Hamilton County reports that no defendant applying for appointed counsel is denied, while Nassau County reports that 35 percent of applicants are deemed ineligible annually.

The data also reveal wide disparities in rejection rates even within the same county. For example, the Southern Franklin County Public Defender reports that five percent of defendants applying for appointed counsel are found ineligible annually. The Northern Franklin County Public Defender on the other hand, reports an annual rejection rate of 30 percent (Appendix at 59). The variance in rejection rates may be explained, in part, by the use of differing eligibility income guidelines (see, *supra*, p. 10).

In Erie County, the Legal Aid Bureau of Buffalo indicates that each year less than one percent of defendants applying for its services are determined ineligible, while the assigned counsel program reports a denial rate of 15-20 percent annually (Appendix at 59).

At a minimum, these figures highlight the necessity for a record of all eligibility determinations in order to ensure that there is a proper basis for denying the right to appointed counsel. To assure that eligibility decision-making is fair, consistent and accurate, collection of data concerning all appointments and denials

of appointed counsel should be mandated. All adverse eligibility decisions should be in writing, stating the reason for denial. Significantly, approximately 33 percent of the jurisdictions in the NYSDA study acknowledged that they were unable to provide any data on the frequency of denials of appointed counsel in their respective counties. Although 66 percent of the counties provided data on the rate of denying appointed counsel, Washington County alone indicated that reasons for denial are routinely memorialized in any fashion.

XVI. LACK OF REVIEW PROCESS FOR ADVERSE ELIGIBILITY DETERMINATIONS

Notably absent in almost every jurisdiction is the availability of a formal process of review for those defendants deemed ineligible for appointed counsel. Review procedures that do exist are informal, *ad hoc* practices, with virtually no assurance of consistent and equitable application. Examples of the disparate, informal practices currently used in New York counties include: allowing defendants to ask the judge to review the adverse determination; requiring the defendant to consult with three private attorneys regarding cost of representation and allowing reconsideration of eligibility applications only if private counsel is not retained; authorizing administrative and judicial challenges by the public defense provider; review by the chief defender where the court makes the eligibility determination; and submission of additional financial documentation to support the application for appointed counsel (Appendix at 62–65).

In at least eight jurisdictions, the public defense provider makes the initial eligibility determination and then reviews his own decision should a defendant complain (Appendix at 62–65).

Not a single jurisdiction in New York State provides the formal appellate review process required by professional standards for the provision of defense services. When a party other than the court makes the eligibility determination, the judiciary should review all adverse decisions. *ABA Standards for Criminal Justice, Providing Defense Services*, 5–7.3 (1991); *NSC on Defense Services*, 1.6 (1976). Some standards go even further and require that where a decision of ineligibility is confirmed by the court, the defendant has the right to appellate review of that determination:

A decision of ineligibility which is affirmed by a judge should be reviewed by an expedited interlocutory appeal. The person should be informed of this right to appeal and if he desires to exercise it, the clerk of the court should perfect the appeal. The record on appeal should include all evidence presented to the court, on the issue of eligibility and the judge's findings of fact and conclusions of law denying eligibility.

National Study Commission on Defense Services, 1.6 (1976)

Provision of an appellate review process conducted by the judiciary is consistent with the inherent responsibility of the courts to insure proper appointment of counsel.

XVII. CONCLUSION AND RECOMMENDATIONS

As NYSDA has learned, and as this report illustrates, the practices currently employed in counties throughout New York State for determining eligibility for court-appointed counsel are constitutionally defective and must be revised. Eligibility standards and the procedures for implementing them vary widely from county to county, and are frequently applied inconsistently even within the same jurisdiction. Counties commonly impose an illegally stringent standard of total impoverishment, depriving defendants legitimately unable to hire attorneys of appointed representation.

The personal nature of the right to counsel is routinely ignored when the resources of friends and relatives disqualify defendants for appointed counsel. Defendants are improperly forced to choose between the right to pretrial liberty and the right to counsel when ability to post bail results in denial of appointed representation.

The severity of the problem is escalated by the judiciary, which, in many counties, has abdicated its responsibility to safeguard and effectuate the counsel rights of criminal defendants. Courts often delegate eligibility decision-making to outside entities, rely exclusively on the decisions of those third parties, and retain no role in assuring the integrity of the eligibility process. These unauthorized practices directly contravene the constitutional and statutory obligation of the courts to insure prompt and proper appointment of counsel.

The direct consequence of the grossly deficient eligibility procedures being employed throughout the state is that defendants are routinely denied their constitutional and statutory right to counsel.

The following recommendations should be implemented to ensure fair, consistent, and accurate determinations of eligibility for appointed counsel:

- A procedure for determining eligibility for appointed counsel must be formulated that recognizes the critical distinction between indigency and inability to afford counsel, and that reaffirms the traditional role of the judiciary in insuring the counsel rights of all defendants charged with crimes.
- In carrying out its responsibility, the judiciary should appoint counsel whenever a defendant is financially unable to retain counsel, and make this determination based not on any single factor, but after careful analysis of all information comprising each applicant's complete financial picture.
- To avoid substantial hardship to defendants and their families, only liquid assets should be considered in the eligibility analysis. Appointed counsel must not be denied based on the assets of friends or relatives, whose funds the defendant does not control. Nor should ability to secure pretrial liberty by posting bail be a basis for denial of appointed counsel.
- Income guidelines should never be employed as cut-offs, but should be considered and weighed in conjunction with the debts and other expenses

... the practices currently employed in counties throughout New York State for determining eligibility for court-appointed counsel are constitutionally defective and must be revised.

of the applicant. Moreover, any use of outdated income guidelines must be prohibited.

- The severity of the charges, the complexity of the case, and the cost of private representation in the particular jurisdiction—all highly relevant to the defendant's ability to retain counsel—must be carefully considered in making eligibility decisions.
- No matter what "screening" or information gathering program is in effect in any jurisdiction at present, the courts must take ultimate responsibility for insuring the constitutional right to the appointment of counsel. This means that at minimum, the courts cannot rely on recommendations to deny appointment made by another party without making an independent and meaningful inquiry to assess the applicant's financial status.
- Finally, to insure that eligibility decisions are made in a consistent fashion, and not on an *ad hoc* basis, the guidelines for determining eligibility should be in writing, and should define the process to be followed in approving or rejecting applicants. A process of judicial review should be implemented for all defendants who are denied appointment of counsel.

The recommendations outlined above, aimed at ensuring the appointment of counsel to all defendants entitled to those services, must be viewed as an interim step, not as a definitive solution. Unfortunately, the chaotic disarray which characterizes eligibility decision-making in New York State is symptomatic of much larger problems which affect every aspect of our public defense system.

Persistent underfunding of public defense services in New York, at both the state and county level, has resulted in inadequate staffing, excessive caseloads, insufficient pay, hiring of inexperienced and unskilled attorneys, lack of training and the absence of mechanisms for monitoring the provision of defense services. These factors, both individually, and in tandem, prevent counties from providing defendants unable to hire lawyers with the competent and effective assistance of counsel to which they are constitutionally entitled. Meaningful reform of the public defense system can only occur when the far-reaching effects of systemic non-accountability and chronic underfunding can be identified, measured and addressed.

The critical necessity for comprehensive change in the provision of public defense services, and for consistent and uniform implementation of those services throughout the state, will ultimately require development of a politically insulated entity which houses the financial, administrative and coordination functions of legal services for low-income people. Until then, the right to appointed representation will continue to be at risk for those individuals who find themselves entangled in the criminal process. 43

Appendix

COUNTY ELIGIBILITY CHARTS	1-65
NEW YORK STATE ELIGIBILITY PRACTICES: COUNTY PROFILES	66-241
NEW YORK STATE DEFENDERS ASSOCIATION CHIEF DEFENDER SURVEY: ELIGIBILITY FOR THE APPOINTMENT OF COUNSEL	242-246

ELIGIBILITY DETERMINATION

COUNTY	COURT	PUBLIC DEFENSE OFFICE	OTHER	COMMENTS
Albany		X		Judge determines whether defendant should be referred to the PD, who thereafter makes the eligibility determination.
Allegany	X			There are no written eligibility standards. Eligibility determinations vary by court.
Broome		X		Eligibility determinations made by an investigator from the PD's office.
Cattaraugus	X			There are no written eligibility standards.
Cayuga	X	X		In some instances the court determines eligibility; in other instances the AC Administrator determines eligibility.
Chautauqua		X		Eligibility determinations made by an investigator from the PD's office.
Chemung	X			There are no written eligibility standards. The process for determining eligibility is "arbitrary."
Chenango	X	X		In most cases the PD's office determines eligibility; however, in some instances the court makes the eligibility determination.
Clinton	X	X		Appointment of counsel initially made by court. However, AC has defendant complete eligibility form and thereafter determines eligibility. The initial appointment made by the court is conditional on approval of eligibility.
Columbia		X		Defendant referred to PD's office after initial verbal inquiry by the court. PD's office requires defendant to complete eligibility form. Screening and eligibility determination is made by secretary.
Cortland		X		Senior typist in PD's office has authority to determine eligibility based on set guidelines.
Delaware	X			Eligibility determinations are arbitrary and done on a case-by-case basis.
Dutchess		X		Criminal Justice Intake Specialists and Interns-College/Law School students process the applicant for eligibility and complete the eligibility form.

ELIGIBILITY DETERMINATION

COUNTY	COURT	PUBLIC DEFENSE OFFICE	OTHER	COMMENTS
Erie	X	X		<p>LA Bureau: Court appoints PD who does cursory eligibility examination. A more thorough eligibility review is done by an investigator from the LA Bureau at a later time.</p> <p>AC: In all courts except Supreme and County Courts the AC office assigns counsel. Defendants from Buffalo and Family Court go to AC office where a personal interview and a financial eligibility form is completed. Justice Court defendants are interviewed over the telephone and assigned attorneys are responsible for getting eligibility information. In the Supreme Courts, assignments are made by court at special term at which a program staff person from the AC office interviews the defendant who signs a financial affidavit.</p>
Essex	X			<p>Eligibility forms supplied to the court by the AC office. The judge determines eligibility and assigns attorneys from a list provided by the Administrator.</p>
Franklin		X		<p>Defendants complete financial form at initial court appearance. The forms are then given to the PD's office who determines eligibility.</p>
Fulton	X			<p>Judge provides defendant with eligibility forms and makes the determination.</p>
Genesee		X		<p>Intake for eligibility determinations done in-person at the PD's office or in some instances over the telephone. All jailed defendants are contacted by telephone to see if they need appointed counsel. In 99% of the cases, eligibility determinations are made by the PD's confidential secretary. In questionable cases, the Chief Public Defender is consulted.</p>
Greene	X (appoints in county court)	X		<p>Eligibility interviews conducted by investigator from PD's office. Investigator interviews jailed defendants at the jail and has them complete eligibility form. Eligibility forms are thereafter reviewed by a PD. In county court, the court appoints counsel.</p>
Hamilton	X			<p>Defendant completes eligibility form and submits to court.</p>

ELIGIBILITY DETERMINATION

COUNTY	COURT	PUBLIC DEFENSE OFFICE	OTHER	COMMENTS
Herkimer		X		Upon review of completed eligibility form the AC office appoints counsel.
Jefferson	X			
Lewis	X			Court makes the determination; may ask for assistance from PD if there is difficulty determining eligibility.
Livingston		X		Defendant submits eligibility form to the PD's office who thereafter determines eligibility. If defendant is denied appointed counsel, a letter to this effect is sent to defendant, court and the PD who appears in the court where the defendant initially appeared.
Madison	X	X		Jailed defendants interviewed at jail by a member of the public defender office. Court notified when the defendant is eligible. Defendants not jailed fill out eligibility forms in court and the court appoints counsel.
Monroe	X			The court makes its determination on the basis of eligibility information obtained by a paralegal or a criminal justice intern from the PD's office.
Montgomery		X		
Nassau	X		X (DC Screen. Bureau)	Defense Counsel Screening Bureau makes the initial determination which is reviewed by the judge.
New York (Bronx, Kings, NY, Queens and Richmond)	X (all five Co.)		X (CJA) (Queens Co. only)	The court appoints counsel in all five counties. The CJA completes a form prior to arraignment for bail purposes. No formal eligibility form is completed except in Queens County. Under an experimental program, CJA is conducting eligibility intake and completing all eligibility forms for defendants in Queens County. CJA makes eligibility recommendations to the court who then reviews the recommendation.
New York Neighborhood Defender Service of Harlem	X	X		NDS receives cases two ways: defendants call to 'retain' NDS or they are referred to NDS by the court. If retained, NDS conducts its own eligibility review using a checklist it has developed. If defendants are referred by the court, it is assumed they are eligible.
Niagara		X		Staff investigating attorney conducts eligibility intake.

ELIGIBILITY DETERMINATION

COUNTY	COURT	PUBLIC DEFENSE OFFICE	OTHER	COMMENTS
Oneida		X		The public defender takes the financial statement and declares eligibility for all clients requesting counsel. The court appoints counsel in conflict cases.
Onondaga	X	X		Judge makes a determination (based on verbal discussion) whether to refer client to the AC office. AC makes initial eligibility determinations based on information from the eligibility form. The eligibility determination may be returned to the judge for final review.
Ontario	X	X		Financial forms may be filled out with or without the assistance of the court or the administrator at first appearance or in the event applicant is the target and/or focus of a criminal investigation at the time he invoked his right to counsel.
Orange	X	X		When contacted directly, LAS makes the determination. The court appoints LAS or AC for jailed defendants, or tells indigents to contact LAS or the AC Administrator.
Orleans	X			Eligibility is determined by an immediate interview by the judge with the defendant and/or the completion of the eligibility form.
Oswego	X			A financial eligibility form is completed by the defendant and reviewed by the court.
Otsego	X			Court has defendant complete eligibility form and then reviews form and determines eligibility.
Putnam		X		With the help of LAS staff, the defendant completes eligibility form which is then reviewed by the Chief Attorney who makes the eligibility determination.
Rensselaer	X			Defendant completes an eligibility form in court which is reviewed by the judge who determines eligibility.
Rockland		X		In cases where the defendant is jailed, an interviewer from the PD's office goes to jail and does intake. If the defendant is not jailed he goes to the PD's office for an eligibility interview.
St. Lawrence		X		Court asks defendant if he needs appointed counsel. If yes, the defendant is referred to the PD's office who determines eligibility.

ELIGIBILITY DETERMINATION

COUNTY	COURT	PUBLIC DEFENSE OFFICE	OTHER	COMMENTS
Saratoga		X		Defendants who say they cannot afford an attorney are given an eligibility application to complete in court. The court then forwards the application to the PD's office who determines eligibility.
Schenectady		X		In city court and most criminal courts, initial screening for eligibility is done by the PD's office. In family court, the initial screening is done by the court and further screening is done by the PD's office.
Schoharie	X			Defendant completes all eligibility forms in court. The judge reviews the form and determines eligibility. If the defendant is eligible, the court contacts the AC office who appoints counsel.
Schuyler		X		In all criminal cases, the Chief Public Defender determines eligibility.
Seneca	X	X		Court makes determination with input from the PD's office.
Steuben		X		Court asks defendant if he needs appointed counsel. If yes, the defendant is referred to the PD handling the particular court for an eligibility determination.
Suffolk	X		X (Prob. Dept.)	*ROR* unit of the Probation Department makes most determinations. Court reviews determinations. In a very few cases, LAS will interview and qualify defendants directly.
Sullivan		X		
Tioga	X			Courts provide eligibility forms by the AC office which must be completed by defendant.
Tompkins		X		Defendants are required to complete an eligibility form which is then reviewed by the AC office who determines eligibility.
Ulster	X			Defendants are required to complete an eligibility form in court. Based on information in the eligibility form the court determines eligibility.
Warren		X		Defendants referred to AC office by court. Defendants are required to complete an eligibility form. Upon review and verification of information counsel is appointed by administrator.

ELIGIBILITY DETERMINATION

COUNTY	COURT	PUBLIC DEFENSE OFFICE	OTHER	COMMENTS
Washington		X		Eligibility form completed in court. Form then sent to PD for review. Thereafter, the PD determines eligibility
Wayne	X	X		Defendants who say they need appointed counsel are required to complete an eligibility form. Form reviewed by court who determines eligibility. Notice that counsel has been appointed is sent to PD's office. In cases where defendants "walk-in" to the PD's office, the defendant will be required to complete an eligibility form which is reviewed by the office and an eligibility determination is made.
Westchester	X	X		The LAS handles felony cases. In most cases persons request counsel; LAS interviews and determines eligibility. Court puts imprimatur on the eligibility determination. 18B handles non-felony cases. There are 42 local courts (most with multiple judges) and there is no uniform method of eligibility determination. Some courts use a form, some courts have an attorney determine eligibility and most courts determine eligibility via an oral judicial inquiry.
Wyoming		X		In cases where defendants are jailed, each Monday an attorney from the PD's office goes to the jail and determines eligibility. Defendants are required to complete an eligibility form. In cases where the defendants are not jailed they are required to make an appointment and go to the PD's office to complete eligibility form.
Yates	X	X		Basic eligibility information first taken by court. Court then refers non-incarcerated defendants to the PD's office for further eligibility examination. If defendant is incarcerated, the PD will contact the person in jail.

USE OF INCOME GUIDELINES IN THE ELIGIBILITY DETERMINATION

COUNTY	NO	YES	COMMENTS
Albany	X		No formal guidelines used.
Allegany	X		No formal guidelines; varies by judge making eligibility determination.
Broome		X	\$150.00 maximum weekly net income for a single person plus \$50.00 maximum weekly net income per dependent. The guidelines, which are not updated annually, were last updated in December, 1992. The income guidelines are based on a combination of LSC federal poverty guidelines and the income guidelines of various public defender and legal aid offices throughout the state.
Cattaraugus	X		
Cayuga	X		However, the administrator reported that sometimes the 1991 LSC federal poverty figure of \$159.00 per week for a family of one is used as a very rough guideline.
Chautauqua		X	Non-obligated income: \$75.00 per month for misdemeanors or \$125.00 per month for family court and felony cases; Misdemeanors: \$125.00 per week for a family of one; Felonies: \$175 per week for a family of one.
Chemung	X		
Chenango		X	In 1992 the guidelines used were: \$130.00 per week for a family of one; \$264.00 per week for a family of four. These guidelines are based on Chenango County Social Service Guidelines and reportedly are updated annually. These guidelines may have changed slightly in the last year.
Clinton		X	1991 LSC federal poverty guidelines: \$159.00 per week for a family of one; \$213.00 per week for a family of two; \$268.00 per week for a family of three; \$322 per week for a family of four plus \$54.00 per week for each additional family member.
Columbia		X	Uses same income guidelines as social services. These standards were updated in 1992 and it is not known when they will next be updated.
Cortland		X	\$150 per week for a family of one; \$200 per week for a couple; an additional \$30 per week for each dependant. This rate effective January 1, 1989.
Delaware	X		

USE OF INCOME GUIDELINES IN THE ELIGIBILITY DETERMINATION

COUNTY	NO	YES	COMMENTS
Dutchess		X	Guidelines set in 1991. Varies by class of crime, per week for a family of one: Felony A: \$364.00; B: \$338.00; C: \$312.00; D: \$286.00; E: \$260.00. Misdemeanor: \$221.00. Violation: \$195.00.
Erie		X	LA Bureau: 1993 LSC federal poverty guidelines: \$168.00 per week for a family of one; \$60.00 per week for each additional family member. AC: 1993 federal poverty guidelines of \$167.56 per week for a family of one plus an additional \$59.13 per family member.
Essex	X		
Franklin		X	Northern: \$100.00 per week for a family of one; \$125.00 per week if married; \$15.00 per week per dependent. These guidelines were set in 1990 by Franklin County local law. Southern: \$100.00 per week for a family of one; \$125.00 if married; \$15.00 per dependent. Guidelines based on 1977 figures from the Appellate Division, Third Department and were increased by \$25.00 in 1992.
Fulton	X		Implementation of income guidelines has been met with resistance from judges and board of supervisors. The public defender reports that currently a few judges implement the sliding fee scale which was proposed by the public defender's office. For example, persons making between \$2500.00-\$5000.00 annually and have no dependents would have to pay \$20.00 for the services of the public defender. For those making this amount with one dependant \$15.00; two dependents \$10.00; three dependents \$5.00 and for four or more dependents \$0. The sliding fee scale goes up to those making \$17,501.00-\$20,000. The public defender reports that Fulton County is collecting \$300.00 per month in sliding scale payments. The public defender stated that the county is awaiting an opinion from the Attorney General's Office as to whether the use of the sliding fee scale is appropriate.
Genesee		X	A low of 1985 and a high of 1991 LSC federal poverty guidelines are used; net weekly income for a family of one: \$117.00-\$159.13; family of two: \$158.00-\$213.46; family of three: \$199.00-\$267.79.

USE OF INCOME GUIDELINES IN THE ELIGIBILITY DETERMINATION

COUNTY	NO	YES	COMMENTS
Greene		X	Guidelines are based on past practice: \$125.00 net per week for a single person; \$175.00 net per week for couples without children; \$200.00-\$250.00 for couples with children. These guidelines are flexible. The guidelines are periodically reviewed but not necessarily updated on an annual basis.
Hamilton	X		No income guidelines in place although the county is working to establish them.
Herkimer		X	Similar to guidelines used by social services. \$109.67 net per week for a family of one; \$144.45 for a family of two and an additional \$35.00-\$40.00 per additional family member. Schedule of income guidelines includes the following statement: 'Eligibility for assistance from Herkimer County Welfare Department or Social Security supplemental income automatically entitles the applicant to free legal services.' These guidelines were sent to NYSDA in 1991.
Jefferson		X	In 1991 the PD's office sent NYSDA the following guidelines: \$117.00 per week for a family of one; \$159.00 per week for a family of two; \$193.00 per week for a family of three; \$233.00 per week for a family of four plus \$39.00 per week for each additional family member. These guidelines are based on the 1989 LSC federal poverty guidelines.
Lewis	X		No formal guidelines. Generally, if defendant makes over \$15,000.00 annually, the inquiry is whether he/she has enough money left to hire an attorney.
Livingston		X	\$159.13 gross per week for a family of one; \$213.46 per week for a family of two; \$54.33 per week for each dependent. These are based on the 1991 LSC federal poverty guidelines; they were established in 1992.
Madison		X	\$164.00 per week for a family of one; \$221.00 per week for a family of two; \$278.00 per week for a family of three; \$335.00 per week for a family of four; \$43.00 per week for each additional dependent. These guidelines are based on the 1992 LSC federal poverty guidelines and are next expected to be updated in 1994.

USE OF INCOME GUIDELINES IN THE ELIGIBILITY DETERMINATION

COUNTY	NO	YES	COMMENTS
Monroe		X	1993 LSC federal poverty level: \$167.55 per week plus \$59.14 per dependent. Income guidelines are updated annually.
Montgomery		X	\$125.00 gross per week for a family of one plus \$28.00 gross per week for each additional family member. It is unknown what these guidelines are based on and when they were established.
Nassau		X	According to the guidelines sent to NYSDA in 1991: \$151.00 per week for a family of one. These are based on 100% of the Lower Living Standard Income Level for the metropolitan statistical area of New York City and New Jersey. Guidelines have not been updated in 6-7 years.
New York (Bronx, Kings, New York, Queens and Richmond)	X Bronx, Kings, New York, Richmond)	X (Queens)	Income guidelines used only in Queens County: Accused Misdemeanants: \$249.00 net pay per week for a family of one; \$294.00 net pay per week for a family of two; \$342.00 net pay per week for a family of three; \$384.00 net pay per week for a family of four plus approximately \$40.00-\$50.00 net pay per week for each additional family member. Accused Felons: \$336.00 net pay per week for a family of one; \$389.00 net pay per week for a family of two; \$431.00 net pay per week for a family of three; \$471.00 net pay per week for a family of four plus approximately \$40.00-\$50.00 net pay per week for each additional family member. Apparently these guidelines are based on some percentage of either the 1992 or 1993 LSC federal poverty guidelines.
New York (Neighborhood Defender Service of Harlem)			Income guidelines are sometimes used (only when defendant is not a recipient of any type of government aid). Apparently the guidelines are based on income and obligations and are graded according to the severity of the offense. NDS reports that the income guidelines were last updated in 1990 and will next be updated in December, 1993.
Niagara		X	Single persons charged with a misdemeanor with a net income of \$130.00 per week ineligible; for felonies, net income of over \$225.00 per week ineligible. Exceptions may be made for heavy debts, child support, etc. The income guidelines are not updated annually but reviewed quarterly. No information provided on when these guidelines were set or what they are based on.

USE OF INCOME GUIDELINES IN THE ELIGIBILITY DETERMINATION

COUNTY	NO	YES	COMMENTS
Oneida		X	\$100.00 per week for single people; \$145.00 per week if married; \$25.00 per week for each dependent. These guidelines were updated in 1992 and will be updated again in 1995. The guidelines are based on local experience.
Onondaga		X	Based on the 1993 LSC federal poverty guidelines: \$168.00 per week for a family of one; \$227.00 per week for a family of two plus \$59.00 for each additional family member.
Ontario		X	1993 LSC federal poverty guidelines: \$169.00 per week for a family of one; \$228.00 for a family of two; \$60.00 per week for each additional family member.
Orange		X	\$165.00 net per week for a family of one; \$215.00 per week for married persons plus \$50.00 per child under the age of 21 for either a single person or for married persons. Last updated December 1992, next update expected December 1993.
Orleans		X	Most current information reveals that the income guidelines are based on 1986 LSC federal poverty guidelines: \$103.00 per week for a family of one; \$139.00 per week for a family of two; \$175.00 per week for a family of three; \$212.00 for a family of four and approximately \$30.00-40.00 per week for each additional dependent.
Oswego		X	Based on the 1991 LSC federal poverty guidelines: \$159.00 per week for a family of one; \$214.00 for a family of two; \$54.00 for each additional dependent. Last updated in May, 1991.
Otsego		X	The official guidelines currently used are the 1977 Appellate Division, Third Department guidelines: \$75.00 net per week for a family of one; \$100.00 for married couples; and an additional \$15.00 for each additional family member. Some judges adhere to these guidelines while others "do their own thing." The public defender recommended the following guidelines: Violations: \$125.00-\$150.00 (net per week); Misdemeanors: \$150.00-\$200.00 (net per week); Felonies: \$250.00-\$300.00 (net per week). These figures are for a family of one; and an additional \$25.00 for each family member.
Putnam	X		

USE OF INCOME GUIDELINES IN THE ELIGIBILITY DETERMINATION

COUNTY	NO	YES	COMMENTS
Rensselaer		X	Guidelines are judicial determinations based on what each court believes is an income able to afford retained counsel.
Rockland		X	\$150.00 per week plus \$10.00 per dependent for single individuals; \$200.00 per week plus \$10.00 per dependent for married individuals. Guidelines last updated in 1990. No information provided on what these guidelines are based on.
St. Lawrence		X	Based on the 1980 LSC federal poverty guidelines: \$91.00 net per week for a single individual; \$120.00 net per week for a family of two; \$135.00 net per week for a family of three; \$143.00 net per week for a family of four. It is not known when these guidelines will be updated.
Saratoga		X	Based on 1992 LSC federal poverty guidelines: \$164.00 per week for a family of one; \$221.00 per week for a family of two; \$57.00 per week for each additional family member. According to the public defender, these guidelines are updated annually. However, as noted, the 1992 LSC guidelines are still being used.
Schenectady		X	Based on the 1993 federal poverty guidelines: \$168.00 per week for a family of one; \$227.00 per week for a family of two plus \$59.00 per week for each additional family member. Guidelines updated annually.
Schoharie			Unknown
Schuyler			Unknown
Seneca		X	\$120.00 per week for a single individual. No information provided on what these guidelines are based on, or when they will be updated.
Steuben	X		
Suffolk		X	\$140.00 net per week for a family of one; \$182.00 net per week for a family of two; \$215.00 net per week for a family of three; \$276.00 net per week for a family of four; \$326.00 net per week for a family of five. Guidelines based on 1992 preliminary estimate of poverty thresholds as reported by the U.S. Dept. of Commerce, Society of Census. Guidelines were updated in May, 1993 and are expected to be updated again in May, 1994.

USE OF INCOME GUIDELINES IN THE ELIGIBILITY DETERMINATION

COUNTY	NO	YES	COMMENTS
Sullivan		X	Based on 1993 LSC federal poverty guidelines: \$168.00 per week for a family of one; \$227.00 per week for a family of two plus \$59.00 per week for each additional family member. Next update January, 1994.
Tioga		X	Based on judicial discretion. Defendants are usually eligible if they net \$100.00 per week or less, own no real property, or are on public assistance.
Tompkins		X	No schedule of income guidelines were sent; either 1992 or 1993 LSC federal poverty guidelines are used.
Ulster		X	Based on the 1991 LSC federal poverty guidelines: \$159.00 net per week for a family of one; \$213.00 net per week for a family of two; \$268.00 net per week for a family of three; and \$322.00 net per week for a family of four plus approximately \$54.00 net per week for each additional family member.
Warren		X	The guidelines, until very recently, were based on an NIJ Report: "Containing the Costs of Indigent Defense Program: Eligibility Screening and Cost Recovery Procedures" which were actually the 1986 LSC federal poverty level guidelines: \$129.00 gross per week for a family of one. Administrator did not realize these guidelines are updated annually by the Legal Services Corporation. This information and 1993 guidelines sent to administrator. The administrator now reports that the program is using the 1993 LSC federal poverty level guidelines: \$168.00 per week for a family of one; \$227.00 per week for a family of two; \$286.00 per week for a family of three; and \$345.00 per week for a family of four plus \$59.00 for each additional family member.
Washington		X	Based on the Cost of Living Index: for violations and misdemeanors, \$158.00 per week for a family of one plus \$55.00 per dependent. For felonies, \$100.00 per week is added to these figures. These figures were sent to NYSDA in 1992.

USE OF INCOME GUIDELINES IN THE ELIGIBILITY DETERMINATION

COUNTY	NO	YES	COMMENTS
Wayne		X	Based on the 1993 LSC federal poverty guidelines: \$168.00 per week for a family of one; \$227.00 per week for a family of two plus \$59.00 per week for each additional family member. The guidelines are updated annually.
Westchester	X		
Wyoming		X	Based on the 1993 LSC federal poverty guidelines: \$168.00 gross per week for a family of one; \$227.00 gross per week for a family of two plus \$59.00 gross per week for each additional family member. Guidelines are updated annually.
Yates		X	1. Gross income test (total household income): One person residing alone, \$211.00 per week; \$269.00 per week for two persons residing together plus \$29.00 per week for each additional person; 2. Disposable income test (gross income less reasonable expenses): family court: \$40.00 per week; criminal court: violations \$25.00 per week, misdemeanors \$40.00 per week, felonies \$70.00 per week. 3. Asset test: family court \$1500.00; justice court \$2000.00; county court \$3000.00. These guidelines are updated annually. Last updated January, 1993, next update January, 1994. It is not known how these guidelines were established or what they are based on.

INCOME GUIDELINES SOLE DETERMINANT OF ELIGIBILITY DETERMINATION

COUNTY	NO	YES	COMMENTS
Albany	X		
Allegany	X		No income guidelines are used.
Broome	X		
Cattaraugus	X		No income guidelines are used.
Cayuga	X		
Chautauqua	X		
Chemung	X		No income guidelines are used.
Chenango	X		
Clinton	X		
Columbia		X	
Cortland	X		
Delaware	X		No income guidelines are used.
Dutchess	X		
Erie	X (LA) X (AC)		
Essex	X		No income guidelines are used.
Franklin	X (No.) X (So.)		
Fulton	X		
Genesee	X		
Greene	X		
Hamilton	X		
Herkimer	X		
Jefferson			Unknown
Lewis	X		No formal income guidelines are used.
Livingston		X	
Madison	X		

INCOME GUIDELINES SOLE DETERMINANT OF ELIGIBILITY DETERMINATION

COUNTY	NO	YES	COMMENTS
Monroe	X		
Montgomery			Unknown
Nassau	X		
New York (Bronx, Kings, New York, Queens and Richmond)	X (Bronx, Kings, New York and Richmond)		No income guidelines are used in Bronx, Kings, New York and Richmond Counties.
New York (Neighborhood Defender Service of Harlem)	X		
Niagara	X		
Oneida	X		
Onondaga	X		
Ontario	X		
Orange	X		
Orleans	X		
Oswego	X		
Otsego	X		
Putnam	X		No income guidelines are used.
Rensselaer	X		
Rockland	X		
St. Lawrence	X		
Saratoga	X		
Schenectady	X		
Schoharie			Unknown
Schuyler			Unknown
Seneca	X		
Steuben	X		No income guidelines are used.

INCOME GUIDELINES SOLE DETERMINANT OF ELIGIBILITY DETERMINATION

COUNTY	NO	YES	COMMENTS
Suffolk	X		
Sullivan	X		
Tioga	X		
Tompkins	X		
Ulster	X		
Warren	X		
Washington	X		
Wayne	X		
Westchester	X (LAS)		
Wyoming	X		
Yates	X		

INFORMATION REQUESTED ON ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

COUNTY	INFORMATION REQUESTED ON ELIGIBILITY FORM/OTHER FACTORS CONSIDERED
Albany	Number of dependents, personal and spousal gross and net income, real estate, stocks, bonds, life insurance, own car, liquid assets, living expenses, whether on welfare, unemployment or SSI.
Allegany	Number of dependents, liquid assets, real and personal property, personal and spousal income, monthly debts and rent payments, total amount owed to creditors per month, whether defendant tried to retain a private attorney.
Broome	Number of dependents, household income, liquid assets, real and personal property, automobiles owned by defendant or spouse, whether defendant ever filed for bankruptcy, anticipation of income from any other source, and monthly debt obligations.
Cattaraugus	Personal income, cash on hand, number of dependents, all property owned (car, real property). It should be noted that the form does not request any information concerning the defendant's debts.
Cayuga	Amount of bail and who paid it, number of dependents, real and personal property, liquid assets and fixed monthly living expenses, whether defendant is receiving public assistance. Other factors considered: Administrator stated on eligibility survey that the eligibility determination is not based solely on the defendant's income. However, in 95+ percent of the cases the defendant shows no income, no assets and is frequently on public assistance. Assignments are routinely made for these persons. If the person indicates income and assets then the defendant's marital status and number of dependents are considered.
Chautauqua	Personal and spousal income, real and personal property, liquid assets, monthly expenses. Other factors considered: Defendants who are unemployed or on public assistance are presumptively eligible.
Chemung	Number of dependents, personal and spousal income, liquid assets, real and personal property (including automobile), child/spousal support and other monthly expenses, asks if defendant tried to hire private attorney, asks who paid defendant's bail and how much was paid.

INFORMATION REQUESTED ON ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

COUNTY	INFORMATION REQUESTED ON ELIGIBILITY FORM/OTHER FACTORS CONSIDERED
Chenango	Number of dependents, real and personal property, liquid assets, personal and spousal net and gross income. Other factors considered: Whether defendant is incarcerated, nature of the proceedings, seriousness of the charges and overall interest of justice.
Clinton	Monthly income of defendant, earnings of spouse, number of dependents, liquid and non-liquid assets (including automobile), real property and debts. Other factors considered: Liquidity of assets, ability of defendant to retain counsel with available assets given the nature of the offense.
Columbia	Whether the defendant is on public assistance, personal and spousal gross and net weekly income, liquid and non-liquid assets (including an automobile), monthly expenses.
Cortland	Number of dependents, personal and spousal income, liquid assets, real and personal property (including automobile), whether defendant is on public assistance, fixed monthly expenses, whether bail has been posted, who posted it and amount posted, whether the defendant can afford to hire his own attorney.
Delaware	Personal weekly income, cash on hand and in banks, number of dependents, property owned. It should be noted that the eligibility form does not request any information concerning the defendant's debts.
Dutchess	The first inquiry for the PD's office is to look at the defendant's assets. Each person is reviewed independently. The following is taken into consideration in determining eligibility: The nature of crime, cost to retain private counsel for same charge, and the person's overall assets. If the person is under the age of 21 years, the PD's office also examines the parents' financial situation. The PD's office also examines whether defendants have cash, bank accounts, stocks and bonds. The defendant's overall financial situation is examined.

INFORMATION REQUESTED ON ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

COUNTY	INFORMATION REQUESTED ON ELIGIBILITY FORM/OTHER FACTORS CONSIDERED
Erie	<p>Legal Aid Bureau: No eligibility form used. However, the following statement appears on the income guideline schedule: "Assets considered will include all liquid and non-liquid assets of all persons who are resident members of a family unit except principal resident of a client will be excluded, and reasonable equity on work-related equipment which is essential to the employment or self-employment of the client or member of the family unit..." Impediments to an individual's access to these assets is considered.</p> <p>Assigned Counsel: Information requested on the eligibility form: Personal, spousal, and parental income, liquid assets, real and personal property (including automobile), monthly expenses.</p>
Essex	<p>Defendant's monthly and weekly income, any other income, monthly and weekly income of parents or spouse, real property owned by defendant, parent and/or spouse, other property owned (including automobile), liquid assets, financial obligations, amount of bail set and if posted, how was the money raised.</p>
Franklin	<p>Northern and Southern offices: Number of dependents, personal and spousal income, real and personal property (including automobile), monthly living expenses, whether person tried to hire own attorney and amount of bail and who posted it.</p>
Fulton	<p>Personal, spousal and parental income, liquid and non-liquid assets (including an automobile; bail is considered an asset if paid in cash and if posted with family assets), support obligations, number of dependents, monthly expenses, if bail was posted, person who posted it and amount posted. Asks what efforts defendant made to hire a lawyer and if he tried to borrow money to do so. Asks what financial help defendant expects from relatives and friends. Asks where defendant gets the money to support himself and his family. According to a conversation with Susan Robinson, NYSDA research assistant and the Fulton County Public Defender office on June 17, 1991, no one who owns a car worth more than \$1,000 or has more than \$2,500 equity in any real property is eligible.</p>

INFORMATION REQUESTED ON ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

COUNTY	INFORMATION REQUESTED ON ELIGIBILITY FORM/OTHER FACTORS CONSIDERED
Genesee	Property which can be used as assets, occupation, whether the defendant's job is being held for him or her, gross wages of household, defendant's income, spouse/housemate's income, other members of household income, other sources of income, employment history, occupation of spouse, number of dependents and case-related information. While the form containing the eligibility information (Criminal Court Eligibility Interview Sheet) does not request any information concerning the defendant's expenses, the eligibility survey states that the defendant's "necessities" are considered. Necessities include: shelter, food, clothing, medical care and supplies and transportation.
Greene	Number of dependents, parental income, personal and spousal income, monthly expenses, liquid assets, real and personal property (including automobile), whether defendant tried to hire own attorney, amount of bail posted and who posted it. Other factors considered: Family situation, seriousness of charges, likelihood that person will be able to hire his or her own attorney.
Hamilton	Number of dependents, personal and spousal income, liquid assets, personal and real property (including an automobile), asks whether defendant tried to hire own attorney, amount of bail and who posted it and monthly expenses.
Herkimer	Defendant's and parental income (not spousal), liquid assets, personal and real property (including automobile), defendant's financial obligations and any other information pertinent to the defendant's or parent's financial status.
Jefferson	Amount of bail (but not who posted it), number of dependents, personal income, liquid assets, personal and real property (including automobile and home), expenses and loans. Also, if someone is supporting the defendant, information is required on that persons income.

INFORMATION REQUESTED ON ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

COUNTY	INFORMATION REQUESTED ON ELIGIBILITY FORM/OTHER FACTORS CONSIDERED
Lewis	The amount of bail posted and the name and address of the person who posted the bail, monthly income of defendant, spouse and/or children, liquid and non-liquid assets (including automobile and house), monthly expenses.
Livingston	Number of dependents, personal and spousal gross income, liquid and non-liquid assets and amount of bail. No information is requested about the defendant's debts with the exception of the amount of support paid per week.
Madison	Marital status, number of dependents, age of dependents, personal income, expenses, value of automobile, house, amount in savings account and any other assets. Other factors considered: According to the survey, the key factor is whether the individual can afford to hire a private attorney.
Monroe	Necessities of life—food, shelter, clothing medical supplies and transportation. "Present net assets"—assets solely owned by the defendant or jointly owned with a spouse, less the amount of any security interests held by a third party, but does not include assets, the sale of which, would cause an unreasonable hardship. This would usually preclude the sale of a house for a residence (as opposed to investment property), household furnishings or an automobile necessary for a defendant's employment. Information on the defendant's obligations (debts) is requested on the eligibility form.
Montgomery	Unknown
Nassau	Personal and spousal income, household income if defendant is under 21 years of age, personal property, living expenses and liabilities, whether defendant has posted bail.

INFORMATION REQUESTED ON ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

COUNTY	INFORMATION REQUESTED ON ELIGIBILITY FORM/OTHER FACTORS CONSIDERED
<p>New York (Bronx, Kings, New York, Queens and Richmond) NDS</p>	<p>According to the report Financial Standards for Assignment of Counsel the following factors should be tied to whether a defendant receives appointed counsel: personal and spousal income, number of dependents, type of crime charged, liquid assets, real and personal property, court may inquire if the bail can be assigned for the purpose of securing counsel. Information requested on the ACES eligibility form: Employment status of defendant and spouse, defendant's and spouse's occupation, if not working whether the defendant and spouse are homemaker, disabled or student. Net weekly income of defendant and spouse, benefits received by the defendant and spouse, who defendant lives with, number of dependents, employment status and income of defendant's parents or guardians if defendant is under 21 years old, asset information (bank accounts of defendant, spouse and parent or guardian if defendant under 21, value of automobile and other assets of defendant and spouse and parents or legal guardian if defendant under 21), amount of rent or mortgage and whether or not the defendant intends on hiring his own attorney. It should be noted that other than the question concerning the amount paid for rent or mortgage, no questions are asked regarding the defendant's debts or expenses. Neighborhood Defender Service of Harlem: No eligibility form is used. Other factors considered in the eligibility determination include obligations, e.g., rent, child care, outstanding debt.</p>
<p>Niagara</p>	<p>Number of dependents, personal, spousal and parental income, liquid assets, real and personal property (including automobile), debts of defendants or parents, monthly rent, disabilities, amount of cash bail, name and address of person who paid the bail.</p>
<p>Oneida</p>	<p>Personal, spousal and parental income, personal and real property (including automobile), liquid assets, fixed monthly expenses. Other factors considered: if the defendant is incarcerated.</p>

INFORMATION REQUESTED ON ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

COUNTY	INFORMATION REQUESTED ON ELIGIBILITY FORM/OTHER FACTORS CONSIDERED
Onondaga	Personal and spousal income, parental income if the defendant is under 21, amount in support payments paid or received, liquid and non-liquid assets (including automobile), real property (including defendant's home), whether defendant is on public assistance and amount, amount of bail and who paid the bail, asks defendant how much he/she can pay for attorney fees. Other factors considered: The nature of the offense charged and the likely private retainer required for the charges pending.
Ontario	Household income, personal and real property (including automobile), living expenses, liquid assets, number of dependents, child care expenses and support payments. Other factors considered: The administrator reports that the primary factor is other liquid assets available to retain counsel at the generally accepted rate for the case involved, e.g., misdemeanor, felony, custody, paternity, etc.
Orange	Seriousness of the charges, defendant's debts, cost of retaining a private lawyer, and the possibility of losing a job.
Orleans	Personal, spousal and parental (if defendant under 21) income, real and personal property (including home and automobile), liquid assets and monthly expenses.
Oswego	Personal and spousal income, personal and real property, major debts, amount of bail and who paid it, number of dependents.
Otsego	Weekly, bi-weekly and monthly personal and spousal income, real and personal property (including automobile), liquid assets, monthly expenses, whether the person tried to hire an attorney, amount of bail and who paid it.

INFORMATION REQUESTED ON ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

COUNTY	INFORMATION REQUESTED ON ELIGIBILITY FORM/OTHER FACTORS CONSIDERED
Putnam	According to the Client Eligibility Guidelines : "The key test for determining eligibility is whether or not the defendant, at the time need is determined, is financially unable to provide for the full payment of adequate counsel and all other necessary expenses of representation." The Client Eligibility Guidelines go on to state that the standard for eligibility is "...when the value of the defendant's present net assets and current net income are insufficient to enable him to promptly retain a qualified attorney, obtain release on bond and pay other expenses necessary to an adequate defense, while furnishing himself and his dependents with the necessities of life." Information requested on the eligibility form : Household income, liquid assets, real and personal property (including automobile), monthly credit obligations and rent expense, amount of bail and who paid it.
Rensselaer	Personal gross and net weekly income, real and personal property (including automobile), liquid assets, monthly expenses, whether dependent has any lawsuits pending, whether on public assistance.
Rockland	The PD's office does use an eligibility form. However, the form was not sent to NYSDA with the completed survey. Therefore, it is not known what information is asked for on the eligibility form. The survey did state that income is considered as well as onerous medical expenses. Persons on social services are automatically eligible.
St. Lawrence	Personal and spousal income, liquid and non-liquid assets (including automobile), real property, whether defendant is on public assistance, amount of bail, and if not employed where defendant gets the money he or she lives on. It should be noted that no questions are asked regarding the defendant's debts or living expenses.
Saratoga	Number of dependents, personal, spousal and parental income (if defendant is a minor), liquid assets, real and personal property (including automobile and house), if unemployed, how defendant supports himself, monthly expenses. Other factors considered : The persons overall expenditures to determine if they are higher than normal expenses for medical, housing, etc. up to 187.5 percent of the LSC federal poverty guideline.

INFORMATION REQUESTED ON ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

COUNTY	INFORMATION REQUESTED ON ELIGIBILITY FORM/OTHER FACTORS CONSIDERED
Schenectady	Whether defendant or spouse is on public assistance, weekly income of defendant and his/her spouse, real property, liquid and non-liquid assets (including an automobile) of defendant and spouse, amount of spousal or child support. It should be noted that other than the questions about support payments, the eligibility form does not contain any questions regarding the defendant's expenses. Other factors considered: Type of case, estimated cost of hiring an attorney for that particular case, length of employment, relatives or friends who have assets and have previously hired an attorney for the defendant.
Schoharie	Unknown
Schuyler	Personal, spousal, parental, brother's and sister's income, liquid assets, real and personal property (including automobile and home) number of dependents, benefits received by defendant, amount of bail and who paid the bail, living expenses.
Seneca	Gross household income from all sources, number of dependents, real and personal property (including automobile and home), liquid assets, monthly expenses. Other factors considered: Seriousness of crime charged, working spouse or parent (for those under 21), and amount of bail and who paid it.
Steuben	Personal and spousal gross and net weekly income, parental income if defendant under 21, real and personal property (including automobile), monthly living expenses. Other factors considered: Person's total financial picture--assets v. liabilities.
Suffolk	Salary of defendant and spouse, liquid and non-liquid assets (including an automobile [owned by defendant or spouse] and house), support payments, amount of rent/mortgage, amount of car payment and any unusual expenses associated with the car. It should be noted that with the exception of questions regarding rent/mortgage and car payments no additional questions are asked about the defendant's expenses. Other factors considered: Defendants receiving public assistance or other income maintenance are automatically eligible.

INFORMATION REQUESTED ON ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

COUNTY	INFORMATION REQUESTED ON ELIGIBILITY FORM/OTHER FACTORS CONSIDERED
Sullivan	Personal, spouse's (or friend's) income, liquid and non-liquid assets, property, number of dependents, debts, automobile ownership, and health-hospitalization. Other factors considered: The estimated fee of a private attorney, alternatives (e.g., pro bono, Sullivan County Bar Association Referral Service—a reduced fee referral service). Also a non-financial factor is considered—whether there is a conflict of interest.
Tioga	Amount of bail and who paid it, support payments, personal income, living expenses, whether there are any relatives, friends or other persons who could be of financial assistance. Other factors considered: The seriousness of the charge, the cost of retaining private counsel and the assets and income of the person.
Tompkins	Personal and spousal net income, number of dependents, those receiving welfare grants or social security are presumptively eligible, liquid assets; personal and real property (including automobile and house), monthly financial obligations. Other factors considered: The defendant's inability to afford counsel, i.e., income exceeds income guidelines but non-voluntarily incurred bills are high enough that the applicant does not have sufficient income to retain counsel.
Ulster	Number of dependents, personal and spousal income, if unemployed where defendant gets money for living expenses, if defendant is receiving social security, support payments, income from rental property, stocks or bonds, miscellaneous income, liquid and non-liquid assets (including automobile and home), monthly expenses, if defendant tried to hire an attorney, amount of bail and the name and address of the person who posted the bail.
Warren	Personal and spousal income, income of live-in boyfriend/girlfriend, household income if defendant under 21, real and personal property (including automobile), liquid assets, monthly expenses, whether defendant tried to hire own attorney, amount of bail and who paid it. Other factors considered: The nature and severity of the criminal charge(s) and the anticipated complexity of the defense.

INFORMATION REQUESTED ON ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

COUNTY	INFORMATION REQUESTED ON ELIGIBILITY FORM/OTHER FACTORS CONSIDERED
Washington	A copy of the eligibility form was not sent to NYSDA with the completed survey. However, the survey stated that the following factors are considered in determining eligibility: medical expenses, whether defendant is paying child support and type of charge (e.g., misdemeanor or felony).
Wayne	Household income, whether defendant is on public assistance, cars, boats and trucks owned, real estate, liquid assets, other available assets and the defendant's debts. Other factors considered: According to the Financial Guidelines of Eligibility for a Public Defender In Wayne County , non-liquid assets should only be considered to the extent that they can be converted during the course of representation to meet latter costs, whether person can obtain a bank loan, the type, seriousness and complexity of the charges should be considered, eligibility should be considered on a case-by-case basis. In addition to these factors, the survey notes that the net worth of assets such as real estate, motor vehicles, the severity of the offense, cash flow of the defendant and exceptional expenses are considered in the eligibility determination.
Westchester	Defendant's occupation and income, spouse's occupation, number of children, how many at home or supported, whether defendant receives government benefits, liquid and non-liquid assets, names of relatives or other interested persons and their employment and earnings, amount of bail and source that posted bail and in what form was bail posted. Additional factors considered: seriousness of charge, complexity of the case, defendant's debts (it should be noted that the eligibility form does not solicit any data concerning the defendant's debts), cost to retain an attorney.

INFORMATION REQUESTED ON ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

COUNTY	INFORMATION REQUESTED ON ELIGIBILITY FORM/OTHER FACTORS CONSIDERED
Wyoming	<p>Number of dependents, public assistance/medicaid number, gross weekly income of defendant, spouse and parents (if defendant a minor), all sources of income of defendant, spouse and parents, liquid and non-liquid assets (including automobile and real estate) of defendant, spouse and parents and debts of defendant, spouse and parents. Other factors considered: The Standards of Eligibility for the Wyoming County Public Defender's Office contains the following statement: "Where justice so requires, funds which a Defendant might obtain by borrowing may be considered in determining eligibility for appointment of the Public Defender."</p>
Yates	<p>Personal income, income of others residing with the defendant, liquid and non-liquid assets, real and personal property (including automobile and home), number of dependents, support payments, name of any friends or relatives who could be of financial assistance to the defendant, if defendant or others in the household are receiving any public assistance and amount, monthly expenses and amount of bail paid and who paid the bail.</p>

TREATMENT OF BAIL IN THE ELIGIBILITY DETERMINATION

COUNTY	CONSIDERED	NOT CONSIDERED	COMMENTS
Albany	X		Only considered when defendants post their own bail.
Allegheny	X		According to the AC administrator, some judges believe that defendants who can post bail can hire an attorney.
Broome		X	
Cattaraugus		X	
Cayuga			Neutrally
Chautauqua	X		Considered an asset when bail is posted by the defendant.
Chemung			Unknown
Chenango		X	
Clinton		X	
Columbia			Unknown
Cortland	X		If defendant or a family member posts bail, it must be determined whether they have the wherewithal to retain counsel.
Delaware			Unknown
Dutchess	X		If bail is paid or secured by the defendant, it is considered an asset.
Erie	X (AC)		LAS: Unknown
Essex	X		Whether or not the defendant posted bail is considered differently by each presiding judge.
Franklin		X	
Fulton	X		Eligibility form treats bail as an asset if cash was posted with family assets only.
Genesee	X		Only considered when bail was a high amount and the defendant was able to pay it.

TREATMENT OF BAIL IN THE ELIGIBILITY DETERMINATION

COUNTY	CONSIDERED	NOT CONSIDERED	COMMENTS
Greene	X		Who posted bail and how they were able to do so is considered. If bail was a large amount and paid in cash, an explanation may be required.
Hamilton		X	
Herkimer		X	
Jefferson			Unknown
Lewis		X	
Livingston		X	
Madison	X		Bail considered positively; if individuals are incarcerated and have not posted bail, there is a very good chance an attorney will be assigned.
Monroe	X		If cash bail is an asset of and posted by the defendant, it is considered a present net asset.
Montgomery			Unknown
Nassau	X		The source and amount of cash bail are considered.
New York (Bronx, Kings, New York, Queens and Richmond)	X (Queens)	X (Bronx, Kings, New York and Richmond)	Queens: The report, "Financial Standards for Assignment of Counsel" states: "A court should not deny the assignment of counsel solely because bail has been posted for the defendant. The court must be satisfied that the defendant is unable to utilize the source of bail money for the additional purpose of retaining an attorney. The court may inquire if the bail can be assigned for the purpose of securing counsel."
New York (Neighborhood Defender Service of Harlem)		X	
Niagara	X		Persons are eligible for services if they can not make bail at least until they are released from jail, when they may re-apply or hire counsel.

TREATMENT OF BAIL IN THE ELIGIBILITY DETERMINATION

COUNTY	CONSIDERED	NOT CONSIDERED	COMMENTS
Oneida	X		Considered positively if the defendant is incarcerated.
Onondaga	X		
Ontario		X	
Orange	X		Only a factor in the rare instance where the LAS suspects that the defendant has not honestly provided financial information.
Orleans			Unknown
Oswego		X	
Otsego		X	
Putnam		X	
Rensselaer			Unknown
Rockland	X		Amount of bail and who posted it are considered along with the seriousness of the charge.
St. Lawrence	X		If the defendant posted cash bail from his or her own resources then bail is considered an asset.
Saratoga		X	
Schenectady	X		Only considered when defendant made bail in excess of \$5000.00.
Schoharie			Unknown
Schuyler			Unknown
Seneca	X		If defendant posted bail, this may disqualify him/her for appointed counsel when considered with other financial information.
Steuben		X	
Suffolk	X		Defendants are assigned counsel if unable to post bail within a reasonable amount of time.
Sullivan	X		If the defendant personally posted bail and this money could be used to hire an attorney, this will be a consideration.

TREATMENT OF BAIL IN THE ELIGIBILITY DETERMINATION

COUNTY	CONSIDERED	NOT CONSIDERED	COMMENTS
Tioga		X	
Tompkins		X	
Ulster	X		Each judge treats bail differently in the determination.
Warren	X		Depends on the amount of bail and the source who posted it.
Washington		X	
Wayne	X		However, bail is only considered to the extent that if a defendant cannot make bail he is considered presumptively eligible for appointed counsel.
Westchester	X (18B)	X (LAS)	When the LAS determines eligibility for felony cases it does not consider bail in the determination. Some courts, however, when determining eligibility in non-felony cases, do consider the defendant's ability to post bail when determining eligibility.
Wyoming		X	
Yates	X		If defendant posted bail, it is considered an asset; otherwise, it is not considered.

**AGE OF MINOR/INCOME OF PARENTS CONSIDERED IN THE
ELIGIBILITY DETERMINATION/WHETHER MINORS PROVIDED
REPRESENTATION WHEN PARENTS CAN PAY BUT REFUSE/
PARENTAL COST RECOVERY PROCESS**

COUNTY	AGE OF MINOR	CONSIDER PARENTS' INCOME		MINORS REP IF PARENTS REFUSE TO PAY		PARENTAL COST RECOVERY		PROCESS OF RECOVERY
		NO	YES	NO	YES	NO	YES	COMMENTS
Albany	21 and under		X	Refer to court		X		
Allegany	21 and under	X			X	X		
Broome	21 and under		X		X		X	Recovery via 722D orders. Generally recovery not pursued by public defender or county attorney.
Cattaraugus	18 and under		X		X	X		
Cayuga	21 and under		X	Court discuss need		X		
Chautauqua	18 and under		X	UK	UK	UK	UK	
Chemung	UNKNOWN							
Chenango	21 and under		X		X	X		
Clinton	18 and under		X		X	X		
Columbia	21 and under		X		X	X		

**AGE OF MINOR/INCOME OF PARENTS CONSIDERED IN THE
ELIGIBILITY DETERMINATION/WHETHER MINORS PROVIDED
REPRESENTATION WHEN PARENTS CAN PAY BUT REFUSE/
PARENTAL COST RECOVERY PROCESS**

COUNTY	AGE OF MINOR	CONSIDER PARENTS' INCOME		MINORS REP IF PARENTS REFUSE TO PAY		PARENTAL COST RECOVERY		PROCESS OF RECOVERY
		NO	YES	NO	YES	NO	YES	COMMENTS
Cortland	21 and under		X		X	X		Although such a provision exists, recovery not pursued.
Delaware	UNKNOWN							
Dutchess	21 and under		X		X		X	County attorney pursues; usually no money recovery from parents.
Erie	21 and under		X		X	X AC	X LA	AC has not received money from parents for several years.
Essex	18 and under	X				X		Parents' income not considered.
Franklin	18 and under		X		X	X		Northern does not consider parental income.

**AGE OF MINOR/INCOME OF PARENTS CONSIDERED IN THE
ELIGIBILITY DETERMINATION/WHETHER MINORS PROVIDED
REPRESENTATION WHEN PARENTS CAN PAY BUT REFUSE/
PARENTAL COST RECOVERY PROCESS**

COUNTY	AGE OF MINOR	CONSIDER PARENTS' INCOME		MINORS REP IF PARENTS REFUSE TO PAY		PARENTAL COST RECOVERY		PROCESS OF RECOVERY	
		NO	YES	NO	YES	NO	YES	COMMENTS	
Fulton	21 and under		X		X		X	However, to date, neither PD office nor the county has tried to recover money from parents.	
Genesee	21 and under		X		X		X	Probation Dept. collects funds.	
Greene	21 and under		X	X*		NA	NA		
Hamilton	21 and under	X		NA					
Herkimer	21 and under		X		X	X			
Jefferson		Unknown							
Lewis	21 and under and single		X		X	X			
Livingston	21 and under		X		X		X	However, no formal process to collect money from parents is in place as of yet.	

**AGE OF MINOR/INCOME OF PARENTS CONSIDERED IN THE
ELIGIBILITY DETERMINATION/WHETHER MINORS PROVIDED
REPRESENTATION WHEN PARENTS CAN PAY BUT REFUSE/
PARENTAL COST RECOVERY PROCESS**

COUNTY	AGE OF MINOR	CONSIDER PARENTS' INCOME		MINORS REP IF PARENTS REFUSE TO PAY		PARENTAL COST RECOVERY		PROCESS OF RECOVERY
		NO	YES	NO	YES	NO	YES	COMMENTS
Madison	18 and under		X		X		X	Letter regarding payment is sent to parents.
Monroe	Under 21		X		X		X	County Law Dept. in charge of parental cost recovery
Montgomery	Unknown							
Nassau	21 and under		X		X	X		
New York (Bronx, Kings, New York, Queens and Richmond)	21 and under		X	UK	UK	X		
New York (Neighborhood Defender Service of Harlem)	18 and under		X		X	X		
Niagara	21 and under		X		X	X		

**AGE OF MINOR/INCOME OF PARENTS CONSIDERED IN THE
ELIGIBILITY DETERMINATION/WHETHER MINORS PROVIDED
REPRESENTATION WHEN PARENTS CAN PAY BUT REFUSE/
PARENTAL COST RECOVERY PROCESS**

COUNTY	AGE OF MINOR	CONSIDER PARENTS' INCOME		MINORS REP IF PARENTS REFUSE TO PAY		PARENTAL COST RECOVERY		PROCESS OF RECOVERY
		NO	YES	NO	YES	NO	YES	COMMENTS
Oneida	21 and under		X		X		X	Based on ability to pay. Turnover to County Attorney if in-house collection fails. Approximately \$50.00 on average collected from parents.
Onondaga	21 and under		X		X		X	Two letters sent to parents by AC office. If parents fail to pay, the matter is turned over to the county attorney who does not actively pursue repayment from parents.

**AGE OF MINOR/INCOME OF PARENTS CONSIDERED IN THE
ELIGIBILITY DETERMINATION/WHETHER MINORS PROVIDED
REPRESENTATION WHEN PARENTS CAN PAY BUT REFUSE/
PARENTAL COST RECOVERY PROCESS**

COUNTY	AGE OF MINOR	CONSIDER PARENTS' INCOME		MINORS REP IF PARENTS REFUSE TO PAY		PARENTAL COST RECOVERY		PROCESS OF RECOVERY	
		NO	YES	NO	YES	NO	YES	COMMENTS	
Ontario	21 and under unless emancipated		X		X		X	Court orders parents to pay fees. If parents refuse to pay, the matter is turned over to the Ontario County Commissioner of Human Services for enforcement.	
Orange	21 and under		X		X	X			
Orleans	18 and under		X		X		X	However, no monies are actually recovered from parents.	
Oswego	21 and under		X		X	X			
Otsego	21 and under		X		X	X			
Putnam	21 and under		X		X	X			
Rensselaer	18 and under	X		Unknown					
Rockland	17 and under		X		X	X			

**AGE OF MINOR/INCOME OF PARENTS CONSIDERED IN THE
ELIGIBILITY DETERMINATION/WHETHER MINORS PROVIDED
REPRESENTATION WHEN PARENTS CAN PAY BUT REFUSE/
PARENTAL COST RECOVERY PROCESS**

COUNTY	AGE OF MINOR	CONSIDER PARENTS' INCOME		MINORS REP IF PARENTS REFUSE TO PAY		PARENTAL COST RECOVERY		PROCESS OF RECOVERY
		NO	YES	NO	YES	NO	YES	COMMENTS
St. Lawrence	Under 21		X		X**		X	Court orders parents to repay the court at the statutorily set AC rate (\$25.00 net per hour out-of-court work; \$40.00 per hour in-court work.) Minors represented only by court order.
Saratoga	18 and under		X		X	X		
Schenectady	18 and under		X		X	X		
Schoharie	Unknown							
Schuyler	Unknown							
Seneca	21 and under		X		X	X		
Steuben	21 and under		X		X		X	The hours of the PD or AC are presented to the county attorney for collection. No monies are actually recovered from parents.

**AGE OF MINOR/INCOME OF PARENTS CONSIDERED IN THE
ELIGIBILITY DETERMINATION/WHETHER MINORS PROVIDED
REPRESENTATION WHEN PARENTS CAN PAY BUT REFUSE/
PARENTAL COST RECOVERY PROCESS**

COUNTY	AGE OF MINOR	CONSIDER PARENTS' INCOME		MINORS REP IF PARENTS REFUSE TO PAY		PARENTAL COST RECOVERY		PROCESS OF RECOVERY
		NO	YES	NO	YES	NO	YES	COMMENTS
Suffolk	21 and under		X		X	X		
Sullivan	21 and under		X		X	X		
Tioga	18 and under	Unknown						
Tompkins	21 and under		X		X	X		
Ulster	21 and under		X		X	X		
Warren	21 and under		X		X	X		
Washington	18 and under		X		X		X	So far, PD office has not had to collect.
Wayne	21 and younger		X		X	X		
Westchester	18 and younger (LAS). Some courts use 18 and younger while others use 21 and younger.		X	X***	X***	X		

**AGE OF MINOR/INCOME OF PARENTS CONSIDERED IN THE
ELIGIBILITY DETERMINATION/WHETHER MINORS PROVIDED
REPRESENTATION WHEN PARENTS CAN PAY BUT REFUSE/
PARENTAL COST RECOVERY PROCESS**

COUNTY	AGE OF MINOR	CONSIDER PARENTS' INCOME		MINORS REP IF PARENTS REFUSE TO PAY		PARENTAL COST RECOVERY		PROCESS OF RECOVERY
		NO	YES	NO	YES	NO	YES	COMMENTS
Wyoming	21 and under		X		X		X	Parents are advised that the county may sue them for legal fees incurred in representing the minor child. The County Attorney handles the collection of money from parents.
Yates	21 and under		X		X	X		

* The public defender reports that between the court and the public defender's office the parents are usually convinced to pay.

** With a court order.

*** According to the survey, the LAS does not deny counsel to minors when parents refuse to pay, but some judges do.

PARTIAL PAYMENT/CONTRIBUTION (722-D): PROCESS FOR RECOVERY

COUNTY	NO	YES	PROCESS OF COLLECTION PARTIAL PAYMENT/722-D
Albany	X		However, the following statement appears on the eligibility form: "If the public defender's office is assigned to represent me, I agree to immediately notify them in the event of becoming employed..." According to the survey, the office never tries to recover the money.
Alegany			Unknown
Broome		X	Collection of partial payment through 722-d orders. The collection of these monies is done by the assigned counsel administrator (who is also the public defender). The orders are not enforced by either the assigned counsel administrator or the county attorney.
Cattaraugus		X	Collection of money from contributions is an individual process handled by the courts.
Cayuga		X	On rare occasions, AC is provided to people who are able to contribute. Judges handle contribution as part of the disposition of the case. Contributions go directly to the county treasurer. Average collection annually is less than \$500.00.
Chautauqua			Unknown
Chemung		X	If the defendant is "borderline" (the defendant is working but doesn't have much money) the defendant is required to talk to three private attorneys. If a private attorney will not take the defendant's case, the defendant may be appointed counsel with the provision that he has to repay the county.
Chenango		X	However, there is no established process for collecting contributions. Average annual collection is \$0.
Clinton		X	There is no process in place at this time for collecting money from partial payment contributions.
Columbia			Unknown

PARTIAL PAYMENT/CONTRIBUTION (722-d): PROCESS FOR RECOVERY

COUNTY	NO	YES	PROCESS OF COLLECTION PARTIAL PAYMENT/722-D
Cortland		X	If defendants get a job or an increase in salary, they must notify PD's office. When the case closes, a 722 order is prepared. One copy is forwarded to the county treasurer; another is sent to the client with a payment schedule. Normally the office seeks \$150.00 for violations, \$300.00 for misdemeanors and \$500.00 for felony cases.
Delaware			Unknown
Dutchess	X		
Erie	X (LA)	X (AC)	AC reports partial payment provision. However, no information provided as to whether they attempt to collect contributions.
Essex			Unknown
Franklin	X (No.)	X (So.)	Southern did not provide information on the process of collection.
Fulton		X	PD office is in the process of implementing guidelines for partial payment.
Genesee		X	AC and PD both indicate that defendants who become financially able shall make payments; 722 orders entered with the court and county treasurer office and probation; collections are not enforced.
Greene	X		
Hamilton	X		
Herkimer		X	The county auditor collects the money from the defendant. The amount of money collected annually is unknown.
Jefferson		X	The eligibility form contains the following statement: "if you do not meet the standards for eligibility, the public defender may represent you, however, the court may order you to pay for this representation if you are able." It is unknown whether partial payment collections are pursued.
Lewis	X		
Livingston	X		

PARTIAL PAYMENT/CONTRIBUTION (722-d): PROCESS FOR RECOVERY

COUNTY	NO	YES	PROCESS OF COLLECTION PARTIAL PAYMENT/722-D
Madison		X	The county treasurer is paid from funds collected by the criminal defense office. The court is rarely involved in the collection.
Monroe		X	PD initially tries to recover any monies; if client refuses to pay, the case is turned over to the County Law Department. The amount of money collected specifically from partial payments is not available.
Montgomery			Unknown
Nassau		X	18-B attorneys collect partial payment fees directly and they are urged vigorously to collect. No information available on annual amount from collections. Additionally, the county noted they are currently investigating the use of a collection lawyer for those who become ineligible after having a lawyer assigned or those who promise to pay but fail to do so.
New York (Bronx, Kings, New York, Queens and Richmond)	X (Bronx, Kings, New York and Richmond)	X (Queens)	Queens: The report, "Financial Standards for the Assignment of Counsel," states: "The Court at any time prior to the completion of the case may, for good cause shown, order a defendant who is unable to afford counsel, in accordance with these rules, to contribute to the cost of representation. The amount of contribution ordered may be a sum not to exceed the full cost of the fees and expenses to be paid by the City of New York to Assigned Counsel or the Legal Aid Society." It is unknown whether this provision has been implemented or what the process is for collecting fees from partial payment.
New York (Neighborhood Defender Service of Harlem)	X		
Niagara		X	Court orders those able to pay to reimburse the county through the treasurer's office. The collections are placed in the PD's budget for assigned counsel. This pays attorneys assigned when conflict occurs. Total amount of all money collected from partial payment/contributions is \$3000.00.

PARTIAL PAYMENT/CONTRIBUTION (722-d): PROCESS FOR RECOVERY

COUNTY	NO	YES	PROCESS OF COLLECTION PARTIAL PAYMENT/722-D
Oneida		X	PD sets the collection practice and money is collected at all stages of proceedings based on \$65.00 per hour. Average annual collection is \$1500.00.
Onondaga		X	Defendants who volunteer to make payments do so directly to the AC office on a mutually agreeable schedule. Those ordered to pay do so through the court. Average amount collected annually is \$24,000.
Ontario		X	The county collects or the court directs payment at or after sentencing. Average amount collected, if any, is minimal.
Orange	X		
Orleans		X	Paybacks are not pursued aggressively. Annual collection is \$0.
Oswego	X		
Otsego		X	Only collected if individual is placed on probation and pays the probation department. Average collection is less than \$1500.00 annually.
Putnam	X		
Rensselaer		X	The following statement appears on the eligibility form: "If the public defender is assigned to represent you, you must immediately notify the public defender's office in the event of becoming employed and you must also advise the name, address and telephone number of employer." Clients send money to PD's office, where payment records are kept. This information is provided to the courts on request. Average annual collection is \$5500.00.
Rockland			Unknown
St. Lawrence		X	The Court orders defendant to repay the county at the statutory rate for AC; \$25.00 out-of-court work and \$40.00 in-court work.
Saratoga		X	However, there are currently no procedures in place for collection.

PARTIAL PAYMENT/CONTRIBUTION (722-d): PROCESS FOR RECOVERY

COUNTY	NO	YES	PROCESS OF COLLECTION PARTIAL PAYMENT/722-D
Schenectady		X	In rare cases there are defendants who have some funds but not enough to hire an attorney. In such cases an attorney is appointed to represent the defendant. Several judges order the PD's office to set up a partial payment plan with the defendant.
Schoharie			Unknown
Schuyler			Unknown
Seneca		X	However, no money is collected because there are no formal collection procedures in place.
Steuben		X	Defendants are told they may be responsible for payment, but collections never take place. Annual collection is \$0.
Suffolk	X		
Sullivan		X	However, LAS does not collect money from those that are determined able to contribute.
Tioga		X	Currently there is no program in place for collecting monies; the county hopes to implement such a program within the next year.
Tompkins	X		
Ulster		X	Defendants send money to the county treasurer directly, or the PD office, who forwards contributions to the county. The county has an account for defender deposits. Money is collected after case is over; court decides how much to collect.
Warren	X		
Washington	X		

PARTIAL PAYMENT/CONTRIBUTION (722-d): PROCESS FOR RECOVERY

COUNTY	NO	YES	PROCESS OF COLLECTION PARTIAL PAYMENT/722-D
Wayne		X	The Wayne County Public Defender Operating guidelines state: "In appropriate cases, the court may order a financially able defendant to make partial payment for public defender services to the Wayne County Public Defender pursuant to §722-d of the County Law." At the conclusion of the defendant's court process, the defense attorney may request a "contribution order" from the judge. If the judge agrees, he signs an order requiring the defendant to pay a sum to the PD's office. On average, \$8,000.00 collected annually.
Westchester	X		
Wyoming	X		However, the Standards of Eligibility for the Wyoming County Public Defender's Office contains the following statement: "Whenever it appears to a court who has appointed counsel or authorized services for a defendant, or before whom the case is then pending, that funds are available for payment in excess of the amount reasonably required for the necessities of life, he may order payment of such excess pursuant to County Law §722-d" and "In case of doubt about the Defendant's eligibility, where justice requires immediate representation or authorization of services, counsel shall be appointed or services shall be authorized, with the contribution order being ordered at a later date if funds are available."
Yates	X		

RECOUPMENT/REPAYMENT: PROCESS FOR RECOVERY

COUNTY	NO	YES	PROCESS OF RECOUPING MONEY
Albany		X	
Allegany		X	Eligibility form states: "Notice: If an attorney is assigned to you, you may be required to pay Allegany County for all or part of your defense." Whether this provision is enforced is unknown.
Broome	X		
Cattaraugus			Unknown
Cayuga	X		
Chautauqua			Unknown
Chemung			Unknown
Chenango	X		
Clinton	X		
Columbia			Unknown
Cortland		X	The office, however, does not have the time or manpower to actively seek reimbursement for services rendered. Average annual collection \$0-\$200.00.
Delaware			Unknown
Dutchess	X		
Erie	X (LAS)		AC: Unknown
Essex		X	Repayment is handled by the court in which the case was heard. It is not known how much money is collected annually.
Franklin		X	Eligibility forms for both the Northern and Southern offices contain the following statement: "Notice: If an attorney is assigned to you, you may be required to repay the County for all or part of the cost of your defense." The Northern office may be required to take legal action for collection. Southern office has no process to recoup money from defendants.
Fulton		X	Eligibility form contains the following statement: "The County Law permits the court to order you to make payment of all or part of the costs of providing defender services. You may be required to pay when the case is over." There is no formal process for recouping money. Average annual recoupment is \$500.00.

RECOUPMENT/REPAYMENT: PROCESS FOR RECOVERY

COUNTY	NO	YES	PROCESS OF RECOUPING MONEY
Genesee		X	
Greene		X	Eligibility form contains the following statement: "Notice: If an attorney is assigned to you, you may be required to repay the court for all or part of the cost of your defense." There is no follow-up to recoup the money.
Hamilton	X		
Herkimer		X	The court is responsible for seeking repayment.
Jefferson			Unknown
Lewis	X		
Livingston	X		
Madison		X	The county treasurer is paid from funds collected by the criminal defense office.
Monroe	X		
Montgomery			Unknown
Nassau		X	
New York (Bronx, Kings, New York, Queens and Richmond)	X		
New York (Neighborhood Defender Service of Harlem)	X		
Niagara	X		
Oneida		X	The PD sets the collection practice and money is collected at all stages of the proceedings based on \$65 per hour. Average amount of money recouped annually is \$1500.00 (Same process as used for partial payment).
Onondaga	X		
Ontario		X	The county collects monies; the court directs payment at or after sentencing.
Orange	X		
Orleans	X		
Oswego	X		

RECOUPMENT/REPAYMENT: PROCESS FOR RECOVERY

COUNTY	NO	YES	PROCESS OF RECOUPING MONEY
Otsego		X	The only process currently used is through the probation department. Average recoupment annually is less than \$1500.00.
Putnam	X		
Rensselaer		X	
Rockland	X		
St. Lawrence			Unknown
Saratoga		X	There are no established procedures for seeking repayment although the PD and county attorney are seeking to implement such procedures.
Schenectady	X		
Schoharie			Unknown
Schuyler		X	The following statement appears on the eligibility form: "Do you realize that even if you are represented by the Public Defender or other assigned counsel, as a condition of this representation you may be required to reimburse the public defender and/or County of Schuyler, in an amount to be set by the Court for this representation and do you agree to do so?" It is unknown whether this provision is enforced.
Seneca		X	No money is collected because there is no available staff to collect or formal procedures in place for collection.
Steuben		X	Average annual recoupment is \$0.
Suffolk	X		
Sullivan		X	Defendants are informed that they may be responsible for full or partial payment, but neither LAS nor the county attempt to collect these monies.
Tioga	X		
Tompkins		X	However, no monies are actually recouped.
Ulster		X	PD bills defendants; repayment is sought at sentencing or letters are sent after family court settlements. The county attorney is responsible for collections.

RECOUPMENT/REPAYMENT: PROCESS FOR RECOVERY

COUNTY	NO	YES	PROCESS OF RECOUPING MONEY
Warren		X	The following statement appears on the eligibility form: "If an attorney is assigned to me, I may be required to repay the county for all or part of such defense." The County, however, does not aggressively recoup money from defendants.
Washington		X	However, repayment is not usually sought after since most who apply for public defense services are unemployed.
Wayne	X		
Westchester	X		
Wyoming			Unknown
Yates	X		

STATEMENT OF CONFIDENTIALITY ON ELIGIBILITY FORM

COUNTY	NO	YES	COMMENTS
Albany	X		
Allegany	X		
Broome	X		
Cattaraugus	X		
Cayuga	X		
Chautauqua	X		
Chemung	X		
Chenango	X		
Clinton			
Columbia	X		
Cortland		X	"The information given in this application is for the private use of the public defender or court appointed counsel and their staffs and the Judge or Judges in the case. This application and the information you provide will not be revealed to anyone else without your permission."
Delaware	X		
Dutchess	X		
Erie	X (AC)		No eligibility form used by LAS.
Essex	X		
Franklin	X		
Fulton	X		"I understand the information on this declaration is not confidential and maybe disclosed by the public defender to the courts and to anyone else he may deem proper in order to determine my rights to be represented by him."
Genesee	X		
Greene	X		
Hamilton	X		

STATEMENT OF CONFIDENTIALITY ON ELIGIBILITY FORM

COUNTY	NO	YES	COMMENTS
Herkimer	X		
Jefferson	X		"The information on this form is not confidential. It may be revealed to the court prosecutor and the public."
Lewis			Unknown
Livingston	X		
Madison	X		
Monroe			Unknown
Montgomery			Unknown
Nassau	X		
New York (Bronx, Kings, New York, Queens and Richmond)	X (Queens)		No eligibility form used in Bronx, Kings, New York or Richmond Counties
New York (Neighborhood Defender Service of Harlem)	X		No eligibility form used.
Niagara	X		"I hereby authorize the public defender's office to disclose the above information to courts and to such other persons as he may be deemed proper for the purpose of reaching a proper decision on the question of my right to be defended by them."
Oneida	X		". . . The information on this form is not confidential. It may be revealed to the court, prosecutor or public."
Onondaga	X		
Ontario	X		
Orange	X		Legal Aid Society
Orleans	X		
Oswego	X		
Otsego	X		

STATEMENT OF CONFIDENTIALITY ON ELIGIBILITY FORM

COUNTY	NO	YES	COMMENTS
Putnam	X		"I hereby give permission to Putnam County LAS to make available this application to any court or competent jurisdiction."
Rensselaer	X		
Rockland			Unknown
St. Lawrence	X		
Saratoga	X		Although there is nothing on the form to indicate that the information is confidential, the chief defender informed us (1/26/93) that he treats the information on the financial affidavit as confidential.
Schenectady	X		
Schoharie			Unknown
Schuyler	X		
Seneca	X		
Steuben	X		
Suffolk	X		
Sullivan	X		
Tioga	X		
Tompkins	X		
Ulster	X		
Warren	X		
Washington			Unknown
Wayne	X		
Westchester	X		
Wyoming			Unknown
Yates			Unknown

**POTENTIAL CLIENT REQUIRED TO SIGN AN AFFIDAVIT REGARDING
THE TRUTHFULNESS OF THE INFORMATION ON THE ELIGIBILITY FORM**

COUNTY	NO	YES	COMMENTS
Albany		X	
Allegany		X	
Broome		X	
Cattaraugus		X	
Cayuga		X	
Chautauqua		X	
Chemung		X	
Chenango		X	
Clinton		X	
Columbia		X	
Cortland		X	
Delaware		X	
Dutchess		X	
Erie		X (AC)	LAS does not use an eligibility form.
Essex		X	
Franklin		X	
Fulton		X	
Genesee	X		The eligibilty form does not require defendants to sign sworn statements; however, the defendant is required to sign the following statement: "I have reviewed the above information and verify the same to be true."
Greene		X	
Hamilton		X	
Herkimer		X	
Jefferson		X	

**POTENTIAL CLIENT REQUIRED TO SIGN AN AFFIDAVIT REGARDING
THE TRUTHFULNESS OF THE INFORMATION ON THE ELIGIBILITY FORM**

COUNTY	NO	YES	COMMENTS
Lewis		X	
Livingston		X	
Madison	X		The eligibility form does not require defendants to sign a sworn statement; however, the following appears in the eligibility form: "Under the penalties of perjury, I certify my financial condition to be as follows."
Monroe	X		
Montgomery			Unknown
Nassau		X	
New York (Bronx, Kings, New York, Queens and Richmond)	X		
New York (Neighborhood Defender Service of Harlem)	X		No eligibility form used.
Niagara		X	
Oneida	X (Short form)	X (Long form)	However, the short form states: "Under the penalties of perjury, I certify my financial condition to be as follows." On the long form, the following statement appears: "I...being duly sworn depose and make under oath the following statement regarding my marital status, residence, source and amount of income and financial status in connection with the request for the services of the PO."
Onondaga	X		
Ontario		X	
Orange	X		No eligibility form used.
Orleans		X	
Oswego	X		

**POTENTIAL CLIENT REQUIRED TO SIGN AN AFFIDAVIT REGARDING
THE TRUTHFULNESS OF THE INFORMATION ON THE ELIGIBILITY FORM**

COUNTY	NO	YES	COMMENTS
Otsego		X	
Putnam		X	
Rensselaer		X	
Rockland		X	
St. Lawrence		X	
Saratoga		X	
Schenectady		X	
Schoharie			Unknown
Schuyler		X	
Seneca		X	
Steuben		X	
Suffolk		X	
Sullivan		X	
Tioga		X	
Tompkins		X	
Ulster		X	
Warren		X	
Washington		X	
Wayne		X	
Westchester		X	
Wyoming		X	
Yates		X	

AVERAGE PERCENT OF DEFENDANTS DETERMINED INELIGIBLE ANNUALLY

COUNTY	PERCENT DETERMINED INELIGIBLE
Albany	Exact figure unknown, but percent determined to be ineligible was characterized as "insignificant."
Allegany	Exact figure unknown, however, the PD claims it is a very low figure. The AC Administrator states that those determined ineligible plead guilty.
Broome	20 Percent
Cattaraugus	Unknown
Cayuga	1-2 Percent
Chautauqua	Unknown
Chemung	Unknown
Chenango	5 Percent
Clinton	5 Percent
Columbia	10-15 Percent
Cortland	23 Percent
Delaware	Unknown
Dutchess	10 Percent
Erie	LA: Less than 1 Percent; AC: 15-20 Percent
Essex	1 Percent
Franklin	Northern: 30 Percent; Southern: 5 Percent
Fulton	10 Percent
Genesee	Less than 1 Percent
Greene	10 Percent
Hamilton	0 Percent
Herkimer	1 Percent
Jefferson	Unknown
Lewis	10 Percent
Livingston	17 Percent
Madison	5-10 Percent
Monroe	15 Percent

AVERAGE PERCENT OF DEFENDANTS DETERMINED INELIGIBLE ANNUALLY

COUNTY	PERCENT DETERMINED INELIGIBLE
Montgomery	Unknown
Nassau	35 Percent
New York (Bronx, Kings, New York, Queens and Richmond)	10-15 Percent
New York (Neighborhood Defender Service of Harlem)	10 Percent
Niagara	20 Percent
Oneida	5 Percent
Onondaga	Unknown
Ontario	Less than 10 Percent
Orange	14 Percent
Orleans	3 Percent
Oswego	Unknown
Otsego	Unknown
Putnam	Unknown
Rensselaer	10 Percent
Rockland	.07 Percent
St. Lawrence	Unknown
Saratoga	10 Percent
Schenectady	16 Percent
Schoharie	Unknown
Schuyler	Unknown
Seneca	10 Percent
Steuben	5 Percent
Suffolk	Unknown
Sullivan	10 Percent
Tioga	25 Percent
Tompkins	6 Percent
Ulster	Unknown

AVERAGE PERCENT OF DEFENDANTS DETERMINED INELIGIBLE ANNUALLY

COUNTY	PERCENT DETERMINED INELIGIBLE
Warren	10-15 Percent
Washington	10 Percent
Wayne	Unknown
Westchester	LAS: Less than 10 percent; 18B: Unknown
Wyoming	10 Percent
Yates	15 Percent

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

COUNTY	NO	YES	COMMENTS
Albany	X		No formal process. Defendants may talk to the judge, who will review eligibility and make a final determination.
Allegany		X	The county court judge may assign counsel if the local judge or hearing officer has denied the application.
Broome		X	If the investigator from the PD's office determines a person is ineligible, that decision is automatically reviewed by the chief public defender. If the chief public defender also determines the person is ineligible, the person is advised that he can ask the judge to review the determination.
Cattaraugus	X		
Cayuga	X		
Chautauqua			Unknown
Chemung			Unknown
Chenango	X		
Clinton	X		
Columbia		X	Judge holds "indigency" hearing for those defendants who seek review of an adverse decision. Based on the hearing, the court will then determine eligibility.
Cortland	X		However, if determined ineligible, defendants who lack funds must consult with three attorneys and report back with their names. If they cannot reach an agreement with any of the three in terms of representation, the PD office will represent them.
Delaware			Unknown
Dutchess	X		However, the court may order PD office to defend the client if the defendant appears on the adjourned date without counsel. Also, those with borderline incomes must consult with three private attorneys who will work for a marginal fee. If they can not come to terms with any of them, the PD's office will re-qualify them for appointed counsel.
Erie		X (LA) X (AC)	LA Bureau allows defendants to bring in any documentation they have and to consult with a senior staff attorney. Similarly, AC permits defendants determined ineligible to bring in additional documentation.
Essex		X	If the local magistrate denies counsel, the defendant may appeal to the county court judge. The administrator has the authority to appoint counsel.

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

COUNTY	NO	YES	COMMENTS
Franklin	X (Northern) X (Southern)		Northern: However, the defendant can go to the judge and tell him he needs counsel. Southern: However, if charges are severe or if the judge so orders, representing client is undertaken if defendant's income is greatly in excess of the income guideline.
Fulton	X		
Genesee		X (PD)	PD or AC is notified if a defendant is ineligible under guidelines; estimates are made on the cost of defense. Judge and chief PD review the case and the judge makes a final determination.
Greene		X	If ineligible, two attorneys review the case and make a recommendation to the court; the court makes the final determination.
Hamilton			Unknown; assigned counsel administrator reports that no defendants are denied appointed counsel.
Herkimer		X	Review of the determination may be conducted by the judge with jurisdiction in the pending matter.
Jefferson			Unknown
Lewis		X	If ineligible persons indicate they believe they are eligible, the eligibility form is sent to the chief PD for review.
Livingston		X	Judges get copies of rejection letters and may order representation for defendants if he/she deems necessary.
Madison		X	If defendant can not pay for counsel, his/her financial situation is reviewed and a potential fee is imposed. The potential fee is to be paid to the county treasurer.
Monroe		X	The case is reviewed by the supervising attorney or, if necessary, by the chief defender. If new information is obtained, it is presented to the judge for a final determination.
Montgomery			Unknown
Nassau		X	Court may review documentation and overrule the decision of the Defense Counsel Screening Bureau.
New York (Bronx, Kings, New York, Queens and Richmond)	X		Although there is no judicial review process, the LAS will on occasion review and contest eligibility determinations made by the court, both administratively and in court.
New York (Neighborhood Defender Service of Harlem)		X	Informal only. Generally the court requires the defendant to secure private counsel, and/or that the defendant provide an explanation of financial circumstances that prevent the defendant from securing private counsel.

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

COUNTY	NO	YES	COMMENTS
Niagara		X	Defendants may re-apply or submit financial affidavits to be reviewed by the chief PD.
Oneida		X	Defendant can appeal to chief defender with a complete long-form financial statement or judicial examination and appointment.
Onondaga		X	Determination may be reviewed within the AC office or taken back to court for determination by the assigning judge. Additional information may be requested such as verification of income, entitlements, assets, etc. The reviewing judge may order a client to contribute toward the cost of his representation if he is financially able.
Ontario		X	If denied by administrator, defendant can apply directly to the court. If the local court denies, defendants can apply to the administrator to review the court's decision.
Orange		X	If rejected by LAS, the defendant is advised that the issue of eligibility may be raised with the judge.
Orleans	X		
Oswego		X	Application can be reviewed by the AC administrator.
Otsego	X		
Putnam		X	Defendant has ten days to appeal denial decision. The financial application is reviewed by three members of the LAS Board of Directors. Two out of three must agree on the final determination.
Rensselaer	X		Applicants may ask the judge to review their application, but there are no formal procedures in place.
Rockland		X	Defendants can apply for re-evaluation by chief PD or can ask the judge to appoint counsel.
St. Lawrence		X	Defendants denied counsel are entitled to have the court review the determination.
Saratoga		X	The eligibility form includes the following statement: "If you wish to appeal your denial ... contact: Saratoga County Public Defender Office ..." The defendants can send a letter requesting review with any additional financial information to the Chief PD, who reviews letter and any additional documentation and makes the decision regarding eligibility.
Schenectady		X	Chief PD reviews the eligibility determination and then if the defendant wishes to appeal the Chief PD's decision, the defendant can ask the judge to review this decision.
Schoharie	X		
Schuyler			Unknown
Seneca	X		However, the judge may reconsider the eligibility decision.

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

COUNTY	NO	YES	COMMENTS
Steuben		X	Defendant can seek a personal interview with the PD/AC administrator, and, in some cases, with the court.
Suffolk	X		However, defendants who continue to return to court without counsel can be sent for a new eligibility interview.
Sullivan		X	Executive director must approve all denials. If a defendant is denied appointed counsel, the LAS will advise the defendant to try and hire three attorneys. If none of the three attorneys will accept the defendant's case, the defendant must bring back, to the LAS, letters from the attorneys to that effect and then the LAS will represent the defendant.
Tioga		X	The defendant can ask the court to review the petition and financial affidavit.
Tompkins		X	The administrator of the AC program reviews the defendant's file and then meets with the defendant.
Ulster		X	PD's office reviews the financial circumstances of the defendant again and either asks the PD in court to accept the case or suggests the defendant request the court to appoint counsel.
Warren	X		
Washington		X	The defendant is called personally to discuss the reasons for denial; a follow-up letter is then sent to the defendant.
Wayne		X	If the court declines to assign counsel, inquiry should be made as to whether the defendant will then return with private counsel. If upon inquiry, the defendant indicates that he does not have access to private counsel, the court informs the defendant that he may contact the PD's office regarding alternatives for representation. If the PD's office denies eligibility, the defendant may make a request for counsel directly to the judge involved in the case.
Westchester	X		While there is no formal review process, the eligibility file can be reviewed by the chief attorney of the LAS. Defendants can ask the court to "overrule" the eligibility decision of the LAS. If the case involves a non-felony, it is handled by the 18B panel and according to the survey, there is essentially no review process in non-felony cases and no one to argue on defendant's behalf in 18B situations.
Wyoming		X	If defendants exceed guidelines, they must provide a list of three attorneys they contacted and the retainers they requested. The attorney handling that jurisdiction then reviews each client's financial affidavit individually.
Yates		X	The defendant may apply to the court for a final determination.

**NEW YORK STATE ELIGIBILITY PRACTICES:
COUNTY PROFILES**

INCOME GUIDELINES SOLE DETERMINANT OF ELIGIBILITY DETERMINATION

No income guidelines used. Income is considered along with the defendant's assets and debts. Persons on public assistance or unemployment insurance are automatically eligible for appointed counsel.

INFORMATION REQUESTED ON THE ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

Information requested on the eligibility form: Number of dependents, personal and spousal gross and net income, real estate, stocks, bonds, life insurance, own car, liquid assets, living expenses, whether on welfare, unemployment or SSI.

HOW IS BAIL TREATED IN THE ELIGIBILITY PROCESS

If the defendant himself is the one to post the bail, then this factor is considered in the eligibility determination. If a friend or relative of the defendant post bail, then this factor is not considered.

PARTIAL PAYMENT/CONTRIBUTION (722 D)

No partial payment/contribution provision.

RECOUPMENT/REPAYMENT

Yes. According to the survey, defendants are informed that they may be responsible to pay part or all of the cost of their representation in the event they become able to pay after representation. The following statement appears on the eligibility form: "If the public defender's office is assigned to represent me, I agree to immediately notify them in the event of becoming employed..." However, according to the survey, the office does not try to recoup money from defendants.

**PARENTAL CONSIDERATION
AGE OF MINOR**

21 and younger

INCOME OF PARENTS CONSIDERED

Yes

MINORS PROVIDED REPRESENTATION WHEN PARENTS ARE DETERMINED TO BE ABLE TO PAY BUT REFUSE

No. The matter is referred to the judge.

COUNTY

ALBANY*

SOURCE AND DATE OF INFORMATION

Chief Defender Eligibility Survey conducted over the telephone by Karen Kane, NYSDA's Director of Research with Bob Van Slank, Investigator, Albany County Public Defender, 9/28/93, and eligibility form **Application for Public Defender Representation** sent to NYSDA by the public defender's office on June 24, 1991.

ELIGIBILITY PROCESS AND WHO MAKES THE DETERMINATION

When a defendant appears before a judge at arraignment, the judge will inquire whether the defendant needs appointed counsel. If the defendant states that he needs appointed counsel, the judge will ask the defendant if he works. Generally, those who do not work will be appointed counsel. If a defendant states that he does work, the judge will inquire about his income. The judge will then make a determination based on the defendant's income whether to refer the defendant to the public defender who is covering the court where the matter is pending. In cases where the judge is unsure about possible eligibility the defendant is also referred to the public defender. The defendant is then required to complete an eligibility form. The public defender covering the court will then review the form and make an eligibility determination. In many instances, defendants will walk-in to the public defender's office where they are required to complete an eligibility form. The form is reviewed by a public defender who determines eligibility.

PERCENT DETERMINED INELIGIBLE ANNUALLY

Unsure about exact figure, but the percentage determined ineligible was characterized as being an "insignificant" percent.

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

No formal process. However, the public defender tells the defendant to talk to the judge. The judge may then review the defendant's eligibility form and listen to his story. Thereafter, the judge will make the final eligibility determination.

INCOME GUIDELINES

No formal income guidelines used.

PARENTAL COST RECOVERY

No

SIGN AFFIDAVIT

Yes

**DEFENDANT REQUIRED TO SIGN ANY
WAIVERS IN THE COURSE OF THE
ELIGIBILITY DETERMINATION**

According to the survey, no. However, the eligibility form contains the following statement: "Do you authorize the court, the office of the public defender or assigned counsel to make any inquiries or investigation concerning the answers given by you in this affidavit?"

STATEMENT OF CONFIDENTIALITY

No

**PUBLIC DEFENSE OFFICE/COUNTY
TRIES TO KEEP ELIGIBILITY
INFORMATION CONFIDENTIAL**

Yes

* The Albany County Public Defender's office specifically declined to verify the information on its Profile Sheet indicating that it was in the process of revising its eligibility guidelines. Thus, the reported eligibility data may no longer be current as a result of the implementation of new guidelines.

COUNTY

ALLEGANY

SOURCE AND DATE OF INFORMATION

Chief Defender Eligibility Survey
Judith Samber, Allegany Public Defender
7/93; conversation between Ken Strutin, NYSDA
staff attorney and W. Joseph Embser, Allegany
County Assigned Counsel Administrator, on
February 23, 1993; Chief Defender Eligibility Survey,
W. Joseph Embser, Allegany County Assigned
Counsel Administrator, 8/93; and eligibility form
Application for Assigned Counsel which was sent
with the survey.

**ELIGIBILITY PROCESS AND WHO
MAKES THE DETERMINATION**

The court appoints in family court, county court
and local criminal court. Conflict cases referred by
court to assigned counsel administrator. The court
has the defendant complete a financial affidavit at
the arraignment. The assigned counsel
administrator said that only some courts use a
financial eligibility form. Also, the administrator
stated that there are no standards used.
Determinations vary by courts—some courts are
liberal and some are conservative (and that the
county court judges are more conservative). The
eligibility determination depends on the court's
desire to have an attorney in the case.

PERCENT DETERMINED INELIGIBLE

According to the public defender survey, a very low
percentage. The assigned counsel administrator
stated he doesn't know the percent determined
ineligible because they plead guilty.

**REVIEW PROCESS FOR THOSE
DETERMINED INELIGIBLE**

According to the public defender survey, there is a
review process. The county court judge may
assign counsel where local judge or hearing officer
has denied application. However, according to the
assigned counsel administrator's survey, there is no
review process.

INCOME GUIDELINES

No formal guidelines. Varies by judge making the
eligibility determination.

INFORMATION REQUESTED ON THE ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

Information requested on the eligibility form: Number of dependents, liquid assets, real and personal property, personal and spousal income, monthly debts and rent payments, total amount owed to creditors per month, whether defendant tried to retain a private attorney. The assigned counsel survey states that the eligibility determination is in the sole discretion of the judge.

HOW IS BAIL TREATED IN THE ELIGIBILITY PROCESS

No answer provided by the chief defender on the survey. It should be noted, however, that the financial form **does not** ask any questions relating to bail. The assigned counsel administrator stated that some judges will say if you can post bail then you can pay for your own lawyer.

PARTIAL PAYMENT/CONTRIBUTION (722 D)

No answer provided by chief defender on the survey. However, the following statement appears on the financial eligibility form: "Notice: If any attorney is assigned to you, you may be required to pay Allegany for all or part of your defense." We do not know if Allegany County enforces this provision. The assigned counsel survey says that eligibility determinations are usually all or nothing meaning that a defendant is considered completely eligible or completely ineligible.

RECOUPMENT/REPAYMENT

No answer provided by chief defender on the survey. However, the following statement appears on the financial eligibility form: "Notice: If an attorney is assigned to you, you may be required to pay Allegany County for all or part of your defense." We do not know if Allegany County enforces this provision. The assigned counsel administrator stated on the survey that defendants are not informed that they may be responsible for all or part of the cost of representation after the representation.

PARENTAL CONSIDERATION

AGE OF MINOR

No answer provided by public defender on survey. The assigned counsel survey stated 21 and younger.

INCOME OF PARENTS CONSIDERED

There is no indication on the form that the parents income is considered. However, W. Joseph Embser, the Allegany Assigned Counsel Administrator told NYSDA staff attorney Ken Strutin on February 23, 1993 that there is no special treatment of minors; that the eligibility decision is usually based on the personal knowledge of the judge conducting the eligibility interview, i.e., whether the parent or parents have any money to pay for their child's representation.

MINOR PROVIDED REPRESENTATION WHEN PARENTS ARE DETERMINED TO BE ABLE TO PAY BUT REFUSE

According to the public defender survey, yes. The assigned counsel administrator, however, indicated that sometimes minors are provided representation when the parents can pay but won't and sometimes minors are not provided representation when this occurs.

PARENTAL COST RECOVERY

This question was not answered by the chief defender on the survey. The Administrator, however, told us that he is unaware of any effort by the county to try and recover money from parents.

SIGN AFFIDAVIT

Yes

DEFENDANT REQUIRED TO SIGN ANY WAIVERS IN THE COURSE OF THE ELIGIBILITY DETERMINATION

No

STATEMENT OF CONFIDENTIALITY

No

PUBLIC DEFENSE OFFICE/COUNTY TRIES TO KEEP ELIGIBILITY INFORMATION CONFIDENTIAL

According to the public defender survey, yes. The assigned counsel survey said that no attempt is made to keep the eligibility information confidential.

COUNTY

BROOME

SOURCE AND DATE OF INFORMATION

Chief Defender Eligibility Survey, Robert O'Leary, Broome County Public Defender, 3/94; and eligibility form **Affidavit of Financial Status Public Defender of Broome County** and schedule of income guidelines sent with the survey; and conversation between NYSDA research assistant Susan Robinson and Public Defender Robert O'Leary on June 5, 1991.

ELIGIBILITY PROCESS AND WHO MAKES THE DETERMINATION

Persons requesting the services of the public defender are interviewed by the public defender investigator to determine financial eligibility. These interviews are conducted in both the Broome County jail and the public defender's office. This office then advises the court as to whether it will be representing the defendant or that the defendant does not qualify for the services of the public defender.

PERCENT DETERMINED INELIGIBLE ANNUALLY

20 percent

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

Yes. If a public defender investigator determines that a person does not qualify for representation, that decision is automatically reviewed by the chief public defender. If a person maintains they still cannot afford to hire a private attorney, they are advised to bring this to the attention of the judge. Every person determined to be ineligible is referred to the Broome County Bar Association Referral Service.

INCOME GUIDELINES

Yes. \$150.00 maximum weekly net income for a single person plus \$50.00 maximum net income per dependent. The survey states that the guidelines are not updated annually and were last updated in December, 1992. The survey notes that the income guidelines are based on a combination of the LSC federal poverty guidelines and the eligibility standards of various public defender and legal aid offices throughout the state.

INCOME GUIDELINES SOLE DETERMINANT OF ELIGIBILITY DETERMINATION

No

INFORMATION REQUESTED ON THE ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

Information requested on the eligibility form:
Number of dependents, household income, liquid assets, real and personal property, automobiles owned by defendant or spouse and monthly debt obligations.

HOW IS BAIL TREATED IN THE ELIGIBILITY PROCESS

Posting of bail will not disqualify nor even be considered for eligibility purposes. In the event a person is determined to be ineligible and yet still remains in jail, a re-evaluation of eligibility is done within one week.

PARTIAL PAYMENT/CONTRIBUTION (722 D)

Yes, appointed counsel is provided to people who are able to contribute toward the cost of their representation. At times, the court will assign counsel when there is a conflict of interest with the public defender and the defendants' income or a minor's parent's income would disqualify the defendant. When this occurs, the court issues an order pursuant to §722-d of the County Law requiring the defendant's parents to reimburse the county the cost of legal services rendered by assigned counsel. The money is collected by the administrator of the assigned counsel program (who is also the public defender). The enforcement of these orders is not pursued by either the assigned counsel administrator or the county attorney. The survey reports that annually, an average of less than \$1,000.00 is collected from partial payments/contributions.

RECOUPMENT/REPAYMENT

No, defendants are not informed that they may be responsible for all or part of the cost of their representation in the event they become able to pay after representation.

PARENTAL CONSIDERATION

AGE OF MINOR

Under 21 years old

INCOME OF PARENTS CONSIDERED

Yes. Defendant's 21 and younger must complete an 'Affidavit of Financial Status of Parent(s)' and 'Questionnaire for Parent(s).'

**MINORS PROVIDED REPRESENTATION
WHEN PARENTS ARE DETERMINED TO
BE ABLE TO PAY BUT REFUSE**

Yes

PARENTAL COST RECOVERY

Yes. In the event the public defender represents a minor whose parent's income would disqualify that person from representation, the court will sign an order pursuant to §722-d of the County Law requiring the defendant's parents to reimburse the county for the cost of the legal services rendered. However, the overwhelming number of cases where there is actual recovery of money is small, and neither the public defender nor the county attorney pursue enforcement of these orders. The survey notes that, annually, the average amount of money recovered from parents is \$1,000.00.

**OTHER MEASURES USED TO OFFSET THE
COST OF PROVIDING PUBLIC DEFENSE
SERVICES**

Aid to Defense monies and COMBAT grants.

SIGN AFFIDAVIT

Yes

**DEFENDANT REQUIRED TO SIGN
ANY WAIVERS IN THE COURSE OF
THE ELIGIBILITY DETERMINATION**

No

STATEMENT OF CONFIDENTIALITY

No

**PUBLIC DEFENSE OFFICE/COUNTY
TRIES TO KEEP ELIGIBILITY
INFORMATION CONFIDENTIAL**

Yes. Except where a defendant is considered ineligible and wishes the determination to be reviewed by the court. In those situations, the court is advised of the information regarding financial status and the reason the public defender's office determined that the persons did not qualify.

COUNTY

CATTARAUGUS

SOURCE AND DATE OF INFORMATION

Chief Defender Eligibility Survey conducted over the telephone by Rene Otero, NYSDA Research Assistant with Daniel DeRose, Administrator, Cattaraugus County Assigned Counsel on August 25, 1993 and eligibility form **Defendant's Affidavit and Assignment of Counsel** sent to NYSDA on June 20, 1991 by Jeremiah Moriarity, the former administrator of the assigned counsel program.

ELIGIBILITY PROCESS AND WHO MAKES THE DETERMINATION

The court gives the defendant a financial affidavit form to complete. Based on the information supplied by the defendant on the affidavit, the judge determines whether to appoint counsel or not. There are no written guidelines.

PERCENT DETERMINED INELIGIBLE ANNUALLY

Unknown

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

No

INCOME GUIDELINES

No

INCOME GUIDELINES SOLE DETERMINANT OF ELIGIBILITY DETERMINATION

No income guidelines used.

INFORMATION REQUESTED ON THE ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

Information requested on the eligibility form: Personal income, cash on hand, number of dependents, all property owned (car, real property). It should be noted that the form does not request any information concerning the defendant's debts.

HOW IS BAIL TREATED IN THE ELIGIBILITY PROCESS

According to the survey, bail is not a factor considered in the eligibility determination.

PARTIAL PAYMENT/CONTRIBUTION (722 D) Yes. Appointed counsel is provided to people who are able to contribute toward the cost of their representation. The collection of money from contributions is an individual process handled by the courts.

RECOUPMENT/REPAYMENT It is unknown by the administrator whether defendants are informed that they may be responsible for all or part of the cost of their representation in the event they become able to pay after representation. It should be noted that there is no statement on the eligibility form concerning recoupment/repayment.

PARENTAL CONSIDERATION

AGE OF MINOR 18 and younger

INCOME OF PARENTS CONSIDERED Yes

MINORS PROVIDED REPRESENTATION WHEN PARENTS ARE DETERMINED TO BE ABLE TO PAY BUT REFUSE Yes

PARENTAL COST RECOVERY No

SIGN AFFIDAVIT Yes

DEFENDANT REQUIRED TO SIGN ANY WAIVERS IN THE COURSE OF THE ELIGIBILITY DETERMINATION It is unknown to the administrator whether or not the defendant is required to sign any waivers. However, no statement regarding waivers appears on the eligibility form.

STATEMENT OF CONFIDENTIALITY No

PUBLIC DEFENSE OFFICE/COUNTY TRIES TO KEEP ELIGIBILITY INFORMATION CONFIDENTIAL Unknown

COUNTY

CAYUGA

SOURCE AND DATE OF INFORMATION

Chief Defender Eligibility Survey, Milan M. Durgala, Cayuga County Assigned Counsel Administrator 7/93; conversation between NYSDA research assistant Debra Cohen and the Administrator on January 6, 1991; and examination of **Cayuga County Bar Association Assigned Counsel Program Affidavit of Defendant In Support Of His/Her Application To Be Assigned Without Fee.**

ELIGIBILITY PROCESS AND WHO MAKES THE DETERMINATION

Defendants fill out eligibility form (all courts and jails have a supply of these forms). Some courts make the determination of eligibility and then direct the Administrator to appoint counsel. In some cases, the eligibility form goes directly to the Administrator and the Administrator appoints or in borderline cases the Administrator first consults with the court.

PERCENT DETERMINED INELIGIBLE ANNUALLY

1-2 percent

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

No

INCOME GUIDELINES

According to the survey, income guidelines are not used. However in a conversation between the Administrator and research assistant Debra Cohen, the Administrator stated that sometimes the 1991 poverty guideline —\$159.00 per week for a family of one—is used as a "very rough" guideline.

INCOME GUIDELINE SOLE DETERMINANT OF ELIGIBILITY DETERMINATION

No

INFORMATION REQUESTED ON THE ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

Information requested on the eligibility form: Amount of bail and who paid it, number of dependents, real and personal property, liquid assets and fixed monthly living expenses, whether defendant is receiving public assistance. **Other factors considered:** Administrator stated on eligibility survey that the eligibility determination is

not based solely on the defendant's income. However, in 95+ percent of the cases the defendant shows no income, no assets and is frequently on public assistance. Assignments are routinely made for these persons. If the person indicates income and assets, then the defendant's marital status and number of dependents are considered.

HOW IS BAIL TREATED IN THE ELIGIBILITY PROCESS

Neutrally

PARTIAL PAYMENT/CONTRIBUTION (722 D)

Yes. Appointed counsel is provided to people who are able to contribute toward the cost of their representation. However, this is very rare. **Process for collecting partial payment/contribution:** The judge will require contribution as part of the disposition of the case. Any contribution ordered by the court goes directly to the County Treasurer. Average amount collected annually is less than \$500.00. According to the survey, the cost of collecting monies from partial payment/contribution (722 D) offsets the cost of collecting these monies.

RECOUPMENT/REPAYMENT

No. Defendants are not informed that they may be responsible for part or all of the cost of their representation in the event they become able to pay after representation.

PARENTAL CONSIDERATION

AGE OF MINOR

21 years of age and younger

INCOME OF PARENTS CONSIDERED

Yes. The eligibility form has the following statement: "If you are under 21 years of age, you and/or your parents must answer all of the following questions." The minor must be unemancipated.

MINORS PROVIDED REPRESENTATION WHEN PARENTS ARE DETERMINED TO BE ABLE TO PAY BUT REFUSE

If this situation arises, the Administrator will discuss it with the court.

PARENTAL COST RECOVERY

No

SIGN AFFIDAVIT Yes

**DEFENDANT REQUIRED TO SIGN ANY
WAIVERS IN THE COURSE OF THE
ELIGIBILITY DETERMINATION** No

STATEMENT OF CONFIDENTIALITY No

**PUBLIC DEFENSE OFFICE/COUNTY
TRIES TO KEEP ELIGIBILITY
INFORMATION CONFIDENTIAL** Yes

COUNTY

CHAUTAUQUA

SOURCE AND DATE OF INFORMATION

Telephone conversation between NYSDA research assistant Susan Robinson and Brian Taylor, Investigator, Chautauqua County Public Defender office on June 17, 1991 and eligibility form **Affidavit of Financial Status and Public Defender Office Manual** (which includes income guidelines) both which were sent to NYSDA by the public defender's office on June 20, 1991.

ELIGIBILITY PROCESS AND WHO MAKES THE DETERMINATION

According to the **Public Defender Office Manual**, the public defender's office receive their clients through jail interviews, office interviews or judge referrals. An investigator from the public defender's office conducts the eligibility screening. Defendants are required to complete a financial affidavit. Based on established guidelines the investigator determines whether the defendant is eligible for appointed counsel.

PERCENT DETERMINED INELIGIBLE ANNUALLY

Unknown

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

Unknown. However the **Public Defender Office Manual** contains the following statement: "If a prospective defendant is ineligible, the office can do little more than explain the situation to the defendant and advise him or her to secure retained counsel."

INCOME GUIDELINES

The **Public Defender Office Manual** states that there are three categories which are used to evaluate the applicant's eligibility: non-obligated monthly income of the applicant, the applicant's yearly income, and any other assets available to the applicant. With regard to the non-obligated income, if such income is less than \$75.00 per month for misdemeanors or \$125.00 per month for family court and felony cases the applicant is eligible under this category. With regard to the applicants yearly income, defendants are eligible in this category if they earn: Misdemeanors: \$6,500.00 per year for a family of one (\$125.00 per week). Felonies: \$9,400.00 per year for a family of one

(\$175.00 per week). In a letter from the investigator, Brian Taylor to NYSDA dated June 20, 1991, he indicated these guidelines were established in 1975. It is unknown what these guidelines are based on and if they have been updated and when they will next be updated. With regard to the third category— assets— if adequate funds are or can become available from these sources, the defendant is ineligible. Assets include: personal property (home, car, motorcycle, motorboat, or other items of similar nature which could be sold or used as collateral to secure a loan); bail money in applicant's name, interest in real property, bank accounts, trust funds, stocks and bonds. **The Public Defender Office Manual states:** "The inter-play between these three categories is important to understand. The applicant must meet the requirements of each category to be eligible. Thus, he must have a low non-obligated monthly income, with a low yearly income and have no assets upon which to draw additional funds."

INCOME GUIDELINES SOLE DETERMINANT OF ELIGIBILITY DETERMINATION

No. See above.

INFORMATION REQUESTED ON THE ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

Information requested on the eligibility form: Personal and spousal income, real and personal property, liquid assets, monthly expenses. **Other factors considered:** Defendants who are unemployed or on public assistance are presumptively eligible. Also, see section above **Eligibility Guidelines.**

HOW IS BAIL TREATED IN THE ELIGIBILITY PROCESS

According to the **Public Defender Office Manual** if the bail is posted by the defendant, it is considered an asset.

PARTIAL PAYMENT/CONTRIBUTION (722 D)

There is no indication in the written materials or on the eligibility form that appointed counsel is provided to those people who are able to contribute toward the cost of their representation.

RECOUPMENT/REPAYMENT

There is no indication in the written materials or on the eligibility form that defendants are informed that they may be responsible to pay for all or part of the cost of their representation in the event that they become able to pay after representation.

PARENTAL CONSIDERATION

AGE OF MINOR

18 years and younger

INCOME OF PARENTS CONSIDERED

Yes. The eligibility form contains the following statement: "If you are under "18" years of age, enter information for parents and yourself."

MINORS PROVIDED REPRESENTATION WHEN PARENTS ARE DETERMINED TO BE ABLE TO PAY BUT REFUSE

Unknown

PARENTAL COST RECOVERY

Unknown

SIGN AFFIDAVIT

Yes

DEFENDANT REQUIRED TO SIGN ANY WAIVERS IN THE COURSE OF THE ELIGIBILITY DETERMINATION

Unknown

STATEMENT OF CONFIDENTIALITY

No

PUBLIC DEFENSE OFFICE/COUNTY TRIES TO KEEP ELIGIBILITY INFORMATION CONFIDENTIAL

Unknown

COUNTY

CHEMUNG

SOURCE AND DATE OF INFORMATION

Telephone conversation between NYSDA research assistant, Susan Robinson and Betty Prechtl, Secretary, Chemung County Public Defender's Office on June 10, 1991; eligibility form **Financial Affidavit In Support of Request To Be Assigned Counsel**; and telephone conversation between NYSDA research assistant, Debra Cohen, and James Kain, Investigating attorney for the Chemung County Public Defender's Office on January 16, 1992.

ELIGIBILITY PROCESS AND WHO MAKES THE DETERMINATION

According to the telephone conversations noted above, the court determines eligibility. Defendants are required to complete an eligibility form. According to the investigating attorney James Kain, there are no written eligibility guidelines—the process for determining eligibility is "arbitrary."

PERCENT DETERMINED INELIGIBLE ANNUALLY

Unknown

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

Unknown

INCOME GUIDELINES

According to the investigating attorney, no income guidelines are used to determine eligibility.

INCOME GUIDELINES SOLE DETERMINANT OF ELIGIBILITY DETERMINATION

No income guidelines used.

INFORMATION REQUESTED ON THE ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

Information requested on the eligibility form: Number of dependents, personal and spousal income, liquid assets, real and personal property (including automobile), child/spousal support and other monthly expenses, asks if defendant tried to hire private attorney, asks who paid defendant's bail and how much was paid.

HOW IS BAIL TREATED IN THE ELIGIBILITY PROCESS

Unknown. However, the eligibility form does require information on the amount of bail posted and who posted the bail.

PARTIAL PAYMENT/CONTRIBUTION (722 D)

According to the investigating attorney, if the defendant is "borderline" (the defendant is working but doesn't have much money), the court will tell the defendant to go talk to some private attorneys. If a private attorney won't take the case then the court will appoint counsel with the provision that the defendant will have to repay the county.

RECOUPMENT/REPAYMENT

Unknown if defendants are informed that they may be responsible to pay all or part of the cost of their representation in the event they become able to pay after representation. However, the eligibility form contains the following statement: "If an attorney is assigned to you, you may be required to repay the county for all or part of the cost of your defense." It is unknown whether this is enforced.

PARENTAL CONSIDERATION

AGE OF MINOR

Unknown

INCOME OF PARENTS CONSIDERED

Unknown. The eligibility form asks for parents' name and place of employment but there is no statement on the eligibility form explicitly stating that the parents are responsible for their child's legal expenses.

MINORS PROVIDED REPRESENTATION WHEN PARENTS ARE DETERMINED TO BE ABLE TO PAY BUT REFUSE

Unknown

PARENTAL COST RECOVERY

Unknown

SIGN AFFIDAVIT

Yes

DEFENDANT REQUIRED TO SIGN ANY WAIVERS IN THE COURSE OF THE ELIGIBILITY DETERMINATION

Unknown

STATEMENT OF CONFIDENTIALITY

No. The eligibility form contains the following statement: "I hereby authorize the court or its representatives, to verify the answers given in this affidavit."

**PUBLIC DEFENSE OFFICE/COUNTY
TRIES TO KEEP ELIGIBILITY
INFORMATION CONFIDENTIAL**

Unknown

COUNTY

CHENANGO

SOURCE AND DATE OF INFORMATION

Chief Defender Eligibility Survey, Peter McBride, Chenango County Public Defender 7/93, and eligibility form **Financial Questionnaire Chenango County Public Defender Program**.

ELIGIBILITY PROCESS AND WHO MAKES THE DETERMINATION

A financial eligibility form is completed by the defendant at court and then the form is sent to the public defender's office. The public defender then determines who is eligible for appointed counsel. In some instances the court appoints counsel. The public defender also administers the assigned counsel program.

PERCENT DETERMINED INELIGIBLE ANNUALLY

5 percent

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

No

INCOME GUIDELINES

Yes. Although the public defender did not include the income guidelines with the survey, in a conversation between NYSDA research assistant Debra Cohen and Judy Grace of the Chenango Public Defender's office on January 6, 1992, Ms. Grace said the income guidelines are as follows: \$130.75 (net) per week for family of one and \$264.50 (net) per week for family of four. According to Ms. Grace (and the survey), these guidelines are based on Chenango County Social Services guidelines (e.g., guidelines for medicare and food stamps). According to the survey and to Ms. Grace, these guidelines are updated annually. Thus, it is likely that the guidelines listed above have changed slightly in the last year.

INCOME GUIDELINES SOLE DETERMINANT OF ELIGIBILITY DETERMINATION

No

INFORMATION REQUESTED ON THE ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

Information requested on eligibility form: Number of dependents, real and personal property, liquid assets, personal and spousal net and gross income. Other factors considered: Whether defendant is incarcerated, nature of the proceedings, seriousness of the charges and overall interest of justice.

HOW IS BAIL TREATED IN THE ELIGIBILITY PROCESS

Not generally considered.

PARTIAL PAYMENT/CONTRIBUTION(722 D)

Yes, appointed counsel is provided to people who can contribute toward the cost of their representation. However, there is no established process for collecting money that people can contribute. Also, according to the survey, the average amount of money collected from partial payment/contribution annually is \$0.

RECOUPMENT/REPAYMENT

No. Defendants are not informed that they may be responsible to repay all or part of the cost of their representation in the event that they become able to pay after representation.

PARENTAL CONSIDERATION

AGE OF MINOR

21 and younger

INCOME OF PARENTS CONSIDERED

Yes. Eligibility form asks for parents' name, address, phone number, occupation and income.

MINORS PROVIDED REPRESENTATION WHEN PARENTS ARE DETERMINED TO BE ABLE TO PAY BUT REFUSE

Yes

PARENTAL COST RECOVERY

No

SIGN AFFIDAVIT

Yes

DEFENDANT REQUIRED TO SIGN ANY WAIVERS IN THE COURSE OF THE ELIGIBILITY DETERMINATION

No

STATEMENT OF CONFIDENTIALITY

No

**PUBLIC DEFENSE OFFICE/COUNTY
TRIES TO KEEP ELIGIBILITY
INFORMATION CONFIDENTIAL**

Yes

COUNTY

CLINTON

SOURCE AND DATE OF INFORMATION

Chief Defender Eligibility Survey, Robert A. Kagan, Administrator, Clinton County Assigned Counsel, 8/93; the eligibility form **Application for Counsel**; and a schedule of income guidelines both of which were sent with the survey.

ELIGIBILITY PROCESS AND WHO MAKES THE DETERMINATION

The presiding judge appoints counsel. The financial eligibility form is completed by the judge in some instances, but in most cases the form is completed by assigned defense counsel. Assignment of counsel is conditional on approval of eligibility.

PERCENT DETERMINED INELIGIBLE ANNUALLY

5 percent

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

No

INCOME GUIDELINES

Yes. The guidelines were obtained by the assigned counsel program from the Legal Aid Society of Northeastern New York. These are actually the 1991 LSC federal poverty guidelines. The survey indicates that the guidelines are updated annually and were last updated in 1992. However, the guidelines sent with the completed survey are the 1991 federal poverty guidelines. The 1991 guidelines are: \$159.00 per week for a family of one; \$213.00 per week for a family of two; \$268.00 per week for a family of three; \$322.00 per week for a family of four plus approximately \$54.00 per week for each additional family member.

INCOME GUIDELINES SOLE DETERMINANT OF ELIGIBILITY DETERMINATION

No

INFORMATION REQUESTED ON THE ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

Information requested on the eligibility form: Monthly income of defendant, earnings of spouse, number of dependents, liquid and non-liquid assets (including automobile), real property and debts. **Other factors considered:** liquidity of assets, ability of defendant to retain counsel with available assets given the nature of the offense.

HOW IS BAIL TREATED IN THE ELIGIBILITY PROCESS

Not considered.

PARTIAL PAYMENT/CONTRIBUTION (722 D)

Yes, appointed counsel is provided to people who are able to contribute toward the cost of their representation. However, according to the survey, there is no process in place at this time for collecting money from partial payment/contributions.

RECOUPMENT/REPAYMENT

No. Defendants are not informed that they may be responsible to repay all or part of the cost of their representation in the event they become able to pay after representation.

PARENTAL CONSIDERATION

AGE OF MINOR

18 and younger

INCOME OF PARENTS CONSIDERED

Yes, however, it should be noted that the eligibility form does not ask questions concerning the income of the parents nor are there any statements on the form that the parents are responsible for their child's legal expenses.

MINORS PROVIDED REPRESENTATION WHEN PARENTS ARE DETERMINED TO BE ABLE TO PAY BUT REFUSE

Yes

PARENTAL COST RECOVERY

No

SIGN AFFIDAVIT

Yes

DEFENDANT REQUIRED TO SIGN ANY WAIVERS IN THE COURSE OF THE ELIGIBILITY DETERMINATION	No
STATEMENT OF CONFIDENTIALITY	No
PUBLIC DEFENSE OFFICE/COUNTY TRIES TO KEEP ELIGIBILITY INFORMATION CONFIDENTIAL	Yes

COUNTY

COLUMBIA

SOURCE AND DATE OF INFORMATION

Chief Defender Eligibility Survey, Melissa Pullen, Confidential Secretary, 1/94, and income guidelines sent with the survey.

ELIGIBILITY PROCESS AND WHO MAKES THE DETERMINATION

After initial arraignment of a defendant, the court adjourns the case and tells those who state they cannot afford a lawyer to contact the public defender's office before the defendant's next court date. The public defender's office has the defendant complete an eligibility form. Eligibility screening and determinations made by a secretary in the office. The eligibility determinations are not put in writing.

PERCENT DETERMINED INELIGIBLE ANNUALLY

10-15 percent

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

Yes. The judge will hold a hearing on the issue of eligibility and based on the hearing, determine eligibility.

INCOME GUIDELINES

Yes. Use social services income guidelines. According to the survey these were updated in 1992 and it is unknown when they will next be updated.

INCOME GUIDELINES SOLE DETERMINANT OF ELIGIBILITY DETERMINATION

For the most part, yes.

INFORMATION REQUESTED ON THE ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

Information requested on the eligibility form: Whether the defendant is on public assistance, personal and spousal gross and net weekly pay, liquid and non-liquid assets (including an automobile), monthly expenses.

HOW IS BAIL TREATED IN THE ELIGIBILITY PROCESS

Not considered

PARTIAL PAYMENT/CONTRIBUTION (722 D)	No partial payment used.
RECOUPMENT/REPAYMENT	No, defendants are not informed that they may be responsible to pay all or part of their legal representation in the event they become able to pay after representation.
<u>PARENTAL CONSIDERATION</u>	
AGE OF MINOR	21 and younger
INCOME OF PARENTS CONSIDERED	Yes
MINORS PROVIDED REPRESENTATION WHEN PARENTS ARE DETERMINED TO BE ABLE TO PAY BUT REFUSE	Yes
PARENTAL COST RECOVERY	No
SIGN AFFIDAVIT	Yes
DEFENDANTS REQUIRED TO SIGN ANY WAIVERS IN THE COURSE OF THE ELIGIBILITY DETERMINATION	No
STATEMENT OF CONFIDENTIALITY	No
PUBLIC DEFENSE OFFICE/COUNTY TRIES TO KEEP ELIGIBILITY INFORMATION CONFIDENTIAL	Yes

COUNTY

CORTLAND

SOURCE AND DATE OF INFORMATION

Chief Defender Eligibility Survey, Peggy Martin, Senior Typist, Cortland Public Defender Office, 7/93 and eligibility form Application For Assigned Counsel.

ELIGIBILITY PROCESS AND WHO MAKES THE DETERMINATION

A financial eligibility application is completed by the defendant if they are over 21 or if they are married. Upon review of the eligibility form (or the Family Court papers connected with the instant offense), if the defendant is within the financial guidelines, the public defender's office senior typist (assigned by court jurisdiction) appoints an attorney or notifies the court that there is a conflict.

PERCENT DETERMINED INELIGIBLE ANNUALLY

23 percent

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

No. However, if an applicant is determined to be ineligible and they lack the funds to retain an attorney, the defendant is asked to talk to three private attorneys and report back with the three names. If the defendant is unable to meet any of the terms of the three attorneys, the public defender's office will then represent them. The defendant is then suppose to repay the county for the public defense services.

INCOME GUIDELINES

Yes. \$150.00 (net) per week for family of one. A couple (married or living together), \$200.00 (net) per week. An additional \$30.00 is allowed per week per dependent. This rate was set in 1988 - effective January 1, 1989. The rate from 1977 until 1988 was \$75.00. It is unknown when the guidelines will next be updated. This is at the discretion of the county legislature.

INCOME GUIDELINES SOLE DETERMINANT OF ELIGIBILITY DETERMINATION

No

INFORMATION REQUESTED ON THE ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

Information requested on eligibility form: Number of dependents, personal and spousal income, liquid assets, real and personal property (including automobile), whether defendant is on public assistance, fixed monthly expenses, whether bail has been posted, who posted it and amount posted, whether the defendant can afford to hire his own attorney.

Other factors considered: Eligibility is not based solely on the defendant's income. However, if the defendant is on public assistance, he or she is automatically eligible for appointed counsel. A defendant who owns valuable property, such as a home that could be refinanced, may not be determined eligible. A defendant with a high debt load (due to things such as medical expenses, not frivolous expenses) whose income exceeds the guidelines may be determined eligible.

HOW IS BAIL TREATED IN THE ELIGIBILITY PROCESS

If the defendant has the wherewithal to post bail (or a family member to post bail), it must be determined whether or not they also have the wherewithal to retain an attorney.

PARTIAL PAYMENT/CONTRIBUTION (722 D)

Yes. The following statement appears on the **Application For Appointed Counsel** form: "If you become employed at a higher rate or salary during the time your case is pending, the County allows our office to withdraw from your case or seek partial reimbursement. It is the practice of this office to continue legal services and seek a judgement for attorney's fees in some reasonable amount from the court. You will be asked to consent to the amount to be paid in convenient monthly installments. This office normally seeks \$150 for violations, \$300 for misdemeanors and \$500 for felony cases."

Process for collecting monies: At the conclusion of a case, a 722 Order is prepared and presented to the Court for the judge's signature. A copy of the order is forwarded to the County Treasurer's office and a copy is sent to the client with the payment schedule incorporated into the order.

Average amount collected annually: Less than \$300.00 per year.

RECOUPMENT/REPAYMENT

Yes. "Unfortunately, this office does not have the time or the manpower to actively seek reimbursement for services rendered."
Average amount collected annually: \$0-200

PARENTAL CONSIDERATION

AGE OF MINOR

21 and younger

INCOME OF PARENTS CONSIDERED

Yes. The financial eligibility form contains the following statement: "If defendant is under the age of 21, this application is to be completed by the defendant's parent or legal guardian and NOT the defendant."

MINORS PROVIDED REPRESENTATION WHEN PARENTS ARE DETERMINED TO BE ABLE TO PAY BUT REFUSE

Yes

PARENTAL COST RECOVERY

No. Although a provision exists to recover costs of representing minors when parents can pay, the County Attorney does not pursue this avenue.

DOES THE AMOUNT OF MONEY COLLECTED FROM PARTIAL PAYMENT/CONTRIBUTION AND OR RECOUPMENT OFFSET THE COST OF COLLECTING THESE MONIES

No. Any monies collected merely serve to reduce the public defender's approved budget by the same amount of money.

SIGN AFFIDAVIT

Yes

DEFENDANT REQUIRED TO SIGN ANY WAIVERS IN THE COURSE OF THE ELIGIBILITY DETERMINATION

Yes. Blank waivers are signed at the initial interviews if assigned attorney determines they are needed. The following statement appears on the eligibility form: "Please accept this authorization to release any personal background or financial information about me from your files to the Office of the Public Defender of Cortland County or members of his staff."

STATEMENT OF CONFIDENTIALITY

Yes. "The information given in this application is for the private use of the Public Defender or court appointed counsel and their staffs and the Judge or Judges in the case. This application and the information you provide will not be revealed to anyone else without your permission."

COUNTY

DELAWARE

SOURCE AND DATE OF INFORMATION

Telephone conversation between Thomas Schimmerling, Delaware County Assigned Counsel Administrator and Debra Cohen, NYSDA research assistant, on January 7, 1992 and eligibility form **Order Assigning Counsel** sent to NYSDA on January 8, 1993. The administrator also contacted NYSDA on August 11, 1993 and stated that he could not complete the Chief Defender Eligibility Survey since the court determines eligibility and he therefore does not have the information to answer the questions on the survey.

ELIGIBILITY PROCESS AND WHO MAKES THE DETERMINATION

According to the January 7, 1992 telephone conversation, the judges determine eligibility and eligibility determinations are very arbitrary and done on a case-by-case basis.

PERCENT DETERMINED INELIGIBLE ANNUALLY

Unknown

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

Unknown

INCOME GUIDELINES

No

INCOME GUIDELINES SOLE DETERMINANT OF ELIGIBILITY DETERMINATION

No income guidelines used.

INFORMATION REQUESTED ON THE ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

Information requested on the eligibility form:
Personal weekly income, cash on hand and in banks, number of dependents, property owned.

HOW IS BAIL TREATED IN THE ELIGIBILITY PROCESS

Unknown

PARTIAL PAYMENT/CONTRIBUTION (722 D)

Unknown

RECOUPMENT/REPAYMENT Unknown

PARENTAL CONSIDERATION

AGE OF MINOR Unknown

INCOME OF PARENTS CONSIDERED Unknown

**MINORS PROVIDED REPRESENTATION
WHEN PARENTS ARE DETERMINED TO
BE ABLE TO PAY BUT REFUSE** Unknown

PARENTAL COST RECOVERY Unknown

SIGN AFFIDAVIT Yes

**DEFENDANT REQUIRED TO SIGN ANY
WAIVERS IN THE COURSE OF THE
ELIGIBILITY DETERMINATION** Unknown

STATEMENT OF CONFIDENTIALITY No

**PUBLIC DEFENSE OFFICE/COUNTY
TRIES TO KEEP ELIGIBILITY
INFORMATION CONFIDENTIAL** Unknown

COUNTY

DUTCHESS

SOURCE AND DATE OF INFORMATION

Chief Defender Eligibility Survey, Caroline McEnroe, Legal Administrative Assistant, Dutchess County Public Defender, 8/93; eligibility form **Intake Guidelines for 1986**; and schedule of income guidelines which were sent to NYSDA in June, 1991.

ELIGIBILITY PROCESS AND WHO MAKES THE DETERMINATION

The public defender's office supplies the courts with a handout advising the defendant of their phone number, address, hours for processing applicants, a short warning not to speak to anyone about the case and the need to come to the public defender's office as soon as possible. Criminal Justice Intake Specialists and Interns-College/Law School students process the applicant for eligibility and complete the eligibility form.

PERCENT DETERMINED INELIGIBLE ANNUALLY

10 percent

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

No. In a few instances the court will order the public defender's office to defend the client should the defendant appear on the adjourned date without counsel. Also, those who have borderline income are given a list of attorneys who will work at a marginal fee. Sometimes the defendants return with quotes from at least three private attorneys that they still cannot afford to hire a private attorney. In such cases the public defender's office will re-qualify the defendants for appointed counsel. The defendant is given a written statement as to why he/she is not eligible. The Public Defender or staff member will review the case upon request.

INCOME GUIDELINES

Yes. The guidelines, which were last updated in 1991, varies by class of crime. Per week for a family of one: Felony: A \$364.00; B \$338.00; C \$312.00; D \$286.00; and E \$260.00. Misdemeanor: \$221.00. Violation: \$195.00. According to the public defender's office, these rates were set by determining food stamp levels and asking local attorneys what they charge for different crimes. It is not known when the guidelines will next be updated.

INCOME GUIDELINES SOLE DETERMINANT OF ELIGIBILITY DETERMINATION

No

INFORMATION REQUESTED ON THE ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

The first inquiry for the public defender's office is to look at the defendant's assets. Each person is reviewed independently. The following is taken into consideration in determining eligibility: The nature of crime, cost to retain private counsel for same charge, and the person's overall assets. If the person is under the age of 21 years, the public defender's office also examine the parents' financial situation. The public defender's office also examine whether defendants have cash, bank accounts, stocks and bonds. The defendant's overall financial situation is examined.

HOW IS BAIL TREATED IN THE ELIGIBILITY PROCESS

If the bail is paid or secured by the defendant, it is considered an asset.

PARTIAL PAYMENT/CONTRIBUTION (722 D)

No partial payment/contribution.

RECOUPMENT/REPAYMENT

No. Defendants are not informed that they may be responsible to repay all or part of the cost of their representation in the event they become able to pay after representation.

PARENTAL CONSIDERATION

AGE OF MINOR

21 and younger.

INCOME OF PARENTS CONSIDERED

Yes. The eligibility form states: "If such applicant lives at home or is supported by his parents, additional information must be requested regarding those other persons in the household providing such support or accommodations."

MINORS PROVIDED REPRESENTATION WHEN PARENTS ARE DETERMINED TO BE ABLE TO PAY BUT REFUSE

Yes. In such situations, the public defender's office generally seek court direction.

PARENTAL COST RECOVERY

Yes. The complaint is turned over to the county attorney for processing. The public defenders office has received reimbursement in only two cases. On average, no money is recovered from parents.

DOES THE COST OF COLLECTING MONEY FROM PARENTS OFFSET THE COST OF COLLECTING THESE MONIES

No. The county attorney is understaffed just as the public defender's office is understaffed and the process of collecting money from parents is too time consuming.

OTHER MEASURES USED TO OFFSET THE COST OF PUBLIC DEFENSE SERVICES

The public defender receives a small grant under the Aid to Defense Program.

SIGN AFFIDAVIT

Yes

DEFENDANTS REQUIRED TO SIGN ANY WAIVERS IN THE COURSE OF THE ELIGIBILITY DETERMINATION

Yes. The following statement appears on the eligibility form: "Authorizations: These should be executed by those applicants who qualify. They enable the recipient to release to us confidential information regarding the applicant."

STATEMENT OF CONFIDENTIALITY

No

PUBLIC DEFENSE OFFICE/COUNTY TRIES TO KEEP ELIGIBILITY INFORMATION CONFIDENTIAL

Yes. All staff when hired are counselled on the confidentiality on all the information that comes into the office. To divulge any information is cause for dismissal.

COUNTY

ERIE

SOURCE AND DATE OF INFORMATION

Chief Defender Eligibility Survey, William Diggins, former Administrator, Erie County Bar Association Aid to Indigent Prisoners Bureau, Inc., 7/93, and eligibility form used by the assigned counsel program sent with the survey, **Affidavit of Financial Status**. Verification of survey responses completed by the current assigned counsel administrator Robert Lonski, 11/22/93.

Chief Defender Eligibility Survey, Nicholas Longo, Senior Investigator, Public Defender Unit, Erie County Legal Aid Bureau, 7/93, and the 1993 eligibility guidelines used by the Legal Aid Bureau.

ELIGIBILITY PROCESS AND WHO MAKES DETERMINATION

Legal Aid Bureau: The court appoints a public defender who then conducts a cursory examination to determine eligibility. A more thorough eligibility examination is done at a later time by the investigator. The Legal Aid Bureau does not use a financial eligibility form.

Assigned Counsel: In all courts except the Supreme and County Courts, the assigned counsel office assigns counsel. Clients in Buffalo and Family Courts come to the office for a personal eligibility interview, after which assignment is made and a financial affidavit is completed. Interviews for Justice Court clients are done over the telephone, and the assigned attorney is responsible for getting the financial affidavit. In Superior Courts, assignments are made by the Court at Special Term, at which as part of the 'Attorney of the Day' program a program staff person interviews the defendant who signs a financial affidavit. All financial affidavits are sworn to under oath. In appropriate cases, documentation is required.

PERCENT DETERMINED INELIGIBLE ANNUALLY

Legal Aid Bureau: Less than one percent
Assigned Counsel: 15-20 percent

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

Legal Aid Bureau: Yes. The defendant can bring in any documentation they might have and can also consult with a senior staff attorney.

Assigned Counsel: The defendant can produce additional documentation at any time.

INCOME GUIDELINES

Legal Aid Bureau: Yes. \$168.00 (gross) per week for family of one plus \$60.00 per family member. These are based on the 1993 federal poverty income guidelines issued by the United States Department of Health and Human Services. These guidelines are updated annually.

Assigned Counsel: \$167.56 (gross) for family of one plus an additional \$59.13 per family member. According to the survey, these guidelines are based on the federal income guidelines for Neighborhood Legal Services (which are actually the 1993 federal poverty income guidelines issued by the United States Department of Health and Human Services). The guidelines are updated annually.

INCOME GUIDELINES SOLE DETERMINANT OF ELIGIBILITY

Legal Aid Bureau: No
Assigned Counsel: No

INFORMATION REQUESTED ON THE ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

Legal Aid Bureau: No eligibility form used. However, the following statement appears on the income guideline schedule: "Assets considered will include all liquid and non-liquid assets of all persons who are resident members of a family unit except principal resident of a client will be excluded, and reasonable equity on work-related equipment which is essential to the employment or self-employment of the client or member of the family unit..." Impediments to an individual's access to these assets are considered.

Assigned Counsel: Information requested on the eligibility form: Personal, spousal, and parental income, liquid assets, real and personal property (including automobile), monthly expenses.

HOW IS BAIL TREATED IN THE ELIGIBILITY PROCESS

Legal Aid Bureau: No answer provided.
Assigned Counsel: The rare ability to personally post cash bail is considered in assessing the defendant's ability to secure counsel. Likewise, the effect of the posting of bail on the defendant's overall financial situation is considered.

PARTIAL PAYMENT/CONTRIBUTION (722 D)

Legal Aid Bureau: No partial payment/contribution provision.

Assigned Counsel: Yes, appointed counsel is provided to people who are later determined to contribute toward the cost of their representation. No information was provided as to whether the assigned counsel program tries to collect money that defendants can contribute, how it is collected and what is the average amount collected annually.

RECOUPMENT/REPAYMENT

Legal Aid Bureau: No. Defendants are not informed that they may be responsible to repay all or part of the cost of their representation in the event they become able to pay after representation.

Assigned Counsel: No answer provided. No statement to this effect appears on the eligibility form used by the assigned counsel program.

PARENTAL CONSIDERATION

AGE OF MINOR

Legal Aid Bureau: 21 and younger.

Assigned Counsel: 21 and younger.

INCOME OF PARENTS CONSIDERED

Legal Aid Bureau: Yes

Assigned Counsel: Yes

MINORS PROVIDED REPRESENTATION WHEN PARENTS ARE DETERMINED TO BE ABLE TO PAY BUT REFUSE

Legal Aid Bureau: Yes

Assigned Counsel: Yes

PARENTAL COST RECOVERY

Legal Aid Bureau: No

Assigned Counsel: Yes. A letter is sent to parents who are able to pay but refuse to do so, advising them that they are responsible for such payment and that action may be taken to recover costs from them. At this time, no further action is taken.

SIGN AFFIDAVIT

Legal Aid Bureau: No form used.

Assigned Counsel: Yes

**DEFENDANT REQUIRED TO SIGN ANY
WAIVERS IN THE COURSE OF THE
ELIGIBILITY DETERMINATION**

Legal Aid Bureau: No
Assigned Counsel: No

STATEMENT OF CONFIDENTIALITY

Legal Aid Bureau: No form used.
Assigned Counsel: According to the survey, there is a statement that the eligibility information is confidential. However, a review of the eligibility form reveals that no such statement appears on the form.

COUNTY

ESSEX

SOURCE AND DATE OF INFORMATION

Chief Defender Eligibility Survey, Michael J. Gallant, Administrator, Essex County Assigned Counsel, 8/93, and eligibility form **Assigned Counsel Plan Defendant's Application for Assigned Counsel** sent with the survey.

ELIGIBILITY PROCESS AND WHO MAKES THE DETERMINATION

The administrator supplies defendant's financial application for all criminal courts. The judge or local magistrate gives the eligibility forms to the defendants. The judge determine eligibility and assigns attorneys from a list provided by the administrator. Family court uses its own form for family court assignments. Attorneys are selected from the Law Guardian list for juveniles and assigned counsel list for adults.

PERCENT DETERMINED INELIGIBLE ANNUALLY

1 percent

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

Yes. If the local magistrate denies counsel, the defendant appeals to the county court judge. The administrator has the inherent authority to appoint counsel.

INCOME GUIDELINES

No

INCOME GUIDELINES SOLE DETERMINANT OF ELIGIBILITY DETERMINATION

No income guidelines used.

INFORMATION REQUESTED ON THE ELIGIBILITY FORM

Defendant's monthly and weekly income, any other income, monthly and weekly income of parents or spouse, real property owned by defendant, parent and/or spouse, other property owned (including automobile), liquid assets, financial obligations, amount of bail set and if posted, how was the money raised.

HOW IS BAIL TREATED IN THE ELIGIBILITY PROCESS

Whether or not the defendant posted bail is considered differently by each presiding judge.

PARTIAL PAYMENT/CONTRIBUTION (722 D)

The administrator indicated on the survey that he does not know whether judges appoint counsel to people who are able to contribute toward the cost of their representation.

RECOUPMENT/REPAYMENT

Yes. Defendants are informed that they may be responsible to repay all or part of the cost of their representation in the event they become able to pay after representation. **Process for seeking repayment:** This is left to the court in which the case was heard. The administrator indicated on the survey that he does not know the average amount of money recouped annually.

PARENTAL CONSIDERATION

AGE OF MINOR

18 and younger

INCOME OF PARENTS CONSIDERED

According to the survey, no. However, it should be noted that the eligibility form requests financial information on the defendant's parents.

MINORS PROVIDED REPRESENTATION WHEN PARENTS ARE DETERMINED TO BE ABLE TO PAY BUT REFUSE

Parents' income not considered.

PARENTAL COST RECOVERY

No

SIGN AFFIDAVIT

Yes

DEFENDANT REQUIRED TO SIGN ANY WAIVERS IN THE COURSE OF THE ELIGIBILITY DETERMINATION

No

STATEMENT OF CONFIDENTIALITY

No

PUBLIC DEFENSE OFFICE/COUNTY TRIES TO KEEP ELIGIBILITY INFORMATION CONFIDENTIAL

Unknown

COUNTY

FRANKLIN

SOURCE AND DATE OF INFORMATION

Chief Defender Eligibility Survey, Rodney Hart, Northern Franklin County Public Defender Investigator and Genette Hollander, Northern Franklin County Public Defender Paralegal, 7/93 and an examination of **Financial Affidavit in Support of Request to be Assigned Counsel Without Payment of Fee** which was sent to NYSDA by Alex Lesyk, Northern Franklin County Public Defender in June, 1991, and Chief Defender Eligibility Survey, Paul J. Herrmann, Southern Franklin County Public Defender, 8/93, and a copy of the eligibility form **Financial Affidavit in Support of Request to be Assigned Counsel Without Payment of Fee** which is the same form used by the Southern Franklin Public Defender office.

ELIGIBILITY PROCESS AND WHO MAKES THE DETERMINATION

Northern: Defendants complete a financial affidavit form and after reviewing the form the Public Defender makes the appointments. In conflict cases, the judges make the appointments.
Southern: The defendant fills out a financial affidavit at arraignment and the judge either sends the form to the public defender with the accusatory instrument and supporting depositions or gives the form to the defendant and tells the defendant to contact the public defender. The judge adjourns the proceedings so that the defendant can obtain counsel.

PERCENT DETERMINED INELIGIBLE ANNUALLY

Northern: 30 percent
Southern: 5 percent

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

Northern: The defendant can go to the judge and tell him he needs counsel. The judge then makes the final determination.
Southern: Ordinarily no. However, if charges are serious or if the judge so orders, representation of client is undertaken when defendant's income is not way in excess of the eligibility ceiling.

INCOME GUIDELINES

The following guidelines were set in 1990 by local law for Northern Franklin County:

\$100 per week for family of one
\$125.00 if married
\$ 15.00 increase per dependent

The Southern Franklin County figures are based on the figures promulgated by the Appellate Division, 3rd Dept. in 1977 and were increased by \$25.00 in 1992:

\$100.00 per week for family of one
\$125.00 if married
\$ 15.00 increase per dependent

INCOME GUIDELINES SOLE DETERMINANT OF ELIGIBILITY DETERMINATION

Northern: No
Southern: No

INFORMATION REQUESTED ON THE ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

Information requested on the eligibility form (for both Northern and Southern offices): Number of dependents, personal and spousal income, real and personal property (including automobile), monthly living expenses, whether person tried to hire own attorney and amount of bail and who posted it. Other factors considered: The nature of the charges pending.

HOW IS BAIL TREATED IN THE ELIGIBILITY PROCESS

Northern and Southern: According to the survey response, bail is not a consideration in the eligibility determination. However, the eligibility form requires the defendant to state the amount of bail posted and the name of the person who posted the bail. The Southern office stated that a factor in the eligibility determination is not whether the defendant posted bail but whether the defendant is in jail or not.

PARTIAL PAYMENT/CONTRIBUTION (722 D)

Northern: No partial payment/contribution.
Southern: According to the survey, appointed counsel is provided to people who are able to contribute toward the cost of their representation.

RECOUPMENT/REPAYMENT

Northern and Southern: Yes. The following statement appears on the eligibility form used by both offices: *Notice: If an attorney is assigned to you, you may be required to repay the County for all or part of the cost of your defense.* **Northern:** If there are hidden assets the public defender's office is required to take legal action against the defendant. It is the client's responsibility to inform the public defender's office of change in income and the public defender's office responsibility to inform the court.

Average amount of money recouped annually: Information not available. **Southern:** There is no process to recoup money from defendants.

PARENTAL CONSIDERATION

AGE OF MINOR

Northern: According to the survey, they do not consider parental income. Only the income of the individual defendant is considered.

Southern:
18 and younger

INCOME OF PARENTS CONSIDERED

Northern: No
Southern: Yes

MINORS PROVIDED REPRESENTATION WHEN PARENTS ARE DETERMINED TO BE ABLE TO PAY BUT REFUSE

Northern: Not Applicable
Southern: Yes

PARENTAL COST RECOVERY

Northern: Not Applicable
Southern: No

DOES THE AMOUNT OF MONEY COLLECTED FROM RECOUPMENT OFFSET THE COST OF COLLECTING THESE MONIES

Northern: To date, the Northern office has never attempted to recoup monies from clients.
Southern: Does not collect any money from defendants.

SIGN AFFIDAVIT

Northern and Southern: Yes

**DEFENDANT REQUIRED TO SIGN ANY
WAIVERS IN THE COURSE OF THE
ELIGIBILITY DETERMINATION**

Northern and Southern: No

STATEMENT OF CONFIDENTIALITY

Northern: No. There is no statement of confidentiality on the eligibility form. It is the understanding of the Northern office that the eligibility information is not confidential, nor do they believe that it should be.

Southern: No. However the public defender stated on the survey: "Such a statement can easily be added and I will add the same. I've always assumed that this was a privileged communication between attorney and client."

**PUBLIC DEFENSE OFFICE/COUNTY
TRIES TO KEEP ELIGIBILITY
INFORMATION CONFIDENTIAL**

Northern: While the Northern office doesn't believe that the eligibility information is confidential, they have never shared eligibility information with anyone.

Southern: Yes

COUNTY

FULTON

SOURCE AND DATE OF INFORMATION

Chief Defender Eligibility Survey, Ronald Schur Jr., Fulton County Public Defender, 7/93, and letter to Hon. Richard C. Giardino, Fulton County District Attorney from Ronald Schur Jr., Re: Sliding Fee Schedule for Qualified Indigent Defendants dated July 15, 1993, and eligibility form **Declaration of Financial Inability to Retain Counsel** sent to NYSDA by the public defender on June 17, 1991.

ELIGIBILITY PROCESS AND WHO MAKES THE DETERMINATION

The judge supplies the defendant with the financial eligibility form and the judge makes the appointment. On a rare occasion the public defender's office will question an appointment made by a judge.

PERCENT DETERMINED INELIGIBLE

10 percent

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

No

INCOME GUIDELINES

No. The public defender reported that he has tried to implement income guidelines but he has met with much resistance from judges and the Board of Supervisors. **Update:** In a letter sent to Karen Kane from Public Defender Ronald Schur, Mr. Schur reported that a few of the judges have now implemented the proposed Sliding Fee Scale (which was enclosed with the letter). For example, persons making between \$2,500.00-\$5,000 annually and have no dependents would have to pay \$20.00 for the services of the public defender. For those making this amount with one dependent \$15.00; two dependents \$10.00; three dependents \$5.00 and four or more dependents \$0. The Sliding Fee Scale goes up to those making, on an annual basis \$17,501.00-\$20,000.00. The maximum amount a person would be required to pay is \$500.00. The public defender states in the letter that Fulton County is collecting approximately \$300.00 per month with just a few judges implementing the sliding fee scale. No mention was made of who collects this money or the process for collecting it. The public defender also mentioned that the county is still awaiting an opinion from the Attorney General's Office as to whether using the sliding scale is appropriate.

**INCOME GUIDELINES SOLE DETERMINANT
OF ELIGIBILITY DETERMINATION**

No income guidelines used.

**INFORMATION REQUESTED ON THE
ELIGIBILITY FORM/OTHER FACTORS
CONSIDERED**

Information requested on eligibility form:
Personal, spousal and parental income, liquid and non-liquid assets (including an automobile; bail is considered an asset if paid in cash and if posted with family assets), support obligations, number of dependents, monthly expenses, if bail was posted, person who posted it and amount posted. Asks what efforts defendant made to hire a lawyer and if he tried to borrow money to do so. Asks what financial help defendant expects from relatives and friends. Asks where defendant gets the money to support himself and his family. According to a conversation with Susan Robinson, NYSDA research assistant and the Fulton County Public Defender office on June 17, 1991, no one who owns a car worth more than \$1,000 or has more than \$2,500 equity in any real property is eligible.

**HOW IS BAIL TREATED IN THE
ELIGIBILITY PROCESS**

No answer provided on the survey. However, the eligibility form treats bail as an asset if cash bail was posted and it was posted with family assets only. The defendant must provide the name and address of the person who posted bail.

PARTIAL PAYMENT/CONTRIBUTION (722 D)

Yes. Appointed counsel is provided to people who are able to contribute toward the cost of their representation. According to the survey, the public defender's office is in the process of trying to implement guidelines for partial payment. Average amount collected annually from partial payment/contributions is \$500.00.

RECOUPMENT/REPAYMENT

Yes. The eligibility form contains the following statement: "The County Law permits the court to order you to make payment of all or part of the costs of providing defender services. You may be required to pay when the case is over." According to the survey, however, there is no formal process in place yet for recouping money. Average amount of money recouped annually is \$500.00.

PARENTAL CONSIDERATION

AGE OF MINOR

21 and younger.

INCOME OF PARENTS CONSIDERED

Yes. The following statement appears on the eligibility form: "Legal representation to one charged with an offense is a necessity of life. Accordingly, income of a spouse and parents of applicant under 21 years of age and residing with parents must be considered in determining ability to hire a private lawyer...this rule does not apply if the spouse is the complaining party or cannot be expected to cooperate."

MINORS PROVIDED REPRESENTATION WHEN PARENTS ARE DETERMINED TO BE ABLE TO PAY BUT REFUSE

Yes. But the county then reserves the right to sue parents for losses.

PARENTAL COST RECOVERY

Yes. But according to the survey, the public defender program and/or county has never tried to recover money from parents yet.

DOES THE AMOUNT OF MONEY COLLECTED FROM PARTIAL PAYMENT/CONTRIBUTIONS AND RECOUPMENT OFFSET THE COST OF COLLECTING THESE MONIES

No answer provided.

SIGN AFFIDAVIT

Yes

DEFENDANT REQUIRED TO SIGN ANY WAIVERS IN THE COURSE OF THE ELIGIBILITY DETERMINATION

No

STATEMENT OF CONFIDENTIALITY

According to the survey, there is a statement that the eligibility information is confidential. However, the following statement appears on the eligibility form: "I understand the information on this declaration is not confidential and may be disclosed by the public defender to the courts and to anyone else he may deem proper in order to determine my rights to be represented by him..."

COUNTY

GENESEE

SOURCE AND DATE OF INFORMATION

Chief Defender Eligibility Survey, Catherine Johns, Administrator, Genesee County Legal Assistance Corporation, 8/93; Chief Defender Eligibility Survey, Harriet Worthington, Confidential Secretary, Genesee County Public Defender, 8/93, and the eligibility form **Criminal Court Eligibility Interview Sheet** and **Standards of Eligibility for the Genesee County Public Defender's Office** and **Dear Defendant** letter and **Criminal Court Eligibility Assignment Sheet** all of which were sent with the public defender survey.

ELIGIBILITY PROCESS AND WHO MAKES THE DETERMINATION

The **Dear Defendant** letter and the **Criminal Court Eligibility Assignment Sheets** are distributed to all the courts in Genesee County. The **Dear Defendant** letter lets the defendant know what is expected of him or her and the eligibility assignment sheet lets the public defender's office know when the defendant will be calling for an appointment. The defendant makes an appointment with the public defender's office and then goes to the appointment where either the confidential secretary or legal clerk typist conducts intake. Intake is sometimes done over the telephone. Eligibility is determined in 99 percent of the cases by the confidential secretary. If the case is questionable eligibility will then be determined by the chief public defender. Eligibility is determined based on established guidelines. All jail detainees are contacted by telephone to determine if legal assistance is needed. The public defender's office determines eligibility in all family court proceedings referred to the office except for family court support violations and initial paternity. In these cases, eligibility is determined by the assigned counsel administrator.

PERCENT DETERMINED INELIGIBLE ANNUALLY

Less than one percent.

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

According to the assigned counsel survey, there is no appeal process for persons determined ineligible. The public defender survey, however, stated that there is such a process. The assigning court is notified that, based on the guidelines, the defendant is ineligible. Estimates of the amount of money needed to hire a private attorney for the defendant's case is reported to the court. The chief public defender and the judge discuss the case and the judge makes the final determination.

INCOME GUIDELINES

Yes. The public defender's office attempted to get county legislative approval to use 125 percent of the 1991 federal poverty guidelines but the guidelines were not approved. Therefore, a low of the 1985 federal poverty guidelines to a high of the 1991 federal poverty guidelines are used: Net weekly income for a family of one \$117.00-\$159.13; family of two \$158.00-\$213.46; family of three \$199.00-\$267.79, etc.

INCOME GUIDELINES SOLE DETERMINANT OF ELIGIBILITY DETERMINATION

No

INFORMATION REQUESTED ON ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

Property which can be used as assets, occupation, whether the defendant's job is being held for him or her, gross wages of household, defendant's income, spouse/housemate's income, other members of household income, other sources of income, employment history, occupation of spouse, number of dependents and case-related information. While the form containing the eligibility information (**Criminal Court Eligibility Interview Sheet**) does not request any information concerning the defendant's expenses, the eligibility survey states that the defendant's "necessities" are considered. Necessities include: shelter, food, clothing, medical care and supplies and transportation.

HOW IS BAIL TREATED IN THE ELIGIBILITY PROCESS

Unless bail is a high amount and the defendant posted it, it is not considered in the eligibility determination.

PARTIAL PAYMENT/CONTRIBUTION (722 D)

Yes. Appointed counsel is provided to people who are able to contribute toward the cost of their representation. The eligibility form contains the following statement: "I hereby indicate that at any time during the proceedings, should I become financially able to obtain counsel or make partial payment for the representation or other services counsel may report this fact to the court and that the court may authorize payment as the interests of justice dictate. Said payment for legal services will be paid by myself to Genesee County Probation at a rate and amount as determined by the court." The **Standards of Eligibility for the Genesee County Public Defender's Office** states: "Eligibility is to be determined in a manner insuring a limitation on the expenditure of public funds, and to obtain contribution from the client able to pay a portion of the cost of his representation, while guaranteeing the individuals right to adequate defense, and insuring the efficient functioning of the criminal justice system in the County of Genesee." A 722 D order is entered with the court, county treasurer's office and the probation department. However, the county will not enforce the collection of these accounts.

RECOUPMENT/REPAYMENT

No. Defendants are not informed that they may be responsible to repay all or part of the cost of their representation in the event they become able to pay after representation.

TOTAL AMOUNT OF MONEY COLLECTED ANNUALLY FROM PARTIAL PAYMENT/ CONTRIBUTION AND RECOUPMENT/ REPAYMENT

\$4,200.00

DOES THE AMOUNT OF MONEY COLLECTED FROM PARTIAL PAYMENT/ CONTRIBUTION AND RECOUPMENT/ REPAYMENT OFFSET THE COST OF COLLECTING THESE MONIES

Yes. Although no enforcement proceedings are provided the amount collected annually is significant and allows the public defender office to maintain some equity with clients represented so that the general public is treated fairly.

PARENTAL CONSIDERATION

AGE OF MINOR

21 and younger

INCOME OF PARENTS CONSIDERED

Yes. The following statement appears in the **Standards of Eligibility for the Genesee County Public Defender's Office**: "When a client is less than twenty-one years of age, the assets, income and expenses of the client's parents or other persons legally responsible for his support shall be considered."

MINORS PROVIDED REPRESENTATION WHEN PARENTS ARE DETERMINED TO BE ABLE TO PAY BUT REFUSE

The following statement appears in the **Standards of Eligibility for the Genesee County's Public Defender's Office**: "...representation cannot be denied if the parent or other person legally responsible for support refuse to contribute to the cost of counsel." However, the survey states that the defendant and his family would be referred back to the court for determination.

PARENTAL COST RECOVERY

Yes. If a court appoints an attorney to represent a minor with the parents required to pay, a 722 D order is prepared for the judges' signature and the probation department collects the funds. Data on the amount of money collected annually from parents is not available from the public defender's office as all monies are credited to one county revenue account.

SIGN AFFIDAVIT

The eligibility form does not require the defendant to sign a sworn statement but requires the defendant to sign to the following statement: "I have reviewed the above information and verify the same to be true."

DEFENDANT REQUIRED TO SIGN ANY WAIVERS IN THE COURSE OF THE ELIGIBILITY DETERMINATION

No

STATEMENT OF CONFIDENTIALITY

To date, there is no statement on the eligibility form regarding the confidentiality of the eligibility information. The public defender's office, however, reports that a statement concerning the confidentiality of the eligibility information is going to be added to the eligibility form.

**PUBLIC DEFENSE OFFICE/COUNTY
TRIES TO KEEP ELIGIBILITY
INFORMATION CONFIDENTIAL**

The information on the eligibility form is shared with the court if the court becomes involved in determining eligibility. The defendant is notified in advanced that the financial information would be made available to the court if the court is required to determine eligibility.

COUNTY

GREENE

SOURCE AND DATE OF INFORMATION

Chief Defender Eligibility Survey, Greg Lubow, Greene County Public Defender, 8/93, and the eligibility form and **Guidelines for the Greene County Public Defender's Office** both of which were sent to NYSDA June 26, 1991.

ELIGIBILITY PROCESS AND WHO MAKES THE DETERMINATION

Jail intakes: Investigators from the public defender's office interviews and assists in the preparation of the financial forms. Office walk-ins: Client fills out forms and submits to an investigator who reviews the forms. All intakes are reviewed by attorney and assignment undertaken without court order. In county court, court appoints counsel, subject to financial review.

PERCENT DETERMINED INELIGIBLE ANNUALLY

10 percent

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

Yes. If ineligible, two attorneys review (usually the chief public defender and a first assistant public defender); the public defender office then provides the court with a recommendation; the court also reviews eligibility and the court then has the final say.

INCOME GUIDELINES

Yes. \$125.00 net per week for a single person; \$175.00 net per week for a married (or living with) person without children; and \$200.00-\$250.00 for a married (or living with) person with children. These are general guidelines based on past practice. The public defender notes that the guidelines are flexible. The guidelines are periodically reviewed but not necessarily updated on an annual basis.

INCOME GUIDELINES SOLE DETERMINANT OF ELIGIBILITY DETERMINATION

No

INFORMATION REQUESTED ON THE ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

Information requested on the eligibility form: Number of dependents, parental income, personal and spousal income, monthly expenses, liquid assets, real and personal property (including automobile), whether defendant tried to hire own attorney, amount of bail posted and who posted it. Other factors considered: Family situation, seriousness of charges, likelihood that person will be able to hire own attorney.

HOW IS BAIL TREATED IN THE ELIGIBILITY PROCESS

Who posted the bail and how they were able to post the bail is considered. Also, if the bail was paid in cash and it was a large amount of money, this may need to be explained.

PARTIAL PAYMENT/CONTRIBUTION (722 D)

No partial payment provision.

RECOUPMENT/REPAYMENT

Yes. Defendants are informed that they may be responsible to repay all or part of the cost of their representation in the event they become able to pay after representation. The following statement appears on the eligibility form: *Notice: If an attorney is assigned to you, you may be required to repay the court for all or part of the cost of your defense.* According to the survey, although the form states this, no follow up is ever done to recoup the money.

PARENTAL CONSIDERATION

AGE OF MINOR

21 and younger

INCOME OF PARENTS CONSIDERED

Yes. The Guidelines for the Greene County Public Defender's Office states the following: *In dealing with persons under the age of 21 who are not emancipated, we take into account the entire family income. The law requires parents to support their children under the age of 21 with necessities and legal services are deemed to be necessary.*

**MINORS PROVIDED REPRESENTATION
WHEN PARENTS ARE DETERMINED TO
BE ABLE TO PAY BUT REFUSE**

No. Between the court and the public defender's office, parents are usually convinced of their obligations.

PARENTAL COST RECOVERY

According to the survey, parents who are determined to be able to pay for their minor's representation do so.

**OTHER MEASURES USED TO OFFSET
THE COST OF PUBLIC DEFENSE
SERVICES**

Collection from the state for inmate criminal and parole representation and attempt to obtain STOP-DWI money.

SIGN AFFIDAVIT

Yes

**DEFENDANTS REQUIRED TO SIGN ANY
WAIVERS IN THE COURSE OF THE
ELIGIBILITY DETERMINATION**

According to the survey, no. However, the eligibility form contains the following statement: "I hereby authorize the Court, or its representatives to verify the answers given in this affidavit."

STATEMENT OF CONFIDENTIALITY

No answer provided on the survey. However, a review of the eligibility form reveals no statement that the eligibility information is confidential.

**PUBLIC DEFENSE OFFICE/COUNTY
TRIES TO KEEP ELIGIBILITY
INFORMATION CONFIDENTIAL**

Yes. Only in borderline cases is this information disclosed ex-parte to the court.

COUNTY

HAMILTON

SOURCE AND DATE OF INFORMATION

Chief Defender Eligibility Survey conducted over the telephone by NYSDA Research Assistant Rene Otero and Robin Morrison from the Hamilton County Assigned Counsel program on August 25, 1993, and eligibility form **Financial Affidavit In Support of Request to be Assigned Counsel Without Payment of Fee** sent to NYSDA on June 12, 1991.

ELIGIBILITY PROCESS AND WHO MAKES THE DETERMINATION

The defendant completes an eligibility form and the court determines whether to appoint an attorney.

PERCENT DETERMINED INELIGIBLE ANNUALLY

0 percent

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

Unknown. No knowledge of defendants being denied appointed counsel.

INCOME GUIDELINES

No. However, in a conversation between NYSDA Research Assistant Debra Cohen and Charles Drake, Hamilton County Attorney on January 7, 1992, the county is working on establishing income guidelines. As of this survey, the administrator still reports that there are no income guidelines in place.

INCOME GUIDELINES SOLE DETERMINANT OF ELIGIBILITY DETERMINATION

No income guidelines used.

INFORMATION REQUESTED ON THE ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

Information requested on the eligibility form: Number of dependents, personal and spousal income, liquid assets, personal and real property (includes automobile), asks whether defendant tried to hire own attorney, amount of bail and who posted it, monthly expenses.

HOW IS BAIL TREATED IN THE ELIGIBILITY PROCESS

Bail is not a factor in the eligibility determination.

PARTIAL PAYMENT/CONTRIBUTION (722 D) No.

RECOUPMENT/REPAYMENT According to the administrator, no. Defendants are not informed that they may be responsible to repay all or part of the cost of their representation in the event they become able to pay after. However, the eligibility form contains the following statement: "Notice: If an attorney is assigned to you, you may be required to repay the county for all or part of your defense."

PARENTAL CONSIDERATION

AGE OF MINOR 21 and younger

INCOME OF PARENTS CONSIDERED According to the survey, no. However, the eligibility form does ask if the defendant is a student and if so, for name and address of person(s) who helps pay tuition and room and board.

MINORS PROVIDED REPRESENTATION WHEN PARENTS ARE DETERMINED TO BE ABLE TO PAY BUT REFUSE Income of parents not considered.

SIGN AFFIDAVIT Yes

DEFENDANT REQUIRED TO SIGN ANY WAIVERS IN THE COURSE OF THE ELIGIBILITY DETERMINATION According to the survey, no. However, the following statement appears on the eligibility form: "I hereby authorize the Court, or its representatives, to verify the answers given in this affidavit."

STATEMENT OF CONFIDENTIALITY No

PUBLIC DEFENSE OFFICE/COUNTY TRIES TO KEEP ELIGIBILITY INFORMATION CONFIDENTIAL Yes

COUNTY

HERKIMER

SOURCE AND DATE OF INFORMATION

Chief Defender Eligibility Survey, Carl Scalise, Herkimer County Assigned Counsel Administrator, 8/93, and the eligibility form **Affidavit of Financial Status** sent to NYSDA by the administrator on June 10, 1991 along with a letter to Herkimer County judges re: Indigent Defendant Financial Eligibility Guide (dated July 12, 1989).

ELIGIBILITY PROCESS AND WHO MAKES THE DETERMINATION

The defendant completes an eligibility form. The assigned counsel office reviews the form and appoints counsel.

PERCENT DETERMINED INELIGIBLE ANNUALLY

1 percent

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

Yes. A review of the determination may be conducted by the judge who has jurisdiction in the pending matter.

INCOME GUIDELINES

Yes. According to the survey, the guidelines, which are update annually, are similar to those used by social services. No information was provided on the exact figures. In 1991 the administrator sent NYSDA a schedule of the income guidelines. At that time they were using \$109.67 (net) per week for a family of one; \$144.45 for a family of two and an additional \$35.00-\$40.00 per family member. The schedule of income guidelines includes the following statement: 'Eligibility for assistance from Herkimer County Welfare Department or Social Security Supplemental Income automatically entitles the applicant to free legal services.'

INCOME GUIDELINES SOLE DETERMINANT OF ELIGIBILITY DETERMINATION

No

INFORMATION REQUESTED ON THE ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

Information requested on the eligibility form: Defendant and parental incomes (not spousal); liquid assets; personal and real property (including automobile), defendant's financial obligations and any other information pertinent to the defendant's or parent's financial status.

HOW IS BAIL TREATED IN THE ELIGIBILITY PROCESS

Whether the defendant posted bail is not considered in the eligibility determination.

PARTIAL PAYMENT/CONTRIBUTION (722 D)

Yes. Appointed counsel is appointed to people who are able to contribute toward the cost of their representation. **Process for collecting money:** The county auditor collects the money from the defendant. The administrator does not know the average amount of money collected annually from partial payment/contributions.

RECOUPMENT/REPAYMENT

Yes. Defendants are informed that they may be responsible to repay all or part of the costs of their representation in the event that they become able to pay after representation. **Process for recouping money:** The court, not the assigned counsel office, seeks repayment.

PARENTAL CONSIDERATION

AGE OF MINOR

21 and younger

INCOME OF PARENTS CONSIDERED

Yes. The following statement appears on the 1989 letter sent to Herkimer County judges re: Indigent Defendant Financial Eligibility Guide: "Parents of infants (under 21) are responsible for their bills and should be contacted."

MINORS PROVIDED REPRESENTATION WHEN PARENTS ARE DETERMINED TO BE ABLE TO PAY BUT REFUSE

Yes

PARENTAL COST RECOVERY

No

SIGN AFFIDAVIT Yes

**DEFENDANT REQUIRED TO SIGN ANY
WAIVERS IN THE COURSE OF THE
ELIGIBILITY DETERMINATION** No

STATEMENT OF CONFIDENTIALITY No

**PUBLIC DEFENSE OFFICE/COUNTY
TRIES TO KEEP ELIGIBILITY
INFORMATION CONFIDENTIAL** No

COUNTY

JEFFERSON

SOURCE AND DATE OF INFORMATION

Telephone conversation between NYSDA research assistant, Susan Robinson and David Gruenewald, former Public Defender, Jefferson County Public Defender's office on June 20, 1991; eligibility form **Jefferson County Public Defender Application For Defense Services**; and 1989 LSC federal poverty income guidelines both sent to NYSDA by the public defender's office on June 20, 1991.

ELIGIBILITY PROCESS AND WHO MAKES THE DETERMINATION

According to the telephone conversation noted above, the court determines eligibility. Defendants are required to complete a financial eligibility form. No further information is known about the process for determining eligibility.

PERCENT DETERMINED INELIGIBLE ANNUALLY

Unknown

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

Unknown

INCOME GUIDELINES

Yes. According to the income guidelines sent with the eligibility form: \$5,980.00 per year for a family of one (\$117.00 per week); \$8,020.00 per year for a family of two (\$154.00 per week); \$10,060.00 per year for a family of three (\$193.00 per week); and \$12,100.00 per year for a family of four (\$233.00 per week). Approximately \$2,040.00 is added for each additional family member per year (\$39.00 per week). These guidelines are based on the 1989 LSC federal poverty guidelines. It is not known if these guidelines have been updated since they were sent to us in June, 1991.

INCOME GUIDELINE SOLE DETERMINANT OF ELIGIBILITY DETERMINATION

Unknown

INFORMATION REQUESTED ON THE ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

Information requested on the eligibility form: Amount of bail (but not who posted it), number of dependents, personal income, liquid assets, personal and real property (including automobile and home), expenses and loans. Also, if someone is supporting the defendant, information is required on that person's income.

HOW IS BAIL TREATED IN THE ELIGIBILITY PROCESS

Unknown

PARTIAL PAYMENT/CONTRIBUTION (722 D)

The eligibility form contains the following statement: "If you do not meet the standards for eligibility, the public defender may represent you, however, the court may order you to pay for this representation if you are able." It is not known whether this provision is enforced.

RECOUPMENT/REPAYMENT

Unknown if the defendant is informed that they may be responsible to pay for all or part of their legal fees in the event they become able to pay after representation.

PARENTAL CONSIDERATION

AGE OF MINOR

Unknown

INCOME OF PARENTS CONSIDERED

The eligibility form does not explicitly state that parents are responsible for their minor's representation. However, if the defendant is supported by someone, the eligibility form requires the name, address, employer and weekly salary of that person.

MINORS PROVIDED REPRESENTATION WHEN PARENTS ARE DETERMINED TO BE ABLE TO PAY BUT REFUSE

Unknown

PARENTAL COST RECOVERY

Unknown

SIGN AFFIDAVIT

Yes

**DEFENDANT REQUIRED TO SIGN ANY
WAIVERS IN THE COURSE OF THE
ELIGIBILITY DETERMINATION**

Unknown

STATEMENT OF CONFIDENTIALITY

No. The following statement appears on the eligibility form: "The information on this form is not confidential. It may be revealed to the court, prosecutor and the public."

**PUBLIC DEFENSE OFFICE/COUNTY
TRIES TO KEEP ELIGIBILITY
INFORMATION CONFIDENTIAL**

Unknown

COUNTY

LEWIS

SOURCE AND DATE OF INFORMATION

Chief Defender Eligibility Survey, Joanne Kohler Smith, Lewis County Public Defender, 8/93, and eligibility form **Affidavit of Defendant In Support of His Application for Services of Public Defender Without Fee** sent with the survey.

ELIGIBILITY PROCESS AND WHO MAKES DETERMINATION

Financial affidavits are usually given to defendants, by the court, at arraignment. The affidavits are often filled out by the defendant at the arraignment and the public defender is called if the defendant is determined to be eligible. If a judge has a question about eligibility, he calls the public defender.

PERCENT DETERMINED INELIGIBLE ANNUALLY

10 percent

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

Yes. If the person indicates that they feel they are eligible, the form is sent to the chief public defender for review.

INCOME GUIDELINES

No formal guidelines. The eligibility determination is based on assets, liabilities, income and bills. Basically, if someone makes \$15,000.00 per year, the inquiry becomes whether they have money left to hire an attorney. Those who earn more than \$15,000.00 may still be eligible if they have extraordinary expenses or several dependents.

INCOME GUIDELINES SOLE DETERMINANT OF ELIGIBILITY DETERMINATION

No formal guidelines used.

INFORMATION REQUESTED ON THE ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

Information requested on the eligibility form: The amount of bail posted and the name and address of the person who posted the bail, monthly income of defendant, spouse and/or children, liquid and non-liquid assets (including automobile and house), monthly expenses.

HOW IS BAIL TREATED IN THE ELIGIBILITY PROCESS

Whether the defendant posted bail does not usually have an effect on the eligibility determination. It should be noted, however, that the eligibility form requires information on the amount of bail posted and the person who posted the bail.

PARTIAL PAYMENT/CONTRIBUTION (722 D)

No partial payment/contribution.

RECOUPMENT/REPAYMENT

No. Defendants are not informed that they may be responsible to repay all or part of the cost of their representation in the event they become able to pay after representation.

PARENTAL CONSIDERATION

AGE OF MINOR

Younger than 21 and unmarried

INCOME OF PARENTS CONSIDERED

Yes

MINORS PROVIDED REPRESENTATION WHEN PARENTS ARE DETERMINED TO BE ABLE TO PAY BUT REFUSE

Yes

PARENTAL COST RECOVERY

No

SIGN AFFIDAVIT

Yes

DEFENDANT REQUIRED TO SIGN ANY WAIVERS IN THE COURSE OF THE ELIGIBILITY DETERMINATION

According to the survey, no. However, the eligibility form contains the following statement: "Do you authorize the Court or the Public Defender to make any inquiries or investigation concerning the answers given by you in this affidavit?"

STATEMENT OF CONFIDENTIALITY

No

PUBLIC DEFENSE OFFICE/COUNTY TRIES TO KEEP ELIGIBILITY INFORMATION CONFIDENTIAL

Yes

COUNTY

LIVINGSTON

SOURCE AND DATE OF INFORMATION

Chief Defender Eligibility Survey, Francis J. Constantine, Livingston County Public Defender, 7/93; eligibility form: **Application and Financial Status: Livingston County Public Defender**; and a memorandum from the public defender to the assistant public defenders regarding income guidelines for representation. Both the eligibility form and the memorandum were sent to NYSDA with the survey.

ELIGIBILITY PROCESS AND WHO MAKES THE DETERMINATION

A financial affidavit is supplied to the defendant by either the court, an attorney or the public defender office. The defendant completes the application and submits it to the public defender's office. The chief public defender reviews the form and either accepts or rejects the defendant. If accepted, then a public defender is assigned. If rejected, the chief public defender sends a letter to the defendant to this effect with copies going to the court and to the assistant public defender who appeared in the court in which the defendant initially appeared.

PERCENT DETERMINED INELIGIBLE ANNUALLY

17 percent

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

Yes. The judges get copies of the rejection letters and may order representation for defendants if he/she deems necessary.

INCOME GUIDELINES

Yes. Based on the 1991 LSC federal poverty guidelines: \$159.13 gross per week for a family of one. \$213.46 gross per week for a family of two. For each dependent add \$54.33 gross per week. These guidelines were set in 1992. Assistant public defenders are instructed to determine whether a person is eligible by: calculating gross income for family unit. Subtract any support payments. Find out family size: include defendant, spouse (live-in), all children under 21 living in family unit. According to the survey, the guidelines have not been updated for 1993 (the office has only been in existence since 1992). Also, it is unclear from the survey whether the office plans on updating the guidelines annually.

INCOME GUIDELINES SOLE DETERMINANT OF ELIGIBILITY DETERMINATION

According to the survey, the income guidelines are the sole determinant of the eligibility determination.

INFORMATION REQUESTED ON THE ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

Information requested on the eligibility form: Number of dependents, personal and spousal income (gross income), liquid and non-liquid assets and amount of bail. No information is requested about the defendants debts with the exception of the amount of support paid per week.

HOW IS BAIL TREATED IN THE ELIGIBILITY PROCESS

Whether or not the person made bail is not considered in the eligibility determination.

PARTIAL PAYMENT/CONTRIBUTION (722 D)

No partial payment/contribution.

RECOUPMENT/REPAYMENT

No. Defendants are not informed that they may be responsible to repay all or part of the cost of their representation in the event that they become able to pay after representation.

PARENTAL CONSIDERATION

AGE OF MINOR

21 and younger

INCOME OF PARENTS CONSIDERED

Yes. The eligibility form asks for the income of the parents if the defendant is 21 or younger.

MINORS PROVIDED REPRESENTATION WHEN PARENTS ARE DETERMINED TO BE ABLE TO PAY BUT REFUSE

Yes

PARENTAL COST RECOVERY

Yes. However, procedures for collecting money from parents have not been developed as of yet. The office is only slightly more than one year old.

SIGN AFFIDAVIT

Yes

**DEFENDANT REQUIRED TO SIGN ANY
WAIVERS IN THE COURSE OF THE
ELIGIBILITY DETERMINATION** No

STATEMENT OF CONFIDENTIALITY No

**PUBLIC DEFENSE OFFICE\COUNTY
TRIES TO KEEP ELIGIBILITY
INFORMATION CONFIDENTIAL** Yes

COUNTY

MADISON

SOURCE AND DATE OF INFORMATION

Chief Defender Eligibility Survey, David Gruenewald, Director, Madison County Criminal Defense Program, 9/93.

ELIGIBILITY PROCESS AND WHO MAKES THE DETERMINATION

In cases involving jailed defendants: Members of the office go to the jail five to six times per week and interview any newly incarcerated individuals. The court is notified and assignment is made. In cases involving bailed defendants: The courts in the county all have the eligibility forms. The judges have defendants fill out the forms and assignments are then made if the defendant is determined to be eligible.

PERCENT DETERMINED INELIGIBLE ANNUALLY

5-10 percent

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

Yes. If the individual simply cannot afford to hire an attorney, his financial situation is reviewed and a potential fee is imposed. The potential fee is to be paid to the county treasurer.

INCOME GUIDELINES

Yes. \$164.00 per week for a family of one; \$221.00 per week for a family of two; \$278.00 per week for a family of three; \$335.00 per week for a family of four plus approximately \$43.00 for each additional dependent. These income guidelines were last updated in 1992 and are expected to be updated again in 1994. The current guidelines are based upon the 1992 LSC federal poverty guidelines. According to the survey, the income guidelines are loosely followed.

INCOME GUIDELINES SOLE DETERMINANT OF ELIGIBILITY

No

INFORMATION REQUESTED ON THE ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

Information requested on the eligibility form: Marital status, number of dependents, age of dependents, personal income, expenses, value of automobile, house, amount in savings account and any other assets. **Other factors considered:** According to the survey, the key factor is whether the individual can afford to hire a private attorney.

HOW IS BAIL TREATED IN THE ELIGIBILITY PROCESS

If an individual is incarcerated and has not posted bail, there is a very good chance that an attorney will be assigned if no attorney is retained.

PARTIAL PAYMENT/CONTRIBUTION (722 D)

Yes. Appointed counsel is provided to people who are able to contribute toward the cost of their representation. The survey notes that the County Treasurer is paid from funds collected by the Criminal Defense Office. The survey further notes that the court is rarely involved in the collection of money from contributions and that the money is collected at any time after imposition. The program is new, therefore, they have no experience to date collecting money from partial payment or contributions.

RECOUPMENT/REPAYMENT

Yes. Defendants are informed that they may be responsible to repay all or part of the cost of their representation in the event they become able to pay after representation. The collection process is the same as that for partial payment/recoupment.

PARENTAL CONSIDERATION

AGE OF MINOR

According to the survey, 18 and younger. However, see statement below concerning parent's responsibility.

INCOME OF PARENTS CONSIDERED

Yes. The following statement appears on the schedule of income guidelines: "Parents of applicants under 21 are responsible for their legal fees and must be notified."

**MINORS PROVIDED REPRESENTATION
WHEN PARENTS ARE DETERMINED TO
BE ABLE TO PAY BUT REFUSE**

Yes

PARENTAL COST RECOVERY

Yes. Potential fee is imposed. Letter from the defense office is sent out requesting reimbursement. No experience in collecting money from parents to date since program is new.

**DO THE AMOUNT OF MONIES COLLECTED
FROM PARTIAL PAYMENT, RECOUPMENT
AND PARENTS OFFSET THE COST OF
COLLECTING THESE MONIES**

Although the office has yet to start collecting money from contributions, recoupment and parents, the survey indicates that any money collected will offset the cost of collecting these monies since all that is involved is sending out letters.

SIGN AFFIDAVIT

The eligibility form does not require the defendant to sign a sworn statement. Rather, the eligibility form contains the following statement: "Under the penalties of perjury, I certify my financial condition to be as follows:"

**DEFENDANT REQUIRED TO SIGN ANY
WAIVERS IN THE COURSE OF THE
ELIGIBILITY DETERMINATION**

Yes

STATEMENT OF CONFIDENTIALITY

No. In fact, the following statement appears on the eligibility form: "Warning: The information on this form is not confidential. It may be revealed to the court, prosecutor, and the public."

**PUBLIC DEFENSE OFFICE/COUNTY
TRIES TO KEEP ELIGIBILITY
INFORMATION CONFIDENTIAL**

No

COUNTY

MONROE

SOURCE AND DATE OF INFORMATION

Chief Defender Eligibility Survey, Edward Nowak, Monroe County Public Defender, 7/93, and an examination of the eligibility form: **Statement of Financial Status Public Defender of Monroe County and the corresponding Standards of Eligibility for the Monroe County Public Defender's Office** which were both sent to NYSDA with the eligibility survey. Also, Chief Defender Eligibility Survey, Richard Youngman, Administrator, Monroe County Assigned Counsel, 8/93.

ELIGIBILITY PROCESS AND WHO MAKES THE DETERMINATION

Information is obtained from the defendant by either a paralegal or a criminal justice intern under the supervision of a paralegal. A recommendation is then made to the court based upon guidelines implemented by the Monroe County Bar Association. The court may request to see the information or ask questions in order to make the eligibility determination. The decision on eligibility is left up to the judge. In conflict cases, the court contacts the assigned counsel program if the public defender withdraws due to a conflict. The assigned counsel program is not involved in the initial eligibility determination.

PERCENT DETERMINED INELIGIBLE ANNUALLY

15 percent

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

Yes. The eligibility decision is reviewed by the supervising attorney and, where appropriate, by the chief defender. If new information is obtained, it is presented to the judge for a final decision.

INCOME GUIDELINES

Yes. 125 percent of the 1993 LSC federal poverty level: \$167.55 per week plus \$59.14 per dependent. According to the survey, the income guidelines are updated annually.

INCOME GUIDELINES SOLE DETERMINANT OF ELIGIBILITY DETERMINATION

No

INFORMATION REQUESTED ON THE ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

Information requested on the eligibility form: Necessities of life—food, shelter, clothing medical supplies and transportation. "Present net assets"—assets solely owned by the defendant or jointly owned with a spouse, less the amount of any security interests held by a third party, but does not include assets, the sale of which would cause an unreasonable hardship. This would usually preclude the sale of a house for a residence (as opposed to investment property), household furnishings or an automobile necessary for a defendant's employment. Information on the defendant's obligations (debts) is requested on the eligibility form.

HOW IS BAIL TREATED IN THE ELIGIBILITY PROCESS

If cash bail is an asset of and posted by the defendant, it is considered a "present net asset."

PARTIAL PAYMENT/CONTRIBUTION (722 D)

Yes. Appointed counsel is provided to people who can contribute toward the cost of their representation. **Process for collecting partial payment/contribution (722 D):** The public defender office initially tries to recover the money. If the client refuses to pay, it is turned over to the County Law Department for collection. The amount of money collected from partial payment or contributions is not available.

RECOUPMENT/REPAYMENT

No. Defendants are not informed that they may be responsible to pay all or part of the cost of their representation in the event they become able to pay after representation has concluded.

PARENTAL CONSIDERATION

AGE OF MINOR

Under the age of 21

INCOME OF PARENTS CONSIDERED

Yes. The following statement appears in the **Standards of Eligibility for the Monroe County Public Defender's Office:** "When a person under 21 seeks the appointment of counsel or other services, the assets, income and expenses of his parents or persons legally responsible for his support shall be considered."

**MINORS PROVIDED REPRESENTATION
WHEN PARENTS ARE DETERMINED TO
BE ABLE TO PAY BUT REFUSE**

Yes. The following statement appears in **Standards of Eligibility for the Monroe County Public Defender's Office**: "The Sixth Amendment right to counsel is personal; therefore, assignment of counsel cannot be denied if the parents or persons legally responsible for support refuse to contribute toward the cost of counsel."

PARENTAL COST RECOVERY

Yes. 722 D order may be directed by the court. That order is turned over to the County Law Department for purpose of collection. The average amount of money collected from parents annually is not available.

**TOTAL AMOUNT OF MONEY COLLECTED
FROM PARTIAL PAYMENT/CONTRIBUTION
AND PARENTAL COST RECOVERY IN 1992**

\$16,297

**DOES THE AMOUNT COLLECTED FROM
PARTIAL PAYMENT/CONTRIBUTION
AND PARENTS OFFSET THE COST OF
COLLECTING THESE MONIES**

Unknown

**OTHER MEASURES USED TO OFFSET
THE COST OF PUBLIC DEFENSE SERVICES**

State grants.

SIGN AFFIDAVIT

No

**DEFENDANT REQUIRED TO SIGN ANY
WAIVERS IN THE COURSE OF THE
ELIGIBILITY DETERMINATION**

No. However, the defendant must sign a consent that the information may be given to the court if requested.

STATEMENT OF CONFIDENTIALITY

No

**PUBLIC DEFENSE OFFICE/COUNTY
TRIES TO KEEP ELIGIBILITY
INFORMATION CONFIDENTIAL**

Yes

COUNTY

MONTGOMERY

SOURCE AND DATE OF INFORMATION

Telephone conversation between NYSDA research assistant, Debra Cohen, and Joe Ponte, Investigator and Paralegal, Montgomery County Public Defender's office on January 8, 1992.

ELIGIBILITY PROCESS AND WHO MAKES THE DETERMINATION

According to the telephone conversation, the public defender's office makes the eligibility determination. No other information is known concerning the process for determining eligibility.

PERCENT DETERMINED INELIGIBLE ANNUALLY

Unknown

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

Unknown

INCOME GUIDELINES

Yes. \$6,500.00 (gross) a year for a family of one (approximately \$125.00 gross per week). For each dependent \$1,500.00 (gross) is added per year (approximately \$28.00 gross per week). No information is known concerning how these guidelines were established, when they were established, how often they are updated and when they will next be updated.

INCOME GUIDELINES SOLE DETERMINANT OF ELIGIBILITY DETERMINATION

Unknown

INFORMATION REQUESTED ON THE ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

Unknown

HOW IS BAIL TREATED IN THE ELIGIBILITY PROCESS

Unknown

PARTIAL PAYMENT/CONTRIBUTION (722 D)

Unknown if appointed counsel is provided to people who are able to contribute toward the cost of their representation.

RECOUPMENT/REPAYMENT

Unknown if defendants are informed that they may be required to pay all or part of their representation in the event they become able to pay after representation.

PARENTAL CONSIDERATION

AGE OF MINOR

Unknown

INCOME OF PARENTS CONSIDERED

Unknown

MINORS PROVIDED REPRESENTATION WHEN PARENTS ARE DETERMINED TO BE ABLE TO PAY BUT REFUSE

Unknown

PARENTAL COST RECOVERY

Unknown

SIGN AFFIDAVIT

Unknown

DEFENDANT REQUIRED TO SIGN ANY WAIVER IN THE COURSE OF THE ELIGIBILITY DETERMINATION

Unknown

STATEMENT OF CONFIDENTIALITY

Unknown

PUBLIC DEFENSE OFFICE/COUNTY TRIES TO KEEP ELIGIBILITY INFORMATION CONFIDENTIAL

Unknown

COUNTY

NASSAU

SOURCE AND DATE OF INFORMATION

Chief Defender Eligibility Survey, Elaine Jackson Stack, Administrator, Assigned Counsel Plan, Nassau County, 8/93; eligibility form Affidavit In Support of Application for Legal Aid Services or Assigned Counsel Services sent with the eligibility survey; Guidelines for the Nassau County Defense Counsel Screening Society and pertinent forms used by the Screening Society which were sent to NYSDA on September 17, 1991, by Eric Price, Director of the Defense Counsel Screening Bureau.

ELIGIBILITY PROCESS AND WHO MAKES THE DETERMINATION

After inquiry, the court sends the defendant for screening by the Defense Counsel Screening Bureau. It should be noted that the Defense Counsel Screening Bureau is supervised by the Office of Commissioner of Accounts. Incarcerated defendants are interviewed in jail. Eligibility forms are completed by the defendant or by a member of his/her family as required. Ultimately, the court reviews the determination of the Defense Counsel Screening Bureau and either assigns an 18B attorney or the legal aid society or informs the defendant that they are not eligible.

PERCENT DETERMINED INELIGIBLE ANNUALLY

35 percent

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

Yes. The court may review documentation and overrule the decision of the Defense Counsel Screening Bureau.

INCOME GUIDELINES

Yes. According to the standards sent to NYSDA by Eric Price, Director of the Screening Bureau, the guidelines as of 1991 were \$151 per week for a family of one (based on 100% of the Lower Living Standard Income Level [LLSIL] for the metropolitan statistical area of New York City and Northeast New Jersey). [Source: Federal Register, Vol. 52, No. 134, Tues 7/14/87 Tables 3 & 4]. According to the standards, these guidelines are suppose to be updated annually. However, according to the survey, the guidelines are not updated annually. As a matter of fact, the survey reports that the guidelines haven't been updated in 6-7 years.

INCOME GUIDELINES SOLE DETERMINANT OF ELIGIBILITY DETERMINATION

No

INFORMATION REQUESTED ON THE ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

Personal and spousal income, household income if defendant is under 21 years of age, personal property, living expenses and liabilities, whether defendant has posted bail.

HOW IS BAIL TREATED IN THE ELIGIBILITY PROCESS

Source and amount of cash bail considered.

PARTIAL PAYMENT/CONTRIBUTION (722 D)

Yes. Appointed counsel is provided to people who are able to contribute toward the cost of their representation. According to one of the documents sent to NYSDA by Eric Price in September, 1991, entitled **Current Situation**, "If the office determines the defendant to be only partially indigent, an 18-B attorney will be assigned and a partial fee agreement will be signed. This is a contract between the defendant, the county and the attorney. The Defense Counsel Screening Bureau determines how much the defendant can afford and orders that he pay that amount directly to the attorney. Usually it is requested that half of the fee be disbursed at the initial meeting and the rest in a manner to be determined between the defendant and the attorney."

According to the survey, 18-B attorneys are urged to vigorously attempt to collect promised fees from defendants. Some are more successful than others. The county is currently investigating the use of a collection lawyer for those who become ineligible after having a lawyer assigned as well as for those who promise to pay in fee agreement and do not fulfill this obligation. No data are available on the average amount of money collected annually from partial payment/contributions.

RECOUPMENT/REPAYMENT

Yes. Defendants are informed that they may be responsible to repay all or part of the cost of representation in the event that they become able to pay after representation.

PARENTAL CONSIDERATION

AGE OF MINOR

21 and younger

INCOME OF PARENTS CONSIDERED

Yes. Minors must have their parents present with them at the eligibility screening with the Defense Counsel Screening Bureau and parents must provide required financial information.

MINORS PROVIDED REPRESENTATION WHEN PARENTS ARE DETERMINED TO BE ABLE TO PAY BUT REFUSE

Yes. The following appears in the Guidelines for the Defense Counsel Screening Bureau: "Refusal to appear or sign a financial form by parents or guardians shall not be [a] deterrent in the determination of eligibility, if in the judgement of the Defense Counsel Screening Bureau all measures to have the parents or guardians respond have been taken. The court will so advise the County Attorney to take whatever action he deems necessary. An incarcerated under 21 year old applicant, in custody shall be assigned counsel pending screening."

PARENTAL COST RECOVERY

According to the survey, no.

SIGN AFFIDAVIT

Yes

DEFENDANT REQUIRED TO SIGN ANY WAIVERS IN THE COURSE OF THE ELIGIBILITY DETERMINATION

According to the survey, no. However the following statement appears on the eligibility form: "I authorize the Commissioner of Accounts of Nassau County, the legal aid society, or assigned counsel to make any inquires or investigation concerning the answers given by me in this affidavit."

STATEMENT OF CONFIDENTIALITY

No

PUBLIC DEFENSE OFFICE/COUNTY TRIES TO KEEP ELIGIBILITY INFORMATION CONFIDENTIAL

Yes

COUNTY

NEW YORK CITY: BRONX, KINGS, NEW YORK, QUEENS AND RICHMOND

SOURCE AND DATE OF INFORMATION

Chief Defender Eligibility Survey, Archibald R. Murray, Executive Director and Attorney-in-Chief, The Legal Aid Society, Criminal Defense Division, 8/93; a copy of Justice Mangano Task Force rules for Queens County Financial Standards for the Assignment of Counsel (December, 1991); an article from the New York Law Journal, 12/12/91: **Queens Test to Limit Free Counsel Program, Pilot Project to Set Income Caps for Indigency**; conversation between Dawn Lambert-Wacey, NYSDA staff and Jerome McElroy, Executive Director of the New York City Criminal Justice Agency (CJA) on August 30, 1993; and eligibility form used by CJA: ACES.

ELIGIBILITY PROCESS AND WHO MAKES THE DETERMINATION

Counsel is appointed by the court. In all five counties, the New York City Criminal Justice Agency (CJA) completes a form prior to arraignment for bail purposes that contains information about employment as one factor in evaluating an individual's community ties. According to the survey, in Queens and Richmond counties, experimental standards developed by the Appellate Division, Second Department are being tested (and evaluated by the CJA). Jerome McElroy, Executive Director of the NYC Criminal Justice Agency communicated to NYSDA staff member Dawn Lambert-Wacey, in a conversation on August 30, 1993, that the eligibility experiment was only being conducted in Queens County and not Richmond County. In Queens County, a separate income eligibility form, ACES, is compiled. The form is compiled by CJA for persons in custody and by the Court for those returning on Desk Appearance Tickets. The Legal Aid Society does not support the validity of these standards.

PERCENT DETERMINED INELIGIBLE ANNUALLY

10-15 percent

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

No. Although there is no judicial review process, The Legal Aid Society will on occasion review and contest eligibility determinations made by the court, both administratively and in court.

INCOME GUIDELINES

No income guidelines used in Bronx, Kings, New York and Richmond. In Queens County, the following guidelines are used: **Accused Misdemeanants** - \$249.00 net pay per week for a family of one; \$294.00 net pay per week for a family of two; \$342.00 net pay per week for a family of three; \$384.00 net pay per week for a family of four; plus approximately \$40.00-\$50.00 for each additional family member.

Accused Felons - \$336.00 net pay per week for a family of one; \$389.00 net pay per week for a family of two; \$431.00 net pay per week for a family of three; \$471.00 net pay per week for a family of four; plus approximately \$40.00-\$50.00 for each additional family member. Apparently these income figures are based on some percentage of either the 1992 or 1993 federal poverty guidelines.

INCOME GUIDELINES SOLE DETERMINANT OF ELIGIBILITY DETERMINATION

According to the survey, in Queens County, the eligibility determination is based solely on income guidelines (however, see section Information Requested on the Eligibility Form/Other Factors Considered). In Bronx, Kings, New York and Richmond counties eligibility is determined by each judge on an ad-hoc basis.

INFORMATION REQUESTED ON THE ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

According to the report **Financial Standards for Assignment of Counsel** the following factors should be tied to whether a defendant receives appointed counsel: personal and spousal income, number of dependents, type of crime charged, liquid assets, real and personal property, court may inquire if the bail can be assigned for the purpose of securing counsel. **Information requested on the ACES eligibility form:** Employment status of defendant and spouse, defendant and spouse's occupation, if not working whether the defendant and spouse are homemaker, disabled, student. Net weekly income of defendant and spouse, benefits received by the defendant and spouse, who defendant lives with, number of dependents, employment status and income of defendant's parents or guardians if defendant is under 21 years old, asset information (bank accounts of defendant and spouse, and parent or guardian if defendant under 21, value of automobile and other assets of

defendant and spouse and parents or legal guardian if defendant under 21, amount of rent or mortgage and whether or not the defendant intends on hiring his own attorney. It should be noted that other than the question concerning the amount paid for rent or mortgage, no questions are asked regarding the defendant's debts or expenses.

HOW IS BAIL TREATED IN THE ELIGIBILITY PROCESS

According to the survey, in Queens County, bail is excluded from the eligibility determination. However, the report **Financial Standards for Assignment of Counsel** contains the following statement: "A court should not deny the assignment of counsel solely because bail has been posted for the defendant. The court must be satisfied that the defendant is unable to utilize the source of the bail money for the additional purpose of retaining an attorney. The court may inquire if the bail can be assigned for the purpose of securing counsel."

PARTIAL PAYMENT/CONTRIBUTION (722 D)

According to survey, partial payment/contribution is not used. The **Financial Standards for the Assignment of Counsel for Queens County**, however, states the following: "The court at any time prior to the completion of a case may, for good cause shown, order a defendant who is unable to afford counsel, in accordance with these rules, to contribute to the cost of the representation. The amount of contribution ordered may be a sum not to exceed the full cost of the fees and expenses to be paid by the City of New York to Assigned Counsel or The Legal Aid Society."

RECOUPMENT/REPAYMENT

No. Defendants are not informed that they may be responsible to repay all or part of the cost of their representation in the event they become able to pay after representation. This appears to apply to all the New York City counties.

PARENTAL CONSIDERATION

AGE OF MINOR

No answer provided by The Legal Aid Society. However, the report **Financial Standards for the Assignment of Counsel** refers to minors as being under 21 years of age.

INCOME OF PARENTS CONSIDERED

Yes, parental income is considered for all the counties. The report **Financial Standards for the Assignment of Counsel** contains the following statement for Queens County: "In determining the eligibility of an unemancipated defendant, under 21 years of age, the court shall consider the legal responsibility of a parent or guardian who supports him or her, and the parent's or guardian's financial ability to provide counsel."

MINORS PROVIDED REPRESENTATION WHEN PARENTS ARE DETERMINED TO BE ABLE TO PAY BUT REFUSE

Unknown whether this happens.

PARENTAL COST RECOVERY

No

SIGN AFFIDAVIT

No

DEFENDANT REQUIRED TO SIGN ANY WAIVERS IN THE COURSE OF THE ELIGIBILITY DETERMINATION

No

STATEMENT OF CONFIDENTIALITY

No form used in Bronx, Kings, New York or Richmond counties. There is no statement on the ACES form concerning confidentiality. As a matter of fact, it is clear that the eligibility information is supplied to the prosecutor since the ACES form contains four carbon copies: one for the court, one for the defense, one for CJA and one for the district attorney.

PUBLIC DEFENSE OFFICE/COUNTY TRIES TO KEEP ELIGIBILITY INFORMATION CONFIDENTIAL

No. The CJA sheet and the experimental form used in Queens County are attached to the court papers unless sealed pursuant to CPL Articles 160 or 720.

misdemeanors-maximum weekly pay for a single person \$210.00; maximum assets \$2,500.00. An additional \$50.00 per week is added for one dependent and \$25.00 per week is added for each additional dependent. According to the survey, the guidelines are not updated annually. They were last updated in June, 1990 and are expected to next be updated in December, 1993.

INCOME GUIDELINES SOLE DETERMINANT OF ELIGIBILITY DETERMINATION

No

FACTORS CONSIDERED

Note: no eligibility form is used. Other factors considered in the eligibility determination include obligations e.g., rent, child care, outstanding debt.

HOW IS BAIL TREATED IN THE ELIGIBILITY PROCESS

Not considered.

PARTIAL PAYMENT/CONTRIBUTION (722 D)

No partial payment/contribution.

RECOUPMENT/REPAYMENT

No. Defendants are not informed that they may be responsible to repay all or part of the cost of their representation in the event they become able to pay after representation.

PARENTAL CONSIDERATION

AGE OF MINOR

18 and younger

INCOME OF PARENTS CONSIDERED

Yes

MINORS PROVIDED REPRESENTATION WHEN PARENTS ARE DETERMINED TO BE ABLE TO PAY BUT REFUSE

Yes

PARENTAL COST RECOVERY

No

SIGN AFFIDAVIT

No eligibility form used.

DEFENDANTS REQUIRED TO SIGN ANY WAIVERS DURING THE COURSE OF THE ELIGIBILITY DETERMINATION

No

STATEMENT OF CONFIDENTIALITY

No eligibility form used.

COUNTY

NEW YORK (NEIGHBORHOOD DEFENDER SERVICE OF HARLEM)

SOURCE AND DATE OF INFORMATION

Chief Defender Eligibility Survey, Leonard E. Noisette, Project Director, Neighborhood Defender Service of Harlem, 8/93.

ELIGIBILITY PROCESS AND WHO MAKES THE DETERMINATION

The Neighborhood Defender Service of Harlem (NDS) receives cases in two ways: First, clients can "retain" NDS's services or, second, court assignments. With "retained" clients, NDS does an internal eligibility determination. No form is completed other than a checklist of questions related to whether the client is a recipient of a government entitlement/assistance program. If the client is employed, eligibility is determined by the application of an assets/liabilities table. With court assignments, NDS presumes the client to be eligible, as does the court, unless the court inquires re: indigency and/or it appears that the client has substantial resources. In New York County, where NDS receives all of its assignments, there is no formal screening for eligibility.

PERCENT DETERMINED INELIGIBLE ANNUALLY

10 percent

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

Yes. Informal only. Generally, the court requires that the defendant attempt to secure private counsel, and/or that the defendant provide an explanation of financial circumstances that prevent the defendant from being able to secure private counsel.

INCOME GUIDELINE

Sometimes. Income guidelines are only used if a potential client is not a recipient of any type of government assistance (i.e., AFCD, SSI, Medicaid). The table is based on income and obligations and is graded according to the severity of the offense: A felonies-maximum weekly pay for a single person \$300.00; maximum assets \$20,000.00; B or C felonies-maximum weekly pay for a single person \$260.00; maximum assets \$15,000.00; D or E felonies-maximum weekly pay for a single individual \$230.00; maximum assets \$7,500.00;

COUNTY

NIAGARA

SOURCE AND DATE OF INFORMATION

Chief Defender Eligibility Survey, William R. Lewis, Niagara County Public Defender, 8/93, and eligibility form **Request for Public Defender Financial Affidavit In Support of Application for Public Defender Services** which was sent with the survey.

ELIGIBILITY PROCESS AND WHO MAKES THE DETERMINATION

The staff investigating attorney makes personal inquiries using an eligibility form. Persons receiving social services benefits regularly qualify. Personal contact is made with all applicants and they are questioned regarding the eligibility form. If the person does not meet the minimum standards as to assets and income, they are accepted. If they have income and assets or one or the other and are above certain levels, they are rejected at that time.

PERCENT DETERMINED INELIGIBLE ANNUALLY

20 percent

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

Yes. They may re-apply or they may submit their financial affidavit to be reviewed by the chief public defender.

INCOME GUIDELINES

Yes. If the applicant has previously been accepted by the public defender office or is receiving social service benefits, they are routinely determined to be eligible with little inquiry other than completing the eligibility form. If the defendant is not on social services, an evaluation of income and assets is made for eligibility. A single person charged with a misdemeanor or less with net income of \$130.00 per week is ineligible. For felonies, net income over \$225.00 per week, not eligible. It is not known what these income guidelines are based upon. Exceptions are made for heavy debts, medical costs, child support, maintenance, etc. People who are determined ineligible are helped with the eligibility forms to make sure they understand the questions and are given more time with the investigator in applying for appointed counsel to make sure they do not meet the guidelines before they are refused appointed counsel.

The income guidelines are not updated annually but they are reviewed quarterly. No information was provided on when the income guidelines would next be updated.

INCOME GUIDELINES SOLE DETERMINANT OF ELIGIBILITY DETERMINATION

No

INFORMATION REQUESTED ON THE ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

Information requested on the eligibility form: Number of dependents, personal, spousal and parental income, liquid assets, real and personal property (including automobile), debts of defendants or parents, monthly rent, disabilities, amount of cash bail, name and address of person who paid the bail.

HOW IS BAIL TREATED IN THE ELIGIBILITY PROCESS

Persons who can not make bail are usually eligible for public defender services at least until they are released from jail. They may then re-apply or hire private counsel. The eligibility form requires information on the amount of cash bail paid and the name and address of the person who paid the bail.

PARTIAL PAYMENT/CONTRIBUTION (722 D)

Yes. Appointed counsel is provided to people who are able to contribute toward the cost of their representation. For defendants who are not wholly destitute of means to employ counsel or to defray the incidental expenses of trial, but are unable to retain counsel because of their financial condition, the court orders the defendant to reimburse the county through the treasurer's office and the monies are placed in the public defender budget for assigned private counsel. This line item is used to pay the attorneys assigned when a conflict occurs. Total amount of money collected from all defendants from partial payment/contributions \$3,000.00.

RECOUPMENT/REPAYMENT

No. Defendants are not informed that they may be responsible to pay part or all of the cost of their representation in the event they become able to pay after representation. However, the following statement appears on the eligibility form: "I also understand that if I am financially able to obtain my

own counsel at any time on or before my court appearance I must report or notify the public defender's office or they will no longer represent me." According to the survey, if the person is eligible at the time of application, he is informed that if he gets work or inherits he must inform the public defender's office. If he then can afford his own counsel he is removed from public defender services. The defendant is not asked to repay though because he was eligible for appointed counsel at the time of application.

PARENTAL CONSIDERATION

AGE OF MINOR

21 and younger

INCOME OF PARENTS CONSIDERED

Yes. The eligibility form includes the following statement: "If under 21 years of age and not self-supporting defendant must be accompanied by parent or guardian." Also, the eligibility form requires the following information: if defendant lives with parent, whether the parents own a home, parent's income.

MINORS PROVIDED REPRESENTATION WHEN PARENTS ARE DETERMINED TO BE ABLE TO PAY BUT REFUSE

Yes. At least temporarily until parents can be ordered to provide for their children.

PARENTAL COST RECOVERY

No

SIGN AFFIDAVIT

Yes

DEFENDANT REQUIRED TO SIGN ANY WAIVERS IN THE COURSE OF THE ELIGIBILITY DETERMINATION

According to the survey, no. However, the following statement appears on the eligibility form: "I hereby authorize the Public Defender's Office to disclose the above information to courts and to other persons as he may deem proper, for the purpose of reaching a proper decision on the question of my right to be defended by them."

STATEMENT OF CONFIDENTIALITY

No. "I hereby authorize the public defender's office to disclose the above information to courts and to such other persons as he may be deemed proper, for the purpose of reaching a proper decision on the question of my right to be defended by them."

**PUBLIC DEFENSE OFFICE/COUNTY
TRIES TO KEEP ELIGIBILITY
INFORMATION CONFIDENTIAL**

Yes. The only personnel who see the eligibility questionnaire are the investigator, the secretarial staff and the chief public defender.

COUNTY

ONEIDA

SOURCE AND DATE OF INFORMATION

Chief Defender Survey, Frank Nebush, Jr., Oneida County Public Defender, 7/93; eligibility form **Oneida County Office of the Public Defender Affidavit of Financial Status** (long form which is used when a defendant wants to appeal an adverse eligibility determination) and **Oneida County Public Defender Application for Defense Services** (regular form) sent to NYSDA by the Oneida County Public Defender office in June, 1991; and letter from K. Scott Greaser, Oneida County Assigned Counsel Administrator to NYSDA dated July 22, 1993 re: response to Chief Defender Eligibility Survey explaining that the assigned counsel program is not involved in determining eligibility.

ELIGIBILITY PROCESS AND WHO MAKES THE DETERMINATION

The public defender takes the financial statement and declares eligibility for all clients requesting counsel. Judges appoint public defender or assigned counsel in conflict situations. The assigned counsel administrator is not involved in the eligibility determination at all.

PERCENT DETERMINED INELIGIBLE ANNUALLY

5 percent

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

Yes. The defendant can appeal to the chief defender with a complete long form financial statement or judicial examination and appointment.

INCOME GUIDELINES

\$100.00 per week for a single person; \$145.00 per week if married; and \$25.00 additional per week for each dependent. These guidelines are based on local experience. According to the survey, the guidelines are not updated annually. They were last updated in 1992 and are expected to be updated again in 1995.

INCOME GUIDELINES SOLE DETERMINANT OF ELIGIBILITY DETERMINATION

No

INFORMATION REQUESTED ON THE ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

Information requested on the eligibility form: Personal, spousal and parental income, personal and real property (including automobile), liquid assets, fixed monthly expenses. **Other factors considered:** If the defendant is incarcerated.

HOW IS BAIL TREATED IN THE ELIGIBILITY PROCESS

Not a factor unless the defendant is incarcerated.

PARTIAL PAYMENT/CONTRIBUTION (722 D)

Yes. Appointed counsel is provided to those people who are able to contribute toward the cost of their representation. The eligibility form contains the following statement: "If you do not meet the standards of eligibility, the public defender may represent you, however, the court may order you to pay for this representation if you are able." **Process for collecting money from partial payment/contribution (722 D):** The public defender sets the collection practice and money is collected at all stages of the proceedings based on \$65.00 per hour for attorney time. Average amount of money collected annually \$1500.

RECOUPMENT/REPAYMENT

Yes. Defendants are informed that they may be responsible to pay for part or all of the cost of their representation in the event they become able to pay after representation. **Process for collecting partial payment/contributions (722 D):** The survey states that the collection practices for recoupment/repayment are the same as those used for partial payment/contribution. That is, the public defender sets the collection practice and money is collected at all stages of the proceedings based on \$65.00 per hour for attorney time. Average amount of money recouped annually \$1500.

PARENTAL CONSIDERATION

AGE OF MINOR

21 and younger

INCOME OF PARENTS CONSIDERED

Yes

**MINORS PROVIDED REPRESENTATION
WHEN PARENTS ARE DETERMINED TO
BE ABLE TO PAY BUT REFUSE**

Yes

PARENTAL COST RECOVERY

Yes. Payment plan based on ability to pay.
Turnover to the County Attorney if in-house
collection fails. Average amount of money collected
annually from parents \$50.00

**DOES THE AMOUNT OF MONEY COLLECTED
FROM PARTIAL PAYMENT/CONTRIBUTION,
PARENTAL COST RECOVERY AND
RECOUPMENT/REPAYMENT OFFSET THE
COST OF COLLECTING THESE MONIES**

Yes

**OTHER MEASURES USED TO OFFSET
THE COST OF PUBLIC DEFENSE
SERVICES**

Reimbursement from state for prison cases; Aid to
Defense; and STOP DWI funding.

SIGN AFFIDAVIT

According to the survey, no. However, on the
regular form it states: "Under the penalties of
perjury, I certify my financial condition to be as
follows:" The defendant then signs the completed
eligibility form. On the long form the following
statement appears: "I...being duly sworn depose
and make under oath the following statement
regarding my marital status, residence, source and
amount of income and financial status in
connection with the request for the services of the
public defender." The defendant is then required to
sign the completed long form.

**DEFENDANT REQUIRED TO SIGN ANY
WAIVERS IN THE COURSE OF THE
ELIGIBILITY DETERMINATION**

No

STATEMENT OF CONFIDENTIALITY

No. The regular eligibility form contains the
following statement: "The information on this form is
not confidential. It may be revealed to the court,
prosecutor and the public. The long form contains
the following statement: "I consent that copies of
this affidavit may be provided to the court to assist
in determining whether the public defender should
be appointed in my case."

**PUBLIC DEFENSE OFFICE/COUNTY
TRIES TO KEEP ELIGIBILITY
INFORMATION CONFIDENTIAL**

Yes

COUNTY

ONONDAGA

SOURCE AND DATE OF INFORMATION

Chief Defender Eligibility Survey, John Parker, III, Administrator, Onondaga County Bar Association Assigned Counsel Program, 9/93; eligibility form **Onondaga County Bar Association Assigned Counsel Program** and a copy of the income guidelines both sent with the survey.

ELIGIBILITY PROCESS AND WHO MAKES THE DETERMINATION

At arraignment in a criminal case, a defendant is asked whether he has counsel or whether he can afford counsel. If he states that he cannot afford counsel the judge may ask several questions to determine the client's eligibility. These are usually brief and counsel is normally appointed if the defendant says he cannot afford private counsel. The attorney is then notified by the court of the assignment and is responsible for having the client fill out a financial statement which is submitted by the attorney to the assigned counsel office. The assigned counsel office reviews the financial statement and makes an initial determination of eligibility. A review of this determination can be taken back to the court for a final determination by the assigning judge.

PERCENT DETERMINED INELIGIBLE ANNUALLY

Unknown

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

Yes. If the assigned counsel program makes an initial determination questioning the client's eligibility, this determination may be reviewed within the assigned counsel office or may be taken back to the court for determination by the assigning judge. Additional information may be requested such as verification of income, entitlements, assets, etc. The reviewing judge may order a client to contribute toward the cost of his representation, if he is financially able.

INCOME GUIDELINES

Based on 1993 LSC income guidelines: \$168.00 per week for a family of one; \$227.00 per week for a family of two plus \$59.00 for each additional family member.

INCOME GUIDELINES SOLE DETERMINANT OF ELIGIBILITY DETERMINATION

No. Persons earning less than 125 percent of the 1993 LSC federal poverty level guidelines are considered automatically eligible, without further question. Persons earning more than that level of income are reviewed on a case-by-case basis considering their assets and debts as well as the nature of the offense charged and likely private retainer required.

INFORMATION REQUESTED ON THE ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

Information requested on eligibility form: Personal and spousal income, parental income if the defendant is under 21, amount in support payments paid or received, liquid and non-liquid assets (including automobile), real property (including defendant's home), whether defendant is on public assistance and amount, amount of bail and who paid the bail, asks defendant how much he/she can pay for attorney fees. **Other factors considered:** The nature of the offense charged and the likely private retainer required for the charges pending.

HOW IS BAIL TREATED IN THE ELIGIBILITY PROCESS

Cash bail put up by the defendant raises the issue of the defendant's ability to pay all or part of the cost of counsel. It does not disqualify the defendant from eligibility.

PARTIAL PAYMENT/CONTRIBUTION (722 D)

Yes. Appointed counsel is provided to people who are able to contribute toward the cost of their representation. **Process for collecting money from partial payment/contribution:** Defendants who voluntarily agree to make partial payment make those payments to the assigned counsel office based upon a schedule agreed upon. Defendants who are ordered to make partial payments also may make payments to the assigned counsel office as ordered by the court. This is done during the course of representation based upon the ability to pay. No collection action other than the reminder letter are taken. The average amount of money collected from partial payment/contribution is \$24,000.00 annually.

RECOUPMENT/REPAYMENT

No. Defendants are not informed that they may be responsible to pay all or part of the cost of their representation in the event they become able to pay after representation.

PARENTAL CONSIDERATION

AGE OF MINOR

21 and younger

INCOME OF PARENTS CONSIDERED

Yes. The eligibility form contains the following statement: "If you are under 21 and unmarried, your parents are responsible for your legal fees. Please fill in below."

MINORS PROVIDED REPRESENTATION WHEN PARENTS ARE DETERMINED TO BE ABLE TO PAY BUT REFUSE

Yes

PARENTAL COST RECOVERY

Yes. Two letters are sent, by the assigned counsel office, to the parents of the minor requesting payment. If the parents do not pay, the matter is then referred to the County Attorney who does not aggressively seek repayment from parents. The average amount of money collected from parents is \$4,000.00.

DO THE AMOUNT OF MONIES COLLECTED FROM PARTIAL PAYMENT AND PARENTS OFFSET THE COST OF COLLECTING THESE MONIES

In prior years there was no record kept of the cost of any collection process, but it is estimated that the small amount of money collected (approximately \$5,000.00 a year) was four to five times the cost. During the past year, at county direction, the assigned counsel program has implemented enhanced collection procedures which have significantly increased the cost of collection. The amount collected has also increased, but the ratio is currently estimated at one to one, when the additional paid time spent by attorneys is added to the process, although no specific figure has been computed.

SIGN AFFIDAVIT

No

**DEFENDANT REQUIRED TO SIGN ANY
WAIVERS IN THE COURSE OF THE
ELIGIBILITY DETERMINATION**

The eligibility form contains the following statement that the defendant is required to sign: 'I authorize the Court and/or Assigned Counsel Program agents to investigate each of my answers to the above questions.' The survey states that persons claiming to receive public assistance have, during a temporary trial period, been asked to sign a release allowing the Department of Social Services to release the information verifying their receipt of public assistance. This verification process is now being terminated.

STATEMENT OF CONFIDENTIALITY

No

**PUBLIC DEFENSE OFFICE/COUNTY
TRIES TO KEEP ELIGIBILITY
INFORMATION CONFIDENTIAL**

Yes. It is normally the practice to keep the information confidential other than a report to the court when requested for the purposes of determining eligibility for appointed counsel. In certain rare occasions when the information has been subpoenaed, its production has been opposed, but the court ordered the information revealed. This has happened only in the context of family court matters.

COUNTY

ONTARIO

SOURCE AND DATE OF INFORMATION

Chief Defender Eligibility Survey, Robert Zimmerman, Ontario County Assigned Counsel Administrator, 7/93; eligibility form **Assigned Counsel Program Affirmation of Family Financial Status** and a schedule of 1993 income guidelines sent with the survey as well as portions of the Assigned Counsel Plan regarding eligibility.

ELIGIBILITY PROCESS AND WHO MAKES THE DETERMINATION

Counsel initially appointed by court or administrator. Financial form filled out by indigent litigant with or without assistance of the court or administrator or administrator's assistant at first appearance or in the event applicant is the target and/or focus of a criminal investigation at the time he invokes his or her right to counsel.

PERCENT DETERMINED INELIGIBLE ANNUALLY

Less than 10 percent.

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

Yes. If the administrator's office determines that the person is ineligible, the applicant is advised that he or she can apply directly to the court. If it is the local court that denies counsel, the applicant can apply to the administrator who will, with the court, review the court's decision (this is a delicate process, but done if necessary).

INCOME GUIDELINES

Yes. \$169.00 per week for a family of one; \$228.00 for a family of two plus \$60.00 per week for each additional family member. These guidelines, which are updated annually, are based on 125 percent of the 1993 federal poverty guidelines.

INCOME GUIDELINES SOLE DETERMINANT OF ELIGIBILITY DETERMINATION

No

INFORMATION REQUESTED ON THE ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

Information requested on the eligibility form: Household income, personal and real property (including automobile), living expenses, liquid assets, number of dependents, child care expenses and support payments. **Other factors considered:** The administrator reports that the primary factor is other liquid assets available to retain counsel at the generally accepted rate for the case involved, e.g., misdemeanor, felony, custody, paternity, etc.

HOW IS BAIL TREATED IN THE ELIGIBILITY PROCESS

Disregarded

PARTIAL PAYMENT/CONTRIBUTION (722 D)

Yes. Appointed counsel is provided to people who are able to contribute toward the cost of their representation. The following statement appears on the eligibility form: "Whenever a litigant becomes financially able to retain counsel or to make partial payment for representation or other services, the Court may terminate the assignment or authorize partial payment from the litigant to the Ontario County Commission of Human Services as the interest if justice may dictate."
Process for collecting partial payment/contributions (722 D): The county collects; court directs payment at or after sentencing. Average amount of money collected annually from partial payment/contribution is minimal, if any.

RECOUPMENT/REPAYMENT

Yes. Defendants are informed that they may be responsible to repay all or part of the costs of their representation in the event they become able to pay after representation. **Process for recouping money:** The process for seeking repayment is the same as that used for partial payment under 722 D: county collects; court directs payment at or after sentencing.

PARENTAL CONSIDERATION

AGE OF MINOR

21 and younger (unless otherwise emancipated)

INCOME OF PARENTS CONSIDERED

Yes. The following statement appears on the eligibility form: "To parents: Your child has applied for assigned counsel at county expense regarding a pending court proceeding. Since your child is under 21 years of age, it is necessary for you to complete the following Financial Affirmation in order that a determination can be made as to whether you will be responsible for the cost of your child's legal representation. ...If you fail to return [this form] by this date, you will be held responsible for your child's legal fees." Parents have a right to a hearing regarding their child's legal fees.

MINORS PROVIDED REPRESENTATION WHEN PARENTS ARE DETERMINED TO BE ABLE TO PAY BUT REFUSE

Yes. The following statement appears in the **Ontario County Assigned Counsel Plan**: "In no case should an eligible child be denied counsel due to parental unwillingness to pay."

PARENTAL COST RECOVERY

Yes. The following appears in the **Ontario County Assigned Counsel Plan**: "If the parent fails to return the questionnaire or if upon initial review of the parental questionnaire the household is determined ineligible for assigned counsel, the parent shall be so notified and afforded an opportunity to be heard. After providing such an opportunity for a hearing the court shall render an appropriate order regarding parental responsibility for attorney fees, and shall submit a copy of the same to the Ontario County Commissioner of Human Services for enforcement if necessary." The assigned counsel survey reports that the average amount of money recovered from parents annually is minimal, if any.

OTHER MEASURES USED TO OFFSET THE COST OF PUBLIC DEFENSE SERVICES

The assigned counsel program attempted, two or three years ago to get STOP-DWI money but was turned down. The county receives some Aid to Defense money from the state.

SIGN AFFIDAVIT

Yes

DEFENDANT REQUIRED TO SIGN ANY WAIVERS IN THE COURSE OF THE ELIGIBILITY DETERMINATION

According to the survey, no. However, the following statement appears on the eligibility form: "Further, I (we) hereby authorize my employer(s), lending institutions, etc., to release pertinent information to verify the information contained herein."

STATEMENT OF CONFIDENTIALITY

No

PUBLIC DEFENSE OFFICE/COUNTY TRIES TO KEEP ELIGIBILITY INFORMATION CONFIDENTIAL

Yes

COUNTY

ORANGE

SOURCE AND DATE OF INFORMATION

Chief Defender Survey, Gary Abramson, Chief Attorney, Orange County Legal Aid Society, 7/93, and letter from Gary Abramson to NYSDA regarding eligibility income guidelines dated January 21, 1992.

ELIGIBILITY PROCESS AND WHO MAKES THE DETERMINATION

When defendants contact the Legal Aid Society directly, the Legal Aid Society determines eligibility. When local court judges arraign people outside of regular court schedules, the court either appoints the Legal Aid Society or assigned counsel (when defendants are in jail) or tells defendants who are not in jail to call Legal Aid Society or in multiple defendant cases to contact the assigned counsel administrator.

PERCENT DETERMINED INELIGIBLE ANNUALLY

14 percent

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

Yes. When the Legal Aid Society rejects, they advise the defendant that the defendant may raise the issue of the adverse eligibility determination with the judge.

INCOME GUIDELINES

Yes. According to the 1992 letter from Gary Abramson to NYSDA noted above, the guidelines are as follows: \$165.00 net for a single person plus \$50.00 per child under the age 21 and \$215.00 net per week for married persons plus \$50.00 per child under the age of 21. No information is provided in either the letter or the survey on how these guidelines were established or what they are based upon. According to the survey, the guidelines are updated annually. They were last updated in December, 1992 and are next expected to be updated in December, 1993.

INCOME GUIDELINES SOLE DETERMINANT OF ELIGIBILITY DETERMINATION

No

FACTORS CONSIDERED

Seriousness of the charges; debt; cost of retaining a private lawyer; and the possibility of losing a job.

HOW IS BAIL TREATED IN THE ELIGIBILITY PROCESS

Having made bail is not a factor except in the rare instance where the Legal Aid Society suspects the defendant has not been honest about financial information.

PARTIAL PAYMENT/CONTRIBUTION (722 D)

No partial payment/contribution.

RECOUPMENT/REPAYMENT

No

PARENTAL CONSIDERATION

AGE OF MINOR

21 and younger

INCOME OF PARENTS CONSIDERED

Yes

REPRESENTATION PROVIDED WHEN PARENTS DETERMINED TO BE ABLE TO PAY BUT REFUSE

Yes

PARENTAL COST RECOVERY

No

SIGN AFFIDAVIT

No eligibility form used.

DEFENDANT REQUIRED TO SIGN ANY WAIVERS IN THE COURSE OF THE ELIGIBILITY DETERMINATION

No

STATEMENT OF CONFIDENTIALITY

No eligibility form used.

COUNTY

ORLEANS

SOURCE AND DATE OF INFORMATION

Chief Defender Eligibility Survey, David Stefaniak, Orleans County Public Defender, 8/93; telephone conversation between NYSDA research assistant Debra Cohen, and former public defender Duane Johnson on January 7, 1992; and eligibility form **Affidavit of Financial Status Public Defender of Orleans County** and income guidelines sent to NYSDA by former public defender Duane Johnson on January 7, 1992.

ELIGIBILITY PROCESS AND WHO MAKES THE DETERMINATION

Appointments made from the bench. Eligibility is determined by an immediate interview by the judge with the defendant and/or the completion of a financial affidavit.

PERCENT DETERMINED INELIGIBLE ANNUALLY

3 percent

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

No

INCOME GUIDELINES

The eligibility survey completed by the public defender referred to attached income guidelines. However, no income guidelines were attached. Two calls were made to get the attachments referred to in the survey. However, the attachments have not been sent to NYSDA. Thus, the most recent income guidelines NYSDA has for Orleans County are those sent by Duane Johnson in 1992: \$5,360.00 per year for a family of one (\$103.00 per week); \$7,240.00 per year for a family of two (\$139.00 per week); \$9,120.00 per year for a family of three (\$175.00 per week); and \$11,000.00 per year for a family of four (\$212.00 per week). Approximately \$1,800.00-1,900.00 is added per year for each additional dependent (approximately \$30.00-40.00 per week). These guidelines are based on the 1986 federal poverty guidelines. It is unknown if these guidelines have been updated since they were sent to NYSDA in 1992.

INCOME GUIDELINES SOLE DETERMINANT OF ELIGIBILITY DETERMINATION

No

INFORMATION REQUESTED ON THE ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

Information requested on the eligibility form:
Personal, spousal and parental (if defendant under 21) income, real and personal property (including home and automobile), liquid assets and monthly expenses.

HOW IS BAIL TREATED IN THE ELIGIBILITY DETERMINATION

Unknown

PARTIAL PAYMENT/CONTRIBUTION (722 D)

Yes. Appointed counsel is provided to those people who are able to contribute toward the cost of their representation. With regard to the process for collecting partial payment/contributions, the survey states that given the public defender's tremendous caseload, county pay-backs are not aggressively pursued. The average amount of money collected from partial payment/contribution annually is \$0.

RECOUPMENT/REPAYMENT

No. Defendants are not informed that they may be responsible to pay for all or part of the cost of their representation in the event they become able to pay after representation.

PARENTAL CONSIDERATION

AGE OF MINOR

18 and younger

INCOME OF PARENTS CONSIDERED

Yes

MINORS PROVIDED REPRESENTATION WHEN PARENTS ARE DETERMINED TO BE ABLE TO PAY BUT REFUSE

Yes

PARENTAL COST RECOVERY

Yes. However, the survey indicated that the average amount of money recovered from parents annually is \$0.

SIGN AFFIDAVIT

Yes

**DEFENDANT REQUIRED TO SIGN ANY
WAIVERS DURING THE COURSE OF THE
ELIGIBILITY DETERMINATION**

According to the survey, no. The eligibility form, however, contains the following: "I consent that copies of this affidavit may be provided to the court to assist in determining whether the public defender should be appointed in my case."

STATEMENT OF CONFIDENTIALITY

No

**PUBLIC DEFENSE OFFICE/COUNTY
TRIES TO KEEP ELIGIBILITY
INFORMATION CONFIDENTIAL**

Yes

COUNTY

OSWEGO

SOURCE AND DATE OF INFORMATION

Chief Defender Eligibility Survey, George Valette, Oswego County Assigned Counsel Administrator, 7/93, and eligibility form **Oswego County Bar Association Assigned Counsel Program Questionnaire for Persons Requesting Assigned Counsel in Criminal or Family Courts** which was sent with the survey along with a schedule of the income guidelines.

ELIGIBILITY PROCESS AND WHO MAKES THE DETERMINATION

The judge of the court where the case is pending appoints counsel. A financial form is filled out by the defendant, assisted by counsel. The form is reviewed by the judge who determines eligibility.

PERCENT DETERMINED INELIGIBLE ANNUALLY

No statistics available.

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

Yes. Application can be reviewed by the assigned counsel administrator.

INCOME GUIDELINES

\$159.00 per week for family of one; \$214.00 for a family of two plus \$54.00 per week for each additional family member. These guidelines are based on the 1991 LSC federal poverty guidelines. The assigned counsel administrator reported that the guidelines were last update in May, 1991 and does not know when they will again be updated.

INCOME GUIDELINES SOLE DETERMINANT OF ELIGIBILITY DETERMINATION

No

INFORMATION REQUESTED ON THE ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

Information requested on the eligibility form: Personal and spousal income, personal and real property, major debts, amount of bail and who paid it, number of dependents.

HOW IS BAIL TREATED IN THE ELIGIBILITY PROCESS

According to the survey, whether the defendant posted bail or not is not applicable to the eligibility determination. However, the eligibility form does require information on the amount of bail posted and the person who posted the bail.

PARTIAL PAYMENT/CONTRIBUTION (722 D)

No partial payment/contribution provision.

RECOUPMENT/REPAYMENT

No. Defendants are not informed that they may be responsible to repay all or part of the cost of their representation in the event that they become able to pay after representation.

PARENTAL CONSIDERATION

AGE OF MINOR

21 and younger.

INCOME OF PARENTS CONSIDERED

Yes. The eligibility form states: "If you are under 21 and unmarried, your parents are responsible for your legal fees." Also, the following statement appears on the schedule of the income guidelines: "Parents of applicants under 21 years of age are responsible for their legal fees and must be notified."

MINORS PROVIDED REPRESENTATION WHEN PARENTS ARE DETERMINED TO BE ABLE TO PAY BUT REFUSE

Yes

PARENTAL COST RECOVERY

No

SIGN AFFIDAVIT

No

DEFENDANT REQUIRED TO SIGN ANY WAIVERS IN THE COURSE OF THE ELIGIBILITY DETERMINATION

No

STATEMENT OF CONFIDENTIALITY

No

PUBLIC DEFENSE OFFICE/COUNTY TRIES TO KEEP ELIGIBILITY INFORMATION CONFIDENTIAL

Yes

COUNTY

OTSEGO

SOURCE AND DATE OF INFORMATION

Chief Defender Eligibility Survey, Richard Rothermel, Otsego County Public Defender, 7/93; eligibility form **Financial Affidavit In Support of Request to be Assigned Counsel Without Payment of Fee** and a letter to the Otsego County Public Safety and Legal Affairs Committee from Richard Rothermel Re: Public Defender Eligibility Guidelines dated February 26, 1992 both of which were sent with the survey.

ELIGIBILITY PROCESS AND WHO MAKES THE DETERMINATION

The court determines eligibility for appointment of assigned counsel. When the defendant first appears in court, the court asks whether the defendant desires counsel. If the answer is yes, they ask if he can afford counsel. If he says he can't, the court provides the defendant with a financial affidavit which the defendant then completes and submits to the court for the court to review. The court then determines whether the defendant is eligible for appointed counsel.

PERCENT DETERMINED INELIGIBLE ANNUALLY

Unknown

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

No

INCOME GUIDELINES

Yes. The last official guidelines are those from the Appellate Division, Third Department from 1977. They set forth take home pay of \$75.00 for an individual; \$100.00 for an individual whose married; and an additional \$15.00 for each additional family member. The guidelines that have been recommended to the county, but not yet implemented are: violations-net pay per week \$125.00-\$150.00; misdemeanors-net pay per week: \$150.00-\$250.00; and felonies-net pay per week \$250.00-\$350.00. These figures are for a single person. An additional \$25.00 would be added for each family member. These income recommendations are based on a fee survey conducted by the public defender, in February, 1992, of attorneys in Otsego County who practice criminal and family law.

It was noted on the survey that some judges use the 1977 income guidelines while other judges "tend to do their own thing." In the letter to the Public Safety and Legal Affairs Committee from the public defender re: public defender eligibility guidelines, the public defender wrote: "There has been a real problem with determining eligibility for Public Defender representation for years. The only guidelines that have ever been used are those promulgated by the Appellate Division, Third Department back on February 15, 1977...As a result, I have seen cases in which individuals making \$400.00 a week have been assigned counsel and those in which an individual making \$80.00 a week have been denied counsel. This is certainly an unfair situation. There is a need for uniformity."

INCOME GUIDELINES SOLE DETERMINANT OF ELIGIBILITY DETERMINATION

No. Judges have been advised that it is more appropriate to err on the side of appointing someone rather than on not appointing someone.

INFORMATION REQUESTED ON THE ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

Information requested on the eligibility form: Weekly, bi-weekly and monthly personal and spousal income, real and personal property (including automobile), liquid assets, monthly expenses, whether the person tried to hire an attorney, amount of bail and who paid it.

HOW IS BAIL TREATED IN THE ELIGIBILITY DETERMINATION

According to the survey, whether the defendant made bail or not is not applicable to the eligibility determination. It should be noted, however, that the eligibility form does require information on the amount of bail posted and the person who posted the bail.

PARTIAL PAYMENT/CONTRIBUTION (722 D)

Yes. Appointed counsel is provided to persons who are able to contribute toward the cost of their representation. **Process for collecting money:** The only way the contribution is collected is if the court places the individual on probation and directs payment through the Probation Department. The public defender's office does not want to be put in a position adverse to its clients where it is forced to

become a collection agency. Average amount of money collected annually from partial payment/contributions is less than \$1,500.00.

RECOUPMENT/REPAYMENT

Yes. Defendants are informed that they may be responsible to repay all or part of the cost of their representation in the event they become able to pay after representation. The following statement appears on the eligibility form: "If an attorney is assigned to you, you may be required to repay the county for all or part of the cost of your defense." In the letter to the Public Safety Committee from the public defender re: eligibility guidelines, the public defender recommends: "...these figures are merely guidelines, and that there will certainly be occasions when a Judge would feel that someone with greater income should have counsel assigned. It is my suggestion that in that circumstance, the Judge may also direct the individual to reimburse the County for the cost of services provided. In those circumstances, counsel should be assigned from the 18-B panel so that accurate time records of representation are kept and an appropriate reimbursement figure can be computed." **Process for collecting money:** The only process currently in use is recoupment through the Probation Department (the same process for collecting partial payment/contributions). Average amount of money collected annually from recoupment is less than \$1,500.00.

PARENTAL CONSIDERATION

AGE OF MINOR

21 and younger.

INCOME OF PARENTS CONSIDERED

Yes. Although the eligibility form does not explicitly state that parents are responsible for their child's legal fees minor defendants have to provide information on: "If student provide name of person who is helping you pay tuition, room and board." There are no specific questions concerning the income of parents on the eligibility form. However, in the letter to the Public Safety Committee, the public defender writes: "Since both the Family Court Act and Social Services Law put an obligation on a parent to support a child through age 21, it is recommended that anytime an individual applies for the assignment of counsel, that he be required to submit a financial affidavit from his parents. The

parents should be required to attach a copy of their tax returns. If in fact the parents are taking the child as a dependent on their return, they should also be responsible for providing legal services to the child."

**MINORS PROVIDED REPRESENTATION
WHEN PARENTS ARE DETERMINED TO
BE ABLE TO PAY BUT REFUSE**

Yes

PARENTAL COST RECOVERY

No

**DOES THE AMOUNT OF MONEY
COLLECTED FROM PARTIAL PAYMENT
AND RECOUPMENT OFFSET THE
COST OF COLLECTING THESE MONIES**

Yes

SIGN AFFIDAVIT

Yes

**DEFENDANT REQUIRED TO SIGN ANY
WAIVERS IN THE COURSE OF THE
ELIGIBILITY DETERMINATION**

No

STATEMENT OF CONFIDENTIALITY

No

**PUBLIC DEFENSE OFFICE/COUNTY
TRIES TO KEEP ELIGIBILITY
INFORMATION CONFIDENTIAL**

The eligibility application forms are submitted directly to the court. The public defender office does not routinely receive copies of the application. However, when the public defender office does receive copies of the eligibility form they do try and keep the information confidential.

COUNTY

PUTNAM

SOURCE AND DATE OF INFORMATION

Chief Defender Eligibility Survey conducted by telephone by Rene Otero, NYSDA Research Assistant and Barbara, Secretary to Robert Leader, Putnam County Legal Aid Society's Attorney-in-Charge on August 25, 1993, and **Client Eligibility Guidelines** and eligibility form **Financial Affidavit** both which were sent to NYSDA by Noleen McTigue, Office Manager for the Putnam Legal Aid Society, on June 27, 1991.

ELIGIBILITY PROCESS AND WHO MAKES THE DETERMINATION

With the help of the LAS office staff, defendants complete a financial eligibility form. When the application is completed, the chief attorney makes the determination regarding eligibility for counsel. The court can overrule the determination of the chief attorney.

PERCENT DETERMINED INELIGIBLE ANNUALLY

Unknown

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

Yes. If the defendant is rejected, they have a right to appeal the decision within a ten day period. Rejected defendants are provided with an appeal notice. The defendant's financial eligibility application is then reviewed by three members of the Legal Aid Society's Board of Directors, two of which have to be in agreement.

INCOME GUIDELINES

No

INFORMATION REQUESTED ON THE ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

According to the **Client Eligibility Guidelines**: "The key test for determining eligibility is whether or not the defendant, at the time need is determined, is financially unable to provide for the full payment of adequate counsel and all other necessary expenses of representation." The **Client Eligibility Guidelines** go on to state that the standard for eligibility is "...when the value of the defendant's present net assets and current net income are insufficient to enable him to promptly retain a

qualified attorney, obtain release on bond and pay other expenses necessary to an adequate defense, while furnishing himself and his dependents with the necessities of life." **Information requested on the eligibility form:** Household income, liquid assets, real and personal property (including automobile), monthly credit obligations and rent expense, amount of bail and who paid it.

HOW IS BAIL TREATED IN THE ELIGIBILITY PROCESS

According to the survey, whether the defendant posted bail or not is not a factor in the eligibility determination. The eligibility form, however, does require information on the amount of bail posted and the person who paid the bail.

PARTIAL PAYMENT/CONTRIBUTION (722 D)

No partial payment/contribution provision.

RECOUPMENT/REPAYMENT

No. Defendants are not informed that they may be responsible to repay all or part of the cost of their representation in the event they become able to pay after representation.

PARENTAL CONSIDERATION

AGE OF MINOR

21 and younger

INCOME OF PARENTS CONSIDERED

Yes. The **Client Eligibility Guidelines** state: "If more than one member of the family domiciled at the residence is working, total family income should be considered."

MINORS PROVIDED REPRESENTATION WHEN PARENTS ARE DETERMINED TO BE ABLE TO PAY BUT REFUSE

Yes

PARENTAL COST RECOVERY

No

SIGN AFFIDAVIT

Yes

**DEFENDANT REQUIRED TO SIGN ANY
WAIVERS IN THE COURSE OF THE
ELIGIBILITY DETERMINATION**

Yes. The following appears on the eligibility form: "I hereby give permission to Putnam County Legal Aid Society to make available this application to any court or competent jurisdiction."

STATEMENT OF CONFIDENTIALITY

No

**PUBLIC DEFENSE OFFICE/COUNTY
TRIES TO KEEP ELIGIBILITY
INFORMATION CONFIDENTIAL**

Yes

COUNTY

RENSSELAER

SOURCE AND DATE OF INFORMATION

Chief Defender Eligibility Survey, Michael Desautels, Rensselaer County Public Defender (now former public defender), 8/93; eligibility form **Defendant's Application for Assignment of Public Defender and/or Assigned Counsel** which was sent with the survey; and calls to City Court Judge McGraph and County Court Judge Dwyer's law clerk on January 13, 1992, by Debra Cohen, NYSDA research assistant.

ELIGIBILITY PROCESS AND WHO MAKES THE DETERMINATION

Judges in both local court and county court, makes the determination after having prospective clients fill out an eligibility form. The form is completed while in court and is returned to the judge for a review. The judge then makes a determination at that same time regarding eligibility.

PERCENT DETERMINED INELIGIBLE ANNUALLY

10 percent

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

No. An applicant may again request that the judge review the application, but there is no formal procedure in place.

INCOME GUIDELINES

Yes. The guidelines are a per judge determination based upon what each particular court believes is an amount of income that can support a determination of being able to afford retained counsel. The public defender notes that at a meeting of the Magistrates Association more than a year ago, he asked the Association to begin a process of devising guidelines that are uniform and fair. The guidelines are updated according to each judges determination of the need for such updating.

INCOME GUIDELINES SOLE DETERMINANT OF ELIGIBILITY DETERMINATION

No. The public defender states on the survey: "It is impossible to determine exactly what factors are considered by each judge on each application, but I have by letter and by a presentation given to the Magistrates Association stressed the need, pursuant to case law, for judges to take into

account the factors of the seriousness of the charge, the prevailing rate for private counsel in such a charge, the length of time that defense on such a charge would take, etc.*

INFORMATION REQUESTED ON THE ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

Personal gross and net weekly income, real and personal property (including automobile), liquid assets, monthly expenses, whether dependent has any lawsuits pending, whether on public assistance.

HOW IS BAIL TREATED IN THE ELIGIBILITY PROCESS

The application for public defender assignment is used by the public defender office to argue to the courts what would be a fair amount of bail. No information is asked on the eligibility form regarding bail.

PARTIAL PAYMENT/CONTRIBUTION (722 D)

Yes. Appointed counsel is provided to people who are able to contribute toward the cost of their representation. The following statement appears on the eligibility form: "If the public defender is assigned to represent you, you must immediately notify the public defender's office in the event of becoming employed and you must also advise the name, address and telephone number of employer." **Process for collecting money:** The court signs the order that payment be sent to the county. Generally, clients send payment directly to the public defender's office and the public defender's office forwards the money to the county fiscal office. The public defender office keeps a record of what money is collected and what is owed and provides that information to the court when requested. Average amount of money collected from partial payment/contributions annually is \$5,500.00.

RECOUPMENT/REPAYMENT

Yes, according to the survey, defendants are informed that they may be responsible to repay all or part of the cost of their representation in the event they become able to pay after representation. The public defender states on the survey he has never seen the process take place for seeking repayment from defendants.

PARENTAL CONSIDERATION

AGE OF MINOR

18 and younger

INCOME OF PARENTS CONSIDERED

According to the public defender, no. He states that they make every attempt to notify the courts that by case law they should not be considering the income of the parents. However, calls to the county court judge and city court judge by Debra Cohen, NYSDA Research Assistant, on January 13, 1992 revealed that the judges in at least these two courts consider parental income.

MINORS PROVIDED REPRESENTATION WHEN PARENTS ARE DETERMINED TO BE ABLE TO PAY BUT REFUSE

According to the survey, the public defender says income of parents not considered (But see section **Income of Parents Considered**).

PARENTAL COST RECOVERY

According to the public defender this question is not applicable (But see section **Income of Parents Considered**).

SIGN AFFIDAVIT

Yes

DEFENDANT REQUIRED TO SIGN ANY WAIVERS IN THE COURSE OF THE ELIGIBILITY DETERMINATION

No

STATEMENT OF CONFIDENTIALITY

No

PUBLIC DEFENSE OFFICE/COUNTY TRIES TO KEEP ELIGIBILITY INFORMATION CONFIDENTIAL

Yes

COUNTY

ROCKLAND

SOURCE AND DATE OF INFORMATION

Chief Defender Eligibility Survey, Peter Branti, Jr.,
Rockland County Public Defender, 7/93.

**ELIGIBILITY PROCESS AND WHO
MAKES THE DETERMINATION**

The public defender determines eligibility. The eligibility form is completed at the jail by an interviewer if the defendant is incarcerated or, if the defendant is not incarcerated, the form is completed by an interviewer at the public defender office.

**PERCENT DETERMINED INELIGIBLE
ANNUALLY**

.07 percent

**REVIEW PROCESS FOR THOSE
DETERMINED INELIGIBLE**

Yes. The defendant can re-apply for re-evaluation by the chief public defender or can ask the judge to appoint counsel.

INCOME GUIDELINES

Yes. \$150.00 per week plus \$10.00 per dependent for single individuals; \$200.00 per week plus \$10.00 per dependent for married individuals. Onerous medical bills are taken into consideration. Persons receiving social services benefits are automatically eligible. No information was provided regarding what these figures are based upon. The guidelines are not updated annually—they were last updated in 1990. The public defender stated on the survey that the guidelines will next be updated when NYSDA's eligibility survey results are made available.

**INCOME GUIDELINES SOLE DETERMINANT
OF ELIGIBILITY DETERMINATION**

No

**INFORMATION REQUESTED ON THE
ELIGIBILITY FORM/OTHER FACTORS
CONSIDERED**

The public defender office does use an eligibility form. However, the form was not sent to NYSDA with the completed survey. Therefore, it is not known what information is required on the eligibility form. The survey did state that income is considered as well as onerous medical expenses. Persons on social services are automatically eligible.

HOW IS BAIL TREATED IN THE ELIGIBILITY PROCESS

The amount of bail and who posted the bail are considered in the eligibility determination as well as what the defendant is charged with.

PARTIAL PAYMENT/CONTRIBUTION (722 D)

No response was provided as to whether appointed counsel is provided to people who are able to contribute toward the cost of their representation.

RECOUPMENT/REPAYMENT

No. Defendants are not informed that they may be responsible to repay all or part of the cost of their representation in the event they become able to pay after representation.

PARENTAL CONSIDERATION

AGE OF MINOR

17 and younger

INCOME OF PARENTS CONSIDERED

Yes

MINORS PROVIDED REPRESENTATION WHEN PARENTS ARE DETERMINED TO BE ABLE TO PAY BUT REFUSE

Yes

PARENTAL COST RECOVERY

No

SIGN AFFIDAVIT

Yes

DEFENDANT REQUIRED TO SIGN ANY WAIVERS IN THE COURSE OF THE ELIGIBILITY DETERMINATION

No

STATEMENT OF CONFIDENTIALITY

According to the survey, yes. However, since no copy of the eligibility form was sent with the survey it is not known what this statement says.

COUNTY

ST. LAWRENCE

SOURCE AND DATE OF INFORMATION

Chief Defender Eligibility Survey, David Shaw, St. Lawrence County Public Defender, 7/93; eligibility form **Application for Public Defender Services (Criminal)** which was sent with the eligibility form; and a statement from the St. Lawrence Assigned Counsel Administrator, Terry O'Donnell that he is not involved in the eligibility determinations (7/93).

ELIGIBILITY PROCESS AND WHO MAKES THE DETERMINATION

In criminal matters, at arraignment, all defendants are asked by the court whether they wish an attorney to represent them and if so whether they will be retaining counsel or wish to apply for representation from the public defender's office. If the defendant expresses a wish to be represented by the public defender office the court ceases the arraignment process, provides the defendant with a financial eligibility form which upon completion is reviewed by the public defender office. Respondents in family court are treated the same way.

PERCENT DETERMINED INELIGIBLE ANNUALLY

Unknown

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

Yes. Defendants denied representation by the public defender office are entitled to have the court review the public defender's determination.

INCOME GUIDELINES

Yes. \$91.00 net per week for a single individual; \$120.00 for a family of two; \$135.00 for a family of three; \$143.00 for a family of four; \$167.00 for a family of five; and \$190.00 for a family of six. The survey indicates that it is not known when these guidelines were last updated. However, a review of past LSC federal poverty guidelines reveal that \$91.00 per week is the 1980 guideline for a family of one. Thus, the income guidelines haven't been updated in 13 years. The survey states that it is not known when the guidelines will next be updated.

INCOME GUIDELINES SOLE DETERMINANT OF ELIGIBILITY DETERMINATION

No

INFORMATION REQUESTED ON THE ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

Information requested on the eligibility form: Personal and spousal income; liquid and non-liquid assets (including automobile); real property; whether defendant is on public assistance; amount of bail; and if not employed where defendant gets the money he or she lives on. It should be noted that no questions are asked regarding the defendants debts or living expenses.

HOW IS BAIL TREATED IN THE ELIGIBILITY PROCESS

If the defendant posted cash bail from his or her own resources, that is considered an asset.

PARTIAL PAYMENT/CONTRIBUTION (722 D)

Yes. Appointed counsel is provided to people who are able to contribute toward the cost of the representation. The following statement appears on the eligibility form: "...if during the pendency of this action I should become employed, I will notify the public defender's office. In the event of employment, I may be required to repay the county for attorney services or the county may withdraw from representing me." **Process for collecting money:** If the court agrees with the public defender's determination of non-eligibility based upon income, but if the court also finds that the defendant cannot afford to retain counsel, the court orders the public defender office to represent the defendant on a re-pay basis and the defendant is required to contract with St. Lawrence County to re-pay at the state rate (\$25.00 per hour for out-of-court work and \$40.00 per hour for in-court work).

RECOUPMENT/REPAYMENT

No answer provided on the survey.

PARENTAL CONSIDERATION

AGE OF MINOR

Under 21.

INCOME OF PARENTS CONSIDERED

Yes

**MINORS PROVIDED REPRESENTATION
WHEN PARENTS ARE DETERMINED TO
BE ABLE TO PAY BUT REFUSE**

Yes, with a court order.

PARENTAL COST RECOVERY

Yes. If the court orders representation of a minor, generally the court also orders the parents to repay at the statutory rate (\$25.00 and \$40.00 per hour).

**OTHER MEASURES TO OFFSET THE COST
OF PUBLIC DEFENSE SERVICES**

In the past, DCJS has provided the assigned counsel office with a grant in the amount of approximately \$23,000 for the year to offset the cost of the assigned counsel program.

SIGN AFFIDAVIT

Yes

**DEFENDANT REQUIRED TO SIGN ANY
WAIVERS IN THE COURSE OF THE
ELIGIBILITY DETERMINATION**

No

STATEMENT OF CONFIDENTIALITY

No

**PUBLIC DEFENSE OFFICE/COUNTY
TRIES TO KEEP ELIGIBILITY
INFORMATION CONFIDENTIAL**

Yes. The only exception is when the client puts the eligibility determination of the public defender's office at issue with the court.

COUNTY

SARATOGA

SOURCE AND DATE OF INFORMATION

Chief Defender Eligibility Survey, John Ciulla, Jr., Saratoga County Public Defender, 7/93; eligibility form **Application for Counsel-Criminal Court** and schedule of income guidelines both of which were sent with the survey.

ELIGIBILITY PROCESS AND WHO MAKES THE DETERMINATION

The judge at arraignment provides the defendant with a copy of the financial application if the defendant in any way claims not to be able to afford an attorney. The financial application is then forwarded to the public defender's office for approval. The judges reserve the right to overrule denial decision only.

PERCENT DETERMINED INELIGIBLE ANNUALLY

10 percent

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

Yes. The eligibility form includes the following statement: "If you wish to appeal your denial...contact: Saratoga County Public Defender Office..." The defendant can send a letter requesting review with any additional financial information to the chief public defender. The chief public defender reviews the letter and any additional documentation and makes the decision regarding eligibility.

INCOME GUIDELINES

Yes. The public defender office uses the Legal Aid Society of Northeastern New York's Eligibility Guidelines. These guidelines are based on the 1992 LSC federal poverty guidelines (125 percent of the federal poverty level). \$164.00 per week for a family of one; \$221.00 per week for a family of two plus \$57.00 per week for additional family members. According to the survey, these guidelines are updated annually.

INCOME GUIDELINES SOLE DETERMINANT OF ELIGIBILITY DETERMINATION

No

INFORMATION REQUESTED ON THE ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

Information requested on the eligibility form: Number of dependents, personal, spousal and parental income (if defendant is a minor); liquid assets; real and personal property (including automobile and house), if unemployed, how defendant supports himself, monthly expenses. Other factors considered: The persons overall expenditures to determine if they are higher than normal expenses for medical, housing, etc. up to 187.5 percent of the LSC federal poverty guideline.

HOW IS BAIL TREATED IN THE ELIGIBILITY PROCESS

The survey notes that unless the offense involves a minor misdemeanor or is a V&T case, whether or not the defendant made bail is not considered in the eligibility determination.

PARTIAL PAYMENT/CONTRIBUTION (722 D)

Yes. Appointed counsel is provided to people who are able to contribute toward the cost of their representation. It doesn't appear as though there are any procedures for collecting money from partial payment/contributions. The public defender notes in the survey that the county has been asking the county attorney and the public defender to establish procedures for collecting partial payment/contributions.

RECOUPMENT/REPAYMENT

Yes. Defendants are informed that they may be responsible to repay all or part of the cost of their representation in the event that they become able to pay after representation. It should be noted that no statement to this effect appears on the eligibility form. As mentioned under partial payment/contribution, there are no established procedures for seeking repayment. The public defender and the county attorney have been asked to put some procedures in place for seeking repayment.

PARENTAL CONSIDERATION

AGE OF MINOR

18 and younger.

INCOME OF PARENTS CONSIDERED

Yes. The eligibility form includes the following statement: 'Note: If you are a minor, this form must be completed with your parent's financial information.'

MINORS PROVIDED REPRESENTATION WHEN PARENTS ARE DETERMINED TO BE ABLE TO PAY BUT REFUSE

Yes

PARENTAL COST RECOVERY

No. However, as noted in the partial payment/contribution and recoupment/repayment sections, the public defender and county attorney are also interested in putting procedures in place to recover money from parents.

SIGN AFFIDAVIT.

Yes

DEFENDANT REQUIRED TO SIGN ANY WAIVERS IN THE COURSE OF THE ELIGIBILITY DETERMINATION

No

STATEMENT OF CONFIDENTIALITY

No

PUBLIC DEFENSE OFFICE/COUNTY TRIES TO KEEP ELIGIBILITY INFORMATION CONFIDENTIAL

Yes

COUNTY

SCHENECTADY

SOURCE AND DATE OF INFORMATION

Chief Defender Eligibility Survey, Martin Cirincione, 8/93; eligibility form **Schenectady County Public Defender Income Eligibility Affidavit** with attached schedule of income guidelines both which were sent with the survey; and telephone conversation between Karen Kane, NYSDA's Director of Research and Public Defender Martin Cirincione on January 10, 1992.

ELIGIBILITY PROCESS AND WHO MAKES THE DETERMINATION

In city court and most criminal courts the initial pre-arraignment screening is done by attorneys and investigators in the public defender's office. Judges always have the final determination. In family court, the initial screening for eligibility is done by the judge and then further screening is done by the attorney from the public defender office.

PERCENT DETERMINED INELIGIBLE ANNUALLY

16 percent

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

Yes. The defendant can appeal to the chief public defender who will review the eligibility determination. If they then wish to appeal the chief public defender's determination, they can ask the judge to review the determination.

INCOME GUIDELINES

Yes. The guidelines are based on the 1993 LSC federal poverty guidelines. \$168.00 per week for a family of one; \$227.00 per week for a family of two plus \$59.00 for each additional family member. The guidelines are updated annually.

INCOME GUIDELINES SOLE DETERMINANT OF ELIGIBILITY DETERMINATION

No

INFORMATION REQUESTED ON THE ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

Information requested on the eligibility form: Whether defendant or spouse is on public assistance, weekly income of defendant and his/her spouse, real property, liquid and non-liquid assets (including an automobile) of defendant and spouse, amount of spousal or child support. It should be noted that other than the questions about support payments, the eligibility form does not contain any questions regarding the defendant's expenses. **Other factors considered:** Type of case, estimated cost of hiring an attorney for that particular case, length of employment, relatives or friends who have assets and have previously hired an attorney for the defendant.

HOW IS BAIL TREATED IN THE ELIGIBILITY DETERMINATION

Whether the defendant made bail is not relevant to the eligibility determination unless the defendant made bail in excess of \$5,000.00.

PARTIAL PAYMENT/CONTRIBUTION (722 D)

In rare cases there are defendants who have some funds but not enough to hire an attorney. In such cases an attorney is appointed to represent the defendant. Several judges order the public defender's office to set up a partial payment plan with the defendant.

RECOUPMENT/REPAYMENT

No. Defendants are not informed that they may be responsible to repay all or part of the cost of their representation in the event that they become able to pay after representation.

PARENTAL CONSIDERATION

AGE OF MINOR

18 and younger

INCOME OF PARENTS CONSIDERED

Yes

MINORS PROVIDED REPRESENTATION WHEN PARENTS ARE DETERMINED TO BE ABLE TO PAY BUT REFUSE

Yes

PARENTAL COST RECOVERY

No. Except in one case where the public defender's office was ordered by the judge to seek reimbursement from parents.

OTHER MEASURES USED TO OFFSET THE COST OF PUBLIC DEFENSE SERVICES

The public defender's Disability Advocacy Program saves the county approximately \$50,000.00 per year.

SIGN AFFIDAVIT

Yes

DEFENDANT REQUIRED TO SIGN ANY WAIVERS IN THE COURSE OF THE ELIGIBILITY DETERMINATION

No

STATEMENT OF CONFIDENTIALITY

No

PUBLIC DEFENSE OFFICE/COUNTY TRIES TO KEEP ELIGIBILITY INFORMATION CONFIDENTIAL

Yes. The public defender's office has, on two occasions, successfully fought D.A. subpoenas of eligibility forms.

COUNTY

SCHOHARIE

SOURCE AND DATE OF INFORMATION

Chief Defender Eligibility Survey, Janice Duncombe, Secretary, Schoharie County Assigned Counsel, 8/93.

ELIGIBILITY PROCESS AND WHO MAKES THE DETERMINATION

A financial eligibility form is completed by the defendant and turned into the judge. If the judge determines that the defendant is eligible for appointed counsel, the judge calls the assigned counsel office and the assigned counsel program contacts an attorney to represent the defendant.

PERCENT DETERMINED INELIGIBLE ANNUALLY

Unknown, judges make the determination.

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

No

INCOME GUIDELINES

Unknown, judges make the determination.

INCOME GUIDELINES SOLE DETERMINANT OF ELIGIBILITY DETERMINATION

Unknown, judges make the determination.

INFORMATION REQUESTED ON THE ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

Unknown, judges have the financial eligibility form. The assigned counsel office does not have a copy of the form.

HOW IS BAIL TREATED IN THE ELIGIBILITY PROCESS

Unknown, judges make the determination.

PARTIAL PAYMENT/CONTRIBUTION (722 D)

Unknown, judges make the determination.

RECOUPMENT/REPAYMENT

Unknown, judges make the determination.

PARENTAL CONSIDERATION

AGE OF MINOR

Unknown, judges make the determination.

INCOME OF PARENTS CONSIDERED

Unknown, judges make the determination.

**MINORS PROVIDED REPRESENTATION
WHEN PARENTS ARE DETERMINED TO
BE ABLE TO PAY BUT REFUSE**

Unknown

PARENTAL COST RECOVERY

Unknown

SIGN AFFIDAVIT

Unknown, judges have the eligibility form. The assigned counsel office does not have a copy of the form.

**DEFENDANT REQUIRED TO SIGN ANY
WAIVERS IN THE COURSE OF THE
ELIGIBILITY DETERMINATION**

Unknown, judges have the eligibility form. The assigned counsel program does not have a copy of the form.

STATEMENT OF CONFIDENTIALITY

Unknown, judges have the eligibility forms. Assigned counsel program does not have a copy of the form.

**PUBLIC DEFENSE OFFICE/COUNTY
TRIES TO KEEP ELIGIBILITY
INFORMATION CONFIDENTIAL**

Assigned counsel office doesn't possess any eligibility information.

COUNTY

SCHUYLER

SOURCE AND DATE OF INFORMATION

Telephone conversation between NYSDA Research Assistant, Debra Cohen and Ruth, Secretary to Public Defender, Schuyler County Public Defender office on January 7, 1992, and eligibility form **Affidavit of Defendant in Support of His Application To Be Assigned Without Fee** which was sent to NYSDA by the public defender's office on June 10, 1991.

ELIGIBILITY PROCESS AND WHO MAKES THE DETERMINATION

According to the telephone conversation, the chief public defender determines eligibility. The judges, however, can override the chief defender's decision. In family court cases, the family court judge determines eligibility. Other than this, nothing more is known about the process for determining eligibility.

PERCENT DETERMINED INELIGIBLE ANNUALLY

Unknown

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

Unknown

INCOME GUIDELINES

Unknown

INCOME GUIDELINES SOLE DETERMINANT FOR DETERMINING ELIGIBILITY

Unknown

INFORMATION REQUESTED ON THE ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

Information requested on the eligibility form: Personal, spousal, parental, brother's and sister's income, liquid assets, real and personal property (including automobile and home), number of dependents, benefits received by defendant, amount of bail and who paid the bail, living expenses.

HOW IS BAIL TREATED IN THE ELIGIBILITY PROCESS

Unknown. However, the eligibility form does require information on the amount of bail and who paid the bail.

PARTIAL PAYMENT/CONTRIBUTION (722 D)	Unknown if appointed counsel is provided to people who are able to contribute toward the cost of their representation.
RECOUPMENT/REPAYMENT	The eligibility form contains the following statement: "Do you realize that even if you are represented by the Public Defender or other assigned counsel, as a condition of this representation you may be required to reimburse the public defender and/or County of Schuyler, in an amount to be set by the Court for this representation and do you agree to do so." It is not known, however, whether this is enforced.
<u>PARENTAL CONSIDERATION</u>	
AGE OF MINOR	Unknown
INCOME OF PARENTS CONSIDERED	Although the eligibility form does not explicitly state that parents are responsible for their minor's legal fees, the eligibility form requires the defendant to provide income of immediate family. Asks for name of parent and their employer and approximate earnings.
MINORS PROVIDED REPRESENTATION WHEN PARENTS ARE DETERMINED TO BE ABLE TO PAY BUT REFUSE	Unknown
PARENTAL COST RECOVERY	Unknown
SIGN AFFIDAVIT	Yes
DEFENDANT REQUIRED TO SIGN ANY WAIVERS IN THE COURSE OF THE ELIGIBILITY DETERMINATION	The eligibility form contains the following: "Do you authorize the court or the public defender to make any inquiries or investigation concerning the answers given by you in this affidavit?"
STATEMENT OF CONFIDENTIALITY	No

**PUBLIC DEFENSE OFFICE/COUNTY
TRIES TO KEEP ELIGIBILITY
INFORMATION CONFIDENTIAL**

Unknown

COUNTY

SENECA

SOURCE AND DATE OF INFORMATION

Chief Defender Eligibility Survey, Thomas Jones, Seneca County Public Defender, 10/93; and eligibility form **Financial Status Affidavit-Seneca County Public Defender**.

ELIGIBILITY PROCESS AND WHO MAKES THE DETERMINATION

Justices or judges appoint with input from the public defender's office. In most cases, financial affidavits are provided by local justices and completed by the defendant. In county court the public defender's office supplies financial affidavits to defendants, or the judge, after cursory questioning of the defendants, appoints counsel. In such cases, the public defender's office then requires defendants to complete a financial affidavit. In family court cases, the family court clerk supplies the financial affidavits to potential clients.

PERCENT DETERMINED INELIGIBLE ANNUALLY

10 percent

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

No, unless the judge reconsiders.

INCOME GUIDELINES

Yes. \$120.00 per week for a single individual. It is not known what these guidelines are based upon or when they were established. The survey notes that the guidelines are not updated annually. No information was provided as to when the income guidelines may next be updated. Defendants on public assistance automatically qualify for appointed counsel.

INCOME GUIDELINES SOLE DETERMINANT OF ELIGIBILITY DETERMINATION

No

INFORMATION REQUESTED ON THE ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

Information requested on the eligibility form: Gross household income from all sources, number of dependents, real and personal property (including automobile and home), liquid assets, monthly expenses. **Other factors considered:** Seriousness of crime charges; working spouse or parent (for those under 21); and amount of bail and who paid it.

HOW IS BAIL TREATED IN THE ELIGIBILITY PROCESS

If the defendant posted bail, this fact may disqualify him when considered with other financial information.

PARTIAL PAYMENT/CONTRIBUTION (722 D)

Yes. Appointed counsel is appointed to people who are able to contribute toward the cost of their representation. However, the survey notes that no money is collected from partial payment/contributions because there are no procedures or available staff in the public defender's office to collect these monies.

RECOUPMENT/REPAYMENT

Yes. Defendants are informed that they may be responsible to pay all or part of the cost of their representation in the event they become able to pay after representation. However, at this time no money is recouped from defendants.

PARENTAL CONSIDERATION

AGE OF MINOR

21 and under

INCOME OF PARENTS CONSIDERED

Yes. The eligibility form contains the following statement: "If you are under 21 and residing with your parents or guardian, both you and your parents must complete and sign this document before a notary public."

MINORS PROVIDED REPRESENTATION WHEN PARENTS ARE DETERMINED TO BE ABLE TO PAY BUT REFUSE

Yes

PARENTAL COST RECOVERY

No

SIGN AFFIDAVIT

Yes

**DEFENDANT REQUIRED TO SIGN ANY
WAIVERS IN THE COURSE OF THE
ELIGIBILITY DETERMINATION**

According to the survey, no. The eligibility form, however, does contain the following: "I authorize you to provide a copy of this affidavit to the judge to assist in determining whether the public defender should be appointed to represent me."

STATEMENT OF CONFIDENTIALITY

No. See statement noted directly above.

**PUBLIC DEFENSE OFFICE/COUNTY
TRIES TO KEEP ELIGIBILITY
INFORMATION CONFIDENTIAL**

Yes

COUNTY

STEUBEN

SOURCE AND DATE OF INFORMATION

Chief Defender Survey, Jeffery Squires, Steuben County Public Defender, 7/93; and eligibility form Affidavit of Financial Status Public Defender of Steuben County sent to NYSDA by the public defender office in January, 1992.

ELIGIBILITY PROCESS AND WHO MAKES THE DETERMINATION

Defendants are asked by the court if they wish to retain counsel or have counsel appointed. If defendant requests appointed counsel, they are given a financial affidavit to fill out and submit to the assistant public defender handling that particular court. If there is a conflict, then the form is given to the chief defender so he can appoint an 18B attorney (the chief defender also administers the assigned counsel program).

PERCENT DETERMINED INELIGIBLE ANNUALLY

5 percent

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

Yes. The defendant can seek a personal interview with the public defender/assigned counsel administrator and in some instances, with the court.

INCOME GUIDELINES

No

INCOME GUIDELINES SOLE DETERMINANT OF ELIGIBILITY DETERMINATION

No. Income guidelines are not used.

INFORMATION REQUESTED ON THE ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

Information requested on the eligibility form: Personal and spousal gross and net weekly income, parental income if defendant under 21, real and personal property (including automobile), monthly living expenses.
Other factors considered: Person's total financial picture—assets v. liabilities.

HOW IS BAIL TREATED IN THE ELIGIBILITY PROCESS

Not considered

PARTIAL PAYMENT/CONTRIBUTION (722 D) Yes. Appointed counsel is provided to people who are able to contribute toward the cost of their representation. These defendants are told they may be ordered by the court to reimburse the county for the expense. The plan is to collect these monies but practically speaking this doesn't happen. Average amount of partial payment/contribution collected annually is \$0.

RECOUPMENT/REPAYMENT Yes. Defendants are informed that they may be responsible to pay part or all of the cost of their representation in the event they become able to pay after representation. Average amount of money collected from recoupment/repayment is \$0.

PARENTAL CONSIDERATION

AGE OF MINOR 21 and younger

INCOME OF PARENTS CONSIDERED Yes. Eligibility application requests information on parent's income if the defendant is under 21.

MINORS PROVIDED REPRESENTATION WHEN PARENTS ARE DETERMINED TO BE ABLE TO PAY BUT REFUSE Yes

PARENTAL COST RECOVERY Yes. The hours of the public defender or the assigned counsel attorney are presented to the County Attorney for collection. Average amount of money collected from parents annually is \$0.

DOES THE AMOUNT OF MONEY COLLECTED FROM PARTIAL PAYMENT, RECOUPMENT/REPAYMENT AND PARENTS OFFSET THE COST OF COLLECTING THESE MONIES No

SIGN AFFIDAVIT Yes

DEFENDANTS REQUIRED TO SIGN ANY WAIVERS IN THE COURSE OF THE ELIGIBILITY DETERMINATION No

STATEMENT OF CONFIDENTIALITY

No

**PUBLIC DEFENSE OFFICE/COUNTY
TRIES TO KEEP ELIGIBILITY
INFORMATION CONFIDENTIAL**

Yes. The eligibility information is generally confidential unless a question is raised as to accuracies or concealment of assets which might effect eligibility.

COUNTY

SUFFOLK

SOURCE AND DATE OF INFORMATION

Chief Defender Eligibility Survey, Louis Mazzola, Assistant Chief Attorney, Suffolk County Legal Aid Society, 7/93; eligibility form **Suffolk County Department of Probation Release on Recognizance and Legal Aid Eligibility** and, schedule of income guidelines both of which were sent with the survey; and Chief Defender Eligibility Survey, Robert Quinlan, Administrator, Assigned Counsel Defender Plan, Suffolk County, 8/93.

ELIGIBILITY PROCESS AND WHO MAKES THE DETERMINATION

All defendants who are in custody when arraigned in District Court are interviewed by the "ROR Unit" of the probation department. In addition to rating the defendant for ROR eligibility, defendants are asked whether they wish to have the court assign an attorney. Eligibility is then determined by using the "Preliminary Estimates of Poverty Thresholds" published by the U.S. Department of Commerce, Society of Census. Defendants who appear in the trial parts without counsel and advise the court that they are unable to afford counsel are referred to probation for an eligibility interview. They are given a Legal Aid interview sheet. In a small percentage of cases, the Legal Aid Society will interview and qualify defendants directly.

PERCENT DETERMINED INELIGIBLE ANNUALLY

Unknown

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

No. Although there is no formal review process, defendants who continue to return to court without counsel, indicating that they cannot afford to retain counsel, can be sent for a new interview. In any event, the court has the discretion to assign counsel regardless of eligibility and many judges do so.

INCOME GUIDELINES

Yes. \$140.00 net per week for a family of one; \$182.00 net per week for a family of two; \$215.00 net per week for a family of three; \$276.00 net per week for a family of four; \$326.00 net per week for a family of five; etc. These guidelines, which are based on the 1992 Preliminary Estimate of Poverty

Thresholds as reported by the U.S. Department of Commerce, Society of Census were updated in May, 1993. The guidelines are next expected to be updated in May, 1994.

INCOME GUIDELINES SOLE DETERMINANT OF ELIGIBILITY

No

INFORMATION REQUESTED ON THE ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

Information requested on the eligibility form: Salary of defendant and spouse, liquid and non-liquid assets (including an automobile [owned by defendant or spouse] and house), support payments, amount of rent/mortgage, amount of car payment and any unusual expenses associated with the car. It should be noted that with the exception of questions regarding rent/mortgage and car payments no additional questions are asked about the defendants expenses. **Other factors considered:** Defendants receiving public assistance or other income maintenance are automatically eligible.

HOW IS BAIL TREATED IN THE ELIGIBILITY PROCESS

Defendants unable to post bail within a reasonable period of time are assigned by the court.

PARTIAL PAYMENT/CONTRIBUTION (722 D)

No partial payment/contribution provision.

RECOUPMENT/REPAYMENT

No. defendants are not informed that they may be responsible to repay all or part of the cost of their representation in the event they become able to pay after representation.

PARENTAL CONSIDERATION

AGE OF MINOR

21 and younger

INCOME OF PARENTS CONSIDERED

Yes. The Legal Aid Information Sheet states: *Unless otherwise expressed (in writing) by the judge, those who are under 21 years of age must be accompanied by a parent or guardian.*

**MINORS PROVIDED REPRESENTATION
WHEN PARENTS ARE DETERMINED TO
BE ABLE TO PAY BUT REFUSE**

Yes

PARENTAL COST RECOVERY

No

SIGN AFFIDAVIT

Yes

**DEFENDANT REQUIRED TO SIGN ANY
WAIVERS IN THE COURSE OF THE
ELIGIBILITY DETERMINATION**

According to the surveys, no. However the eligibility form contains the following statement: "...and he further gives permission to these agencies [the Court, the Probation Department, and the Legal Aid Society of Suffolk County, Criminal Division, or assigned counsel] to make any inquiries or investigation concerning the answers given in this report."

STATEMENT OF CONFIDENTIALITY

No

**PUBLIC DEFENSE OFFICE/COUNTY
TRIES TO KEEP ELIGIBILITY
INFORMATION CONFIDENTIAL**

The interview sheet used by probation in the district court is not confidential. However, in the small number of cases where the Legal Aid Society determines eligibility, the eligibility information is considered confidential.

COUNTY

SULLIVAN

SOURCE AND DATE OF INFORMATION

Chief Defender Survey, Carl Silverstein, Executive Director, Sullivan County Legal Aid Society, 7/93, and eligibility form **Statement of Financial Eligibility** sent to us by the executive director on January 15, 1993.

ELIGIBILITY PROCESS AND WHO MAKES THE DETERMINATION

The LAS does both civil and criminal cases. 95 percent of the criminal cases are called into the LAS by the court. The remaining 5 percent are walk-ins. In civil cases almost all are walk-ins. For the most part, the LAS does the financial intake and determines if it will represent defendants.

PERCENT DETERMINED INELIGIBLE ANNUALLY

10 percent

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

Yes. The executive director must approve all denials.

INCOME GUIDELINES

Yes. 125 percent of the 1993 LSC federal poverty level: \$168.00 per week for a family of one; \$227.00 per week for a family of two plus \$59.00 per week for each additional family member. The guidelines are updated annually. The guidelines are next scheduled to be updated in January, 1994.

INCOME GUIDELINES SOLE DETERMINANT OF ELIGIBILITY DETERMINATION

No. If a defendant is denied appointed counsel, the LAS will advise the defendant to try and hire three different attorneys. If none of the three attorneys will take the defendant's case the defendant must bring back letters from the attorneys to that effect and then the LAS will accept them. Also, when it is clear that the defendant's discretionary funds are insufficient, the LAS will accept them.

INFORMATION REQUESTED ON THE ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

Information requested on the eligibility form: Personal, spouse's (or friend's) income, liquid and non-liquid assets, property, number of dependents, debts, automobile ownership, and health-hospitalization. **Other factors considered:** The estimated fee of a private attorney, alternatives (e.g., pro bono, Sullivan County Bar Association Referral Service—a reduced fee referral service). Also a non-financial factor is considered—whether there is a conflict of interest.

HOW IS BAIL TREATED IN THE ELIGIBILITY PROCESS

If the defendant can personally post bail and such could be used to pay an attorney, this will be a consideration.

PARTIAL PAYMENT/CONTRIBUTION (722 D)

Yes. Appointed counsel is appointed to people who are able to contribute toward the cost of their representation. But the LAS does not collect money from those that are determined to be able to contribute something.

RECOUPMENT/REPAYMENT

According to the survey, defendants are informed that they may be responsible to repay all or part of the cost of their representation in the event they become able to pay after representation. Neither the LAS or the county attempts to collect these monies.

PARENTAL CONSIDERATION

AGE OF MINOR

21 and younger

INCOME OF PARENTS CONSIDERED

Yes. The LAS will try to determine if parents will hire private counsel but the LAS will represent the minor until then.

MINORS PROVIDED REPRESENTATION WHEN PARENTS ARE DETERMINED TO BE ABLE TO PAY BUT REFUSE

Yes

PARENTAL COST RECOVERY

No

**OTHER MEASURES USED TO OFFSET
THE COST OF PUBLIC DEFENSE
SERVICES**

Court ordered transcripts and experts paid by
county voucher.

SIGN AFFIDAVIT

Yes

**DEFENDANT REQUIRED TO SIGN ANY
WAIVERS IN THE COURSE OF THE
ELIGIBILITY DETERMINATION**

No

STATEMENT OF CONFIDENTIALITY

No. The eligibility form contains the following
statement: "...I have also been told that should any
information obtained herein be false, disclosure of
such to the Sullivan County District Attorney will be
made, as well as to the other appropriate persons.
I understand that the attorney/client relationship
doesn't apply to these pages which I have signed
or initiated."

**PUBLIC DEFENSE OFFICE/COUNTY
TRIES TO KEEP ELIGIBILITY
INFORMATION CONFIDENTIAL**

Yes

COUNTY

TIOGA

SOURCE AND DATE OF INFORMATION

Chief Defender Eligibility Survey, Ronald Slocum, Tioga County Assigned Counsel Administrator, 7/93; and eligibility form **Affidavit of Indigency** sent to NYSDA by H. Robert Hall, assistant public defender on June 5, 1991.

ELIGIBILITY PROCESS AND WHO MAKES THE DETERMINATION

Counsel are appointed by either the county judge, the family court judge or town and village justices. The financial affidavit of the public defender's office or the family court affidavit are used to determine eligibility for the program and the decision is left up to each judge or justice to determine eligibility.

PERCENT DETERMINED INELIGIBLE ANNUALLY

25 percent

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

Yes. The person can ask the court to review his or her petition and financial affidavit. Usually the court will do so to ensure that counsel is assigned when necessary.

INCOME GUIDELINES

Yes. However, according to the survey of the assigned counsel administrator, the income guidelines used are hard to determine since each judge or justice is allowed to use his or her discretion in determining eligibility. The Tioga County Legislature has generally acceded to the judges' determinations as to the eligibility standards each court uses. In a note sent with a copy of the eligibility form to NYSDA by the public defender's office (June 5, 1991), the assistant public defender stated, "...Usually defendants are eligible if working and net salary is \$100.00 or less per week, own no real property or are on public assistance."

INCOME GUIDELINES SOLE DETERMINANT OF ELIGIBILITY DETERMINATION

No

INFORMATION REQUESTED IN THE ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

Information requested on the eligibility form:
Amount of bail and who paid it, support payments, personal income, living expenses, whether there are any relatives, friends or other persons who could be of financial assistance. **Other factors considered:** The seriousness of the charge, the cost of retaining private counsel and the assets and income of the person.

HOW IS BAIL TREATED IN THE ELIGIBILITY PROCESS

Not considered.

PARTIAL PAYMENT/CONTRIBUTION (722 D)

Yes. Appointed counsel is provided to people who are able to contribute toward the cost of their representation. The assigned counsel program does not currently have a system in place to collect monies from persons who have assigned counsel. This is one of the ideas that the assigned counsel program may try next year to recover some of the monies spent in the assigned counsel program.

RECOUPMENT/REPAYMENT

No. Defendants are not informed that they may be responsible to repay part of the cost of their representation in the event that they become able to pay after representation.

PARENTAL CONSIDERATION

AGE OF MINOR

18 and younger.

INCOME OF PARENTS CONSIDERED

According to the survey of the assigned counsel administrator, the parent's ability to pay for their minors representation is not considered. However, the note sent to NYSDA with a copy of the eligibility form (June 5, 1991) states: "If defendant is living at home and either parent is working and can afford an attorney then this office usually turns down the application."

MINORS PROVIDED REPRESENTATION WHEN PARENTS ARE DETERMINED TO BE ABLE TO PAY BUT REFUSE

According to the assigned counsel program survey, parents income is not a consideration in appointing counsel for a minor defendant (But see section Income of Parents Considered).

PARENTAL COST RECOVERY

No (But see section **Income of Parents Considered**).

SIGN AFFIDAVIT

Yes

DEFENDANT REQUIRED TO SIGN ANY WAIVERS IN THE COURSE OF THE ELIGIBILITY DETERMINATION

Yes. In the public defender's affidavit (eligibility form) there is a waiver so that the defendant's financial sources can be checked.

STATEMENT OF CONFIDENTIALITY

The survey of the assigned counsel administrator states that there is a statement on the eligibility form that the eligibility is confidential. However, a review of the form **Affidavit of Indigency**, reveals no statement of confidentiality.

PUBLIC DEFENSE OFFICE/COUNTY TRIES TO KEEP ELIGIBILITY INFORMATION CONFIDENTIAL

Unknown

COUNTY

TOMPKINS

SOURCE AND DATE OF INFORMATION

Chief Defender Eligibility Survey, Greg Kirchgessner, Coordinator, Tompkins County Assigned Counsel, 7/93; and eligibility form **Tompkins County Assigned Counsel Program Application Affidavit** sent to NYSDA on June 10, 1991, by the coordinator of the program.

ELIGIBILITY PROCESS AND WHO MAKES THE DETERMINATION

The defendant is required to fill out an eligibility application. The application is reviewed by the assigned counsel coordinator. If the defendant is eligible, either the assigned counsel coordinator appoints an attorney or the court appoints an attorney.

PERCENT DETERMINED INELIGIBLE ANNUALLY

6 percent

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

Yes. The administrator of the assigned counsel program reviews the defendant's file and then meets with the defendant.

INCOME GUIDELINES

Yes. 125 percent of the LSC federal poverty guidelines is used. The schedule of income guidelines was not sent with the survey; therefore, it is unknown the exact guidelines used. The survey indicates that the guidelines are updated annually. So, most likely, either the 1992 or 1993 federal poverty guidelines are being used.

INCOME GUIDELINES SOLE DETERMINANT OF ELIGIBILITY DETERMINATION

No

INFORMATION REQUESTED ON THE ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

Information requested on the eligibility form: Personal and spousal net income, number of dependents, those receiving welfare grants or social security are presumptively eligible, liquid assets; personal and real property (including automobile and house), monthly financial obligations. **Other factors considered:** The

defendant's inability to afford counsel, i.e., income exceeds income guidelines but non-voluntarily incurred bills are high enough that the applicant does not have sufficient income to retain counsel.

HOW IS BAIL TREATED IN THE ELIGIBILITY PROCESS

Whether the defendant made bail or not is not considered in the eligibility determination.

PARTIAL PAYMENT/CONTRIBUTION (722 D)

No partial payment/contribution provision.

RECOUPMENT/REPAYMENT

Yes. The following statement appears on the eligibility form: "If an attorney is assigned to you, you may be required to repay the county for all or part of the cost of your defense." The survey states that the judge may discontinue assignment of counsel if he becomes aware of a change in the defendant's financial situation. Average amount of money recouped annually is \$0.

PARENTAL CONSIDERATION

AGE OF MINOR

21 and younger

INCOME OF PARENTS CONSIDERED

Yes

MINORS PROVIDED REPRESENTATION WHEN PARENTS ARE DETERMINED TO BE ABLE TO PAY BUT REFUSE

Yes

PARENTAL COST RECOVERY

No

OTHER MEASURES USED TO OFFSET THE COST OF PUBLIC DEFENSE SERVICES

Batching of cases and assigning justice court cases to attorneys who live near the court.

SIGN AFFIDAVIT

Yes

**DEFENDANT REQUIRED TO SIGN ANY
WAIVERS IN THE COURSE OF THE
ELIGIBILITY DETERMINATION**

According to the survey, no. However, the following statement appears on the eligibility form: "In order to verify my answers, I hereby grant permission to the Department of Social Services, the Social Security Administration and to any banks, credit institutions, or other lending institutions to release information regarding the information contained herein to the Tompkins County Assigned Counsel Administration Office."

STATEMENT OF CONFIDENTIALITY

According to the survey, yes. However a review of the eligibility form reveals no statements regarding the confidentiality of the eligibility information.

**PUBLIC DEFENSE OFFICE/COUNTY
TRIES TO KEEP ELIGIBILITY
INFORMATION CONFIDENTIAL**

Yes

COUNTY

ULSTER

SOURCE AND DATE OF INFORMATION

Chief Defender Eligibility Survey, Joan Castka, Confidential Secretary, Ulster County Public Defender, 7/93, and eligibility form **Financial Affidavit In Support of Request to be Assigned Counsel** which was sent with the survey.

ELIGIBILITY PROCESS AND WHO MAKES THE DETERMINATION

Defendants requesting assignment of a public defender are asked to fill out a financial affidavit in the court in which they are arraigned. The form is given back to the judge in that court who then determines if the person is eligible for appointed counsel.

PERCENT DETERMINED INELIGIBLE ANNUALLY

Information not available

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

Defendants who are initially denied appointed counsel are told by the judge to call the public defender's office. The public defender's office reviews the financial circumstances again and then either calls the public defender in the court in which the defendant's case is pending and asks the public defender to accept the defendant or it is suggested to the defendant that he ask the judge to assign counsel and allow the defendant to repay the county for the services.

INCOME GUIDELINES

Yes. The guidelines are based on 125 percent of the 1991 LSC federal poverty guidelines: \$159.00 net per week for a family of one; \$213.00 net per week for a family of two; \$268.00 net per week for a family of three; and \$322 net per week for a family of four plus approximately \$54.00 net per week for additional family members.

INCOME GUIDELINES SOLE DETERMINANT OF ELIGIBILITY DETERMINATION

No

**INFORMATION REQUESTED ON THE
ELIGIBILITY FORM/OTHER FACTORS
CONSIDERED**

Information requested on the eligibility form: Number of dependents, personal and spousal income, if unemployed where defendant gets money for living expenses, if defendant is receiving social security, support payments, income from rental property, stocks or bonds, miscellaneous income, liquid and non-liquid assets (including automobile and home), monthly expenses, if defendant tried to hire an attorney, amount of bail and the name and address of the person who posted the bail.

**HOW IS BAIL TREATED IN THE
ELIGIBILITY PROCESS**

According to the survey, each judge treats whether the defendant made bail or not differently in the eligibility determination.

PARTIAL PAYMENT/CONTRIBUTION (722 D)

Yes. Appointed counsel is provided to people who are able to contribute toward the cost of their representation. There is a form (A-A-1170-0-1265) which the judge signs ordering the defendant to pay and the amount to be paid. **Process for collecting money:** The defendant can either send the money to the public defender office or to the county treasurer. The public defender's office sends the money to the treasurer. The county has a special account for public defender deposits. Money is not collected until the case is completed. In most cases, the court decides how much to collect. The effort to collect money from partial payment/contribution just started so no figures are available concerning the amount collected.

RECOUPMENT/REPAYMENT

Yes. Defendants are informed that they may be responsible to repay all or part of the cost of their representation in the event that they become able to pay after representation. The eligibility form contains the following statements: "I further agree to repay the County of Ulster for money expended on my behalf during the course of my defense"; and "Notice: If an attorney is assigned to you, you may be required to repay the County of Ulster for all or part of the cost of your defense." **Process for collecting money:** The judge in Family Court requests that the public defender office keep track of the time spent with defendants. The public defender then bills the defendant at \$25.00 out-of-

court and \$40.00 in-court. The criminal judges usually set a flat figure as repayment. Repayment is sought at sentencing. In Family Court a letter is sent after the case is settled. If the client doesn't pay, the County Attorney seeks to collect. No figures are available yet on the amount of money recouped.

PARENTAL CONSIDERATION

AGE OF MINOR

21 and younger

INCOME OF PARENTS CONSIDERED

Yes. The eligibility form includes the following statement: "Note: If you are less than 21 years of age or reside with your parents...your parents must sign this form and also complete their own financial affidavit."

MINORS PROVIDED REPRESENTATION WHEN PARENTS DETERMINED TO BE ABLE TO PAY BUT REFUSE

Sometimes

PARENTAL COST RECOVERY

No. The survey states that the public defender office doesn't have the staff to try and recover money from parents.

SIGN AFFIDAVIT

Yes

DEFENDANT REQUIRED TO SIGN ANY WAIVERS IN THE COURSE OF THE ELIGIBILITY DETERMINATION

According to the survey, no. However, the eligibility form includes the following statement: "I hereby authorize the Court and/or the Public Defender to make inquiries to verify the answers I have given."

STATEMENT OF CONFIDENTIALITY

No

PUBLIC DEFENSE OFFICE/COUNTY TRIES TO KEEP ELIGIBILITY INFORMATION CONFIDENTIAL

Yes

COUNTY

WARREN

SOURCE AND DATE OF INFORMATION

Chief Defender Eligibility Survey, Dorothy Charles, Administrator, Warren County Assigned Counsel, 7/93, and eligibility form **Warren County Legal Aid Application for Criminal Assigned Counsel** which was sent with the survey.

ELIGIBILITY PROCESS AND WHO MAKES THE DETERMINATION

Defendants are referred to the assigned counsel program by the courts. Following the completion of a financial application by the defendant and verification of the information given, those qualifying are assigned an attorney by the administrator.

PERCENT DETERMINED INELIGIBLE ANNUALLY

10-15 percent

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

No

INCOME GUIDELINES

Yes. The guidelines used until very recently were based on a report published by the National Institute of Justice entitled: **Containing the Costs of Indigent Defense Program: Eligibility Screening and Cost Recovery Procedures**. Actually, the guidelines were based on the 1986 federal poverty guidelines and appeared in the report as an example of guidelines which were being used by some states. The administrator indicated in a telephone conversation to Karen Kane, NYSDA's Research Director on August 20, 1993, that she had contacted the National Institute of Justice to see if it had updated its report from which the assigned counsel program took its income guidelines. NIJ reported that the document has not been updated. The administrator didn't realize, however, that the guidelines in the report are updated annually by the Legal Services Corporation and the annual updates are published in 45 CFR Part 1611. This information, as well as a copy of the 1993 income guidelines, were provided to the administrator. The administrator now reports that the Warren County Assigned Counsel Program is using 125 percent of the 1993 Legal Services Corporation guidelines: \$168.00 per week for a family of one; \$227.00 per week for a family of two; \$286.00 per week for a family of three; and \$345.00 per week for a family of four plus \$59.00 for each additional family member.

INCOME GUIDELINES SOLE DETERMINANT OF ELIGIBILITY DETERMINATION

No

INFORMATION REQUESTED ON THE ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

Information requested on the eligibility form: Personal and spousal income, income of live-in boyfriend/girlfriend, household income if defendant under 21, real and personal property (including automobile), liquid assets, monthly expenses, whether defendant tried to hire own attorney, amount of bail and who paid it. **Other factors considered:** The nature and severity of the criminal charge(s) and the anticipated complexity of the defense.

HOW IS BAIL TREATED IN THE ELIGIBILITY DETERMINATION

Whether or not bail is considered in the eligibility determination depends on the amount of the bail and the source that paid the bail.

PARTIAL PAYMENT/CONTRIBUTION (722 D)

No partial payment/contribution provision.

RECOUPMENT/REPAYMENT

According to the survey, defendants are not informed that they may be responsible to pay part or all of the cost of the representation in the event they become able to pay after representation. The eligibility form, however, contains the following statement: "If an attorney is assigned to me, I may be required to repay the county for all or part of such defense."

PARENTAL CONSIDERATION

AGE OF MINOR

21 and younger

INCOME OF PARENTS CONSIDERED

Yes

MINORS PROVIDED REPRESENTATION WHEN PARENTS ARE DETERMINED TO BE ABLE TO PAY BUT REFUSE

Yes

PARENTAL COST RECOVERY

No

SIGN AFFIDAVIT

Yes

**DEFENDANT REQUIRED TO SIGN ANY
WAIVERS IN THE COURSE OF THE
ELIGIBILITY DETERMINATION**

No

STATEMENT OF CONFIDENTIALITY

No

**PUBLIC DEFENSE OFFICE/COUNTY
TRIES TO KEEP ELIGIBILITY
INFORMATION CONFIDENTIAL**

Yes. Information is released only when, on rare occasions, a Freedom of Information form is completed and reviewed by the County Attorney.

COUNTY

WASHINGTON

SOURCE AND DATE OF INFORMATION

Chief Defender Survey, Jacqueline Springer-Cherney, Paralegal, Elan Cherney's Office, Washington County Public Defender, 7/93.

ELIGIBILITY PROCESS AND WHO MAKES THE DETERMINATION

The defendant completes a financial eligibility application in court. The application is then sent to the public defender who reviews the application and upon review of the application makes the eligibility determination. If the defendant is determined to be eligible, the public defender assigns the defendant an attorney.

PERCENT DETERMINED INELIGIBLE ANNUALLY

10 percent

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

Yes. Based on the income guidelines, the defendant is called personally to discuss reasons for denial. A follow-up letter is then sent to the defendant.

INCOME GUIDELINES

According to the survey, income guidelines are used. They are based upon the cost of living index and are updated annually. In January, 1992, the public defender's office sent NYSDA a schedule of guidelines: For violations and misdemeanors: \$158.00 per week for a family of one plus \$55.00 per dependent. For felony cases \$100.00 per week is added to these figures.

INCOME GUIDELINES SOLE DETERMINANT OF ELIGIBILITY DETERMINATION

No

FACTORS CONSIDERED

A copy of the eligibility form was not sent to NYSDA with the completed survey. However, the survey stated that the following factors are considered in determining eligibility: medical expenses, whether defendant is paying child support and type of charge (e.g., misdemeanor or felony).

HOW IS BAIL TREATED IN THE ELIGIBILITY PROCESS

Not considered.

PARTIAL PAYMENT/CONTRIBUTION (722 D)

No partial payment/contribution provision.

RECOUPMENT/REPAYMENT

Yes. Defendants are informed that they may be responsible to repay all or part of the cost of their representation in the event they become able to pay after representation. Repayment is not generally sought since most of the people who apply for public defense services are not working.

PARENTAL CONSIDERATION

AGE OF MINOR

18 and younger

INCOME OF PARENTS CONSIDERED

Yes

MINORS PROVIDED REPRESENTATION WHEN PARENTS ARE DETERMINED TO BE ABLE TO PAY BUT REFUSE

Yes

PARENTAL COST RECOVERY

Yes. However, so far the public defender office has never had to follow through on getting the money. No data provided on the average amount of money collected annually from parents.

SIGN AFFIDAVIT

Yes

DEFENDANT REQUIRED TO SIGN ANY WAIVERS IN THE COURSE OF THE ELIGIBILITY DETERMINATION

No

STATEMENT OF CONFIDENTIALITY

No

PUBLIC DEFENSE OFFICE/COUNTY TRIES TO KEEP ELIGIBILITY INFORMATION CONFIDENTIAL

Yes

COUNTY

WAYNE

SOURCE AND DATE OF INFORMATION

Chief Defender Eligibility Survey, Ronald C. Valentine, Wayne County Public Defender, (1/94); eligibility forms **Affirmation of Financial Status Wayne County** and **Affirmation of Family Financial Status; Wayne County Public Defender Operating Guidelines; and Financial Guidelines of Eligibility for a Public Defender in Wayne County** all of which were sent to NYSDA by the Wayne County Public Defender's office on June 27, 1991.

ELIGIBILITY PROCESS AND WHO MAKES THE DETERMINATION

According to **Wayne County Public Defender Operating Guidelines**, eligibility is determined in the following manner: In all cases the court should, at the arraignment or the initial appearance, advise the defendant that he or she has the right to counsel before any further proceedings are held and that the court will assign counsel at no expense if the defendant desires counsel and cannot afford it. Inquiry should then be made as to whether the defendant seeks a public defender. If the defendant does seek a public defender, the court should then have the defendant complete an eligibility form. In lieu of the eligibility form, the court may permit the defendant to verbally provide the answers sought in the affirmation under oath. The court should then evaluate the defendant's financial status in view of the public defender's eligibility guidelines. In appropriate cases, the court may order a financially able defendant to make partial payment for public defender services to the Wayne County Public Defender pursuant to §722-d of the County Law. The court should then inform the defendant as to whether his or her application for a public defender is granted. When the court assigns an attorney, the order appointing counsel along with a copy of the defendant's financial affirmation should be sent with the defendant to the public defender's office to set up a file and make arrangements to meet with his or her attorney. If a defendant remains incarcerated, the court should contact the public defender's office immediately upon the determination of eligibility. In all other cases, as soon as possible. The survey states that defendants can also come to the public defender's office and complete an eligibility form which will be reviewed by the office and an eligibility determination will subsequently be made.

PERCENT DETERMINED INELIGIBLE ANNUALLY

Unknown

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

The **Wayne County Public Defender Operating Guidelines** states the following: "If the court declines to assign counsel, inquiry should be made as to whether the defendant will then retain private counsel. If upon inquiry, the defendant indicates that he does have access to private counsel, the court should inform the defendant that he may contact the public defender's office regarding alternatives for representation." The survey states that denied defendants may make a request for appointed counsel directly to the judge.

INCOME GUIDELINES

Based on the 1993 LSC federal poverty guidelines: \$168.00 per week for a family of one; \$227.00 per week for a family of two plus \$59.00 per week for each additional family member. The guidelines are updated annually.

INCOME GUIDELINES SOLE DETERMINANT OF ELIGIBILITY DETERMINATION

No. According to the **Financial Eligibility Guidelines for a Public Defender in Wayne County**: "A person whose income exceeds the maximum level may be considered eligible for assignment of counsel by taking into account the following factors: current income prospects, including seasonal variations in income; fixed debts and obligations, including unpaid taxes from previous years, child care, transportation and other expenses necessary for employment; expenses associated with age or physical infirmity of resident family members; other significant factors related to the financial inability to afford legal assistance, including the unavailability of affordable legal counsel."

INFORMATION REQUESTED ON THE ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

Information requested on the eligibility form: Household income, whether defendant is on public assistance, cars, boats and trucks owned, real estate, liquid assets, other available assets and the defendant's debts. **Other factors considered:** According to the **Financial Guidelines of Eligibility for a Public Defender in Wayne County**, non-liquid

assets should only be considered to the extent that they can be converted during the course of representation to meet latter costs, whether person can obtain a bank loan, the type, seriousness and complexity of the charges should be considered, eligibility should be considered on a case-by-case basis. In addition to these factors, the survey notes that the net worth of assets such as real estate, motor vehicles, the severity of the offense, cash flow of the defendant and exceptional expenses are considered in the eligibility determination.

HOW IS BAIL TREATED IN THE ELIGIBILITY PROCESS

According to the survey, whether a person is released on bail or not is of no consideration, although if the defendant cannot make bail, he is automatically considered eligible for public defense services.

PARTIAL PAYMENT/CONTRIBUTION (722 D)

Yes. The Wayne County Public Defender Operating Guidelines contain the following statement: "In appropriate cases, the court may order a financially able defendant to make partial payment for public defender services to the Wayne County Public Defender pursuant to section 722-d of the County Law." The survey notes that at the conclusion of the defendant's court process, the defense attorney may request a "contribution order" from the judge. If the judge agrees, he signs an order requiring the defendant to pay a sum to the public defender's office. The survey states that the average amount of money collected annually from partial payment/contributions is \$8,000.

RECOUPMENT/REPAYMENT

No, defendants are not informed that they may be required to pay part or all of the cost of representation in the event they become able to pay after representation.

PARENTAL CONSIDERATION

AGE OF MINOR

21 and younger

INCOME OF PARENTS CONSIDERED

Yes. The eligibility form contains the following statement: "If you are under 21 years and unmarried, your parents are responsible for your

legal costs. Complete this section.* Parents must complete a separate parental affirmation of financial status.

MINORS PROVIDED REPRESENTATION WHEN PARENTS ARE DETERMINED TO BE ABLE TO PAY BUT REFUSE

Yes. The **Financial Guidelines of Eligibility For a Public Defender In Wayne County** contains the following statement: "In cases where, although financially able, the parents will not provide retained counsel, and the minor defendant's income/and or benefits received comes within the financial eligibility guidelines, the court should assign counsel."

PARENTAL COST RECOVERY

While the **Financial Guidelines of Eligibility For a Public Defender In Wayne County** contains the following statement: "The public defender's office reserves the right to attempt to collect attorney fees from the parents of these ineligible minors who have been represented by assigned counsel," the survey notes that the public defender's office does not try and recover money from parents for their child's representation.

SIGN AFFIDAVIT

Yes

DEFENDANT REQUIRED TO SIGN ANY WAIVERS IN THE COURSE OF THE ELIGIBILITY DETERMINATION

No

STATEMENT OF CONFIDENTIALITY

No

PUBLIC DEFENSE OFFICE/COUNTY TRIES TO KEEP ELIGIBILITY INFORMATION CONFIDENTIAL

Yes

COUNTY

WESTCHESTER

SOURCE AND DATE OF INFORMATION

Chief Defender Eligibility Survey, Stephen Pittari, Executive Director, Legal Aid Society of Westchester County, (2/94), and **Fact Sheet for Criminal Matters** which was sent with the survey. **NOTE: Mr. Pittari also administers the assigned counsel program.**

ELIGIBILITY PROCESS AND WHO MAKES THE DETERMINATION

The LAS represents felony cases. In most cases person requests counsel; LAS interviews and determines eligibility. Court puts imprimatur on the eligibility determination made by the LAS. Non-felony cases are handled by the 18B panel. In these cases the courts determine eligibility. There are 42 local courts (most with multiple judges). There is no uniform method among the courts for determining eligibility. Some courts use an eligibility form; some courts have the 18B attorneys determine eligibility; most courts, however, depend on an oral judicial inquiry.

PERCENT DETERMINED INELIGIBLE ANNUALLY

LAS: less than 10 percent; 18B: Unknown

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

LAS: File can be reviewed by the chief attorney. The defendant can also ask the court to "overrule" the LAS.
18B: There is essentially no review process in non-felony cases and no one to argue on defendant's behalf in an 18B situation.

INCOME GUIDELINES

No

INCOME GUIDELINES SOLE DETERMINANT OF ELIGIBILITY DETERMINATION

No income guidelines used.

INFORMATION REQUESTED ON THE ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

Information requested on eligibility form (fact sheet): Defendant's occupation and income; spouse's occupation; number of children; how many at home or supported; whether defendant

receives government benefits; liquid and non-liquid assets; names of relatives or other interested persons and their employment and earnings; amount of bail and source that posted bail and in what form was bail posted. **Additional factors considered:** seriousness of charge; complexity of the case; defendant's debts (it should be noted that the eligibility form does not solicit any data concerning the defendant's debts); cost to retain an attorney.

HOW IS BAIL TREATED IN THE ELIGIBILITY PROCESS

LAS: does not consider the defendant's ability to post bail.
18B: Many local judges in 18B cases do consider the defendant's ability to post bail when determining eligibility.

PARTIAL PAYMENT/CONTRIBUTION (722 D)

No partial payment provision.

RECOUPMENT/REPAYMENT

No

PARENTAL CONSIDERATION

AGE OF MINOR

LAS: 18 and younger
18B: Some judges use 18 and younger while some others use 21 and younger.

INCOME OF PARENTS CONSIDERED

Yes

MINORS PROVIDED REPRESENTATION WHEN PARENTS ARE DETERMINED TO BE ABLE TO PAY BUT REFUSE

LAS: No
18B: Several judges will not appoint counsel to a minor defendant when the parents are able to pay but refuse to do so.

PARENTAL COST RECOVERY

No

SIGN AFFIDAVIT

Yes

**DEFENDANT REQUIRED TO SIGN ANY
WAIVERS IN THE COURSE OF THE
ELIGIBILITY DETERMINATION**

Yes, some of the local courts that use an eligibility form have waiver paragraphs.

STATEMENT OF CONFIDENTIALITY

No

**PUBLIC DEFENSE OFFICE/COUNTY
TRIES TO KEEP ELIGIBILITY
INFORMATION CONFIDENTIAL**

LAS: Defendants denied appointed counsel are informed that if they contest the adverse eligibility determination and the matter goes to the court, then LAS may have to answer questions of court re: defendant's finances.

18B: No uniformity

COUNTY

WYOMING

SOURCE AND DATE OF INFORMATION

Chief Defender Eligibility Survey, Norman Effman, Wyoming County Public Defender, 8/93; eligibility form **Affidavit of Financial Status** which was sent with the survey; and a copy of **Standards of Eligibility For the Wyoming County Public Defender's Office** dated January 23, 1990 sent to NYSDA by the public defender's office on June 14, 1991.

ELIGIBILITY PROCESS AND WHO MAKES THE DETERMINATION

Defendants jailed are provided with a packet of information which includes a financial affidavit. Each Monday an attorney is available at the jail to qualify and determine eligibility and to answer any questions and find out if there is someone willing to post bail. Defendants who are arrested and released are advised to contact the office to make an appointment. Wyoming County provides free legal services for anyone financially eligible who is charged with any violation of the penal law, V&T, misdemeanors or felonies and family court matters (i.e., custody, visitation, and violation of support matters).

PERCENT DETERMINED INELIGIBLE ANNUALLY

10 percent

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

Yes. If a potential client exceeds the guidelines they are advised they must provide a list of attorneys they contacted and the retainer requested. The attorney handling that area then again reviews each client's financial affidavit individually.

INCOME GUIDELINES

Yes. The guidelines, which the survey notes, were provided by the Monroe County Public Defender office, are based on the LSC federal poverty guidelines. The public defender office is currently using the 1993 LSC federal poverty guidelines: \$168.00 gross per week for family of one; \$227.00 gross per week for a family of two; plus \$59.00 for each additional family member. According to the survey, the guidelines are updated annually.

INCOME GUIDELINES SOLE DETERMINANT OF ELIGIBILITY DETERMINATION

No

INFORMATION REQUESTED ON THE ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

Information requested on the eligibility form: Number of dependents, public assistance/medicaid number, gross weekly income of defendant, spouse and parents (if defendant a minor), all sources of income of defendant, spouse and parents, liquid and non-liquid assets (including automobile and real estate) of defendant, spouse and parents and debts of defendant, spouse and parents. **Other factors considered: The Standards of Eligibility for the Wyoming County Public Defender's Office contains the following statement: "Where justice so requires, funds which a Defendant might obtain by borrowing may be considered in determining eligibility for appointment of the Public Defender."**

HOW IS BAIL TREATED IN THE ELIGIBILITY PROCESS

Bail is usually not a factor in eligibility requirements.

PARTIAL PAYMENT/CONTRIBUTION (722 D)

According to the survey, partial payment/contribution is not implemented. However, the **Standards of Eligibility for the Wyoming County Public Defender's Office** contains the following statements: "Whenever it appears to a court who has appointed counsel or authorized services for a defendant, or before whom the case is then pending, that funds are available for payment of a private attorney in excess of the amount reasonably required for the necessities of life, he may order payment of such excess pursuant to County Law 722(d)" and "In case of doubt about the Defendant's eligibility, where justice requires immediate representation or authorization of services, counsel shall be appointed or services shall be authorized, with the contribution order being ordered at a later date if funds are available."

RECOUPMENT/REPAYMENT

No answer provided on the survey regarding whether defendants are informed that they may be responsible to pay all or part of the cost of their representation in the event they become able to pay after representation.

PARENTAL CONSIDERATION

AGE OF MINOR

21 and younger

INCOME OF PARENTS CONSIDERED

Yes. The **Standards of Eligibility for the Wyoming County Public Defender's Office** contains the following statement: "When a person under 21 seeks the appointment of counsel or other services, the assets, income and expenses of his parents or persons legally responsible for his support shall be considered."

MINORS PROVIDED REPRESENTATION WHEN PARENTS ARE DETERMINED TO BE ABLE TO PAY BUT REFUSE

Yes. The **Standards of Eligibility for the Wyoming County Public Defender's Office** contains the following statement: "The Sixth Amendment right to counsel is personal; therefore, assignment of counsel cannot be denied if the parents or the persons legally responsible for support refuse to contribute toward the cost of counsel." _____

PARENTAL COST RECOVERY

Yes. Parents who refuse to either hire an attorney for their child and are financially able to do so are advised that the county may sue them for the legal fees incurred in representing the minor child. The County Attorney handles the collection of money from parents. The **Standards of Eligibility for the Wyoming County Public Defender's Office** contains the following statement: "...reimbursement, in full or part, may be sought from such responsible persons pursuant to Section 722-d of the County Law. The Order obtained pursuant to §722-d of the County Law shall be turned over by the Public Defender to the appropriate county agency for collection."

SIGN AFFIDAVIT

Yes

DEFENDANT REQUIRED TO SIGN ANY WAIVERS IN THE COURSE OF THE ELIGIBILITY DETERMINATION

No

STATEMENT OF CONFIDENTIALITY

No

**PUBLIC DEFENSE OFFICE/COUNTY
TRIES TO KEEP ELIGIBILITY
INFORMATION CONFIDENTIAL**

Yes. Potential clients filling out the financial affidavit are advised that the information disclosed will be kept confidential.

COUNTY

YATES

SOURCE AND DATE OF INFORMATION

Chief Defender Survey, Weston Palmer, Yates County Public Defender, 7/93 and Yates County eligibility form sent with the completed survey.

ELIGIBILITY PROCESS AND WHO MAKES THE DETERMINATION

The court takes the basic eligibility information at the time of the arrest or court appearance and advises the public defender office. If the person is not incarcerated, he or she will be required to contact the public defender office to complete the financial eligibility form. If the person is incarcerated, then the public defender office will contact the incarcerated person. The public defender then determines whether to assign counsel.

PERCENT DETERMINED INELIGIBLE ANNUALLY

15 percent

REVIEW PROCESS FOR THOSE DETERMINED INELIGIBLE

Yes. The defendant may apply to the court for a final determination.

INCOME GUIDELINES

Yes. I. **Gross Income Test** (Total household income including child support): one person residing alone: \$211.00 per week, two persons residing together \$269.00 per week plus \$29.00 per week for each additional person.
II. **Disposable Income Test** (Gross income less reasonable living expenses i.e., rent and utilities, child care or support, food, auto and transportation expenses and TV cable –but not HBO or premium): For family court: \$40.00 per week. For criminal court: violations-\$25.00 per week; misdemeanors-\$40.00 per week; and felony-\$70.00 per week.
III. **Asset Test** (usually house, vehicle or savings or bail): family court- \$1,500.00; justice court-\$2,000.00; and county court-\$3,500.00. No information was provided on the survey regarding what these income guidelines are based upon. According to the survey, these guidelines are updated annually. They were last updated January 1, 1993 and will next be updated January 1, 1994.

INCOME GUIDELINES SOLE DETERMINANT OF ELIGIBILITY DETERMINATION

No

INFORMATION REQUESTED ON THE ELIGIBILITY FORM/OTHER FACTORS CONSIDERED

Information requested on the eligibility form: Personal income, income of others residing with the defendant, liquid and non-liquid assets, real and personal property (including automobile and home), number of dependents, support payments, name of any friends or relatives who could be of financial assistance to the defendant, if defendant or others in the household are receiving any public assistance and amount, monthly expenses and amount of bail paid and who paid the bail.

HOW IS BAIL TREATED IN THE ELIGIBILITY PROCESS

If the defendant posted the bail, then it is considered an asset. Otherwise, it is not considered.

PARTIAL PAYMENT/CONTRIBUTION (722 D)

No partial payment/contribution provision.

RECOUPMENT/REPAYMENT

No. Defendants are not informed that they may be responsible to repay all or part of the cost of their representation in the event that they become able to pay after representation.

PARENTAL CONSIDERATION

AGE OF MINOR

21 and younger

INCOME OF PARENTS CONSIDERED

Yes

MINORS PROVIDED REPRESENTATION WHEN PARENTS ARE DETERMINED TO BE ABLE TO PAY BUT REFUSE

Yes

PARENTAL COST RECOVERY

No

SIGN AFFIDAVIT

Yes

**DEFENDANTS REQUIRED TO SIGN ANY
WAIVERS IN THE COURSE OF THE
ELIGIBILITY DETERMINATION**

According to the survey, no. However, the following appears on the eligibility form: "Do you authorize the Court or the Public Defender to make any inquiries or investigations concerning the answers by you in this Affidavit?"

STATEMENT OF CONFIDENTIALITY

According to the survey, yes. However, a review of the eligibility form reveals that no statement of confidentiality is present on the form.

**NEW YORK STATE DEFENDERS ASSOCIATION
CHIEF DEFENDER SURVEY:
ELIGIBILITY FOR THE APPOINTMENT OF COUNSEL**

**NEW YORK STATE DEFENDERS ASSOCIATION
CHIEF DEFENDER SURVEY:
ELIGIBILITY FOR THE APPOINTMENT OF COUNSEL**

Name and Position of Person Completing Survey _____

Name of Public Defense Program (Public Defender,
Legal Aid or Assigned Counsel) _____

PROCESS FOR DETERMINING ELIGIBILITY

Please describe the process in your county for determining whether a person is eligible for appointed counsel (e.g., who initially appoints counsel; when and by whom is the financial form completed, etc.).

PERSONS DETERMINED INELIGIBLE FOR APPOINTED COUNSEL

To the best of your knowledge, what is the annual percentage of people who seek appointed counsel but are determined to be ineligible?

____ Percent determined **ineligible** for appointed counsel

When a person is denied appointed counsel, is there a review process?

__ Yes __ No

If yes, please describe the review process. _____

PLEASE ANSWER QUESTIONS ON REVERSE SIDE

CONFIDENTIALITY OF ELIGIBILITY INFORMATION

Is there a statement on the financial eligibility form that the information is confidential?

Yes No No financial eligibility form used

If the form does not include a statement concerning confidentiality, is it the practice of the county or the public defense office to try to keep the information confidential?

Yes No

Comments: _____

Does the client sign a sworn statement attesting to the truthfulness of the eligibility information?

Yes No

NOTE: If an eligibility form is used, please attach a copy to the completed survey

INCOME GUIDELINES

Are income guidelines used in the eligibility determination?

Yes No

If yes, what are the guidelines and what are they based on? _____

Are the income guidelines updated annually?

Yes No

If no, when was the last time the guidelines were updated and when do you next expect the guidelines to be updated?

_____ Income guidelines last updated
_____ Expect income guidelines to be updated

NOTE: If you have a schedule of the guidelines, please attach a copy to the completed survey

OTHER GUIDELINES CONSIDERED

Are eligibility determinations based solely on whether the person's income exceeds the income guidelines?

Yes No

If no, please indicate what factors are considered when determining whether a person is eligible for public defense services _____

How is bail treated in the eligibility determination? _____

WAIVER

Is the person, as part of the eligibility determination, required to sign any waivers?

Yes No

If yes, what waivers? _____

CONSIDERATION OF PARENTAL INCOME

For the purpose of eligibility determinations, what age is a person considered a minor?

21 and younger 18 and younger

If the defendant is a minor, is the parent's ability to pay for their minor's legal services considered in determining whether the minor is eligible for appointed counsel?

Yes No

If yes, are minors provided representation in cases where parents have been determined to be financially able to pay for their minor's representation but refuse to pay?

Yes No

PLEASE ANSWER QUESTIONS ON REVERSE SIDE

If yes, does the public defense program and/or county try and recover the cost of providing representation to minors from parents?

Yes No

If yes, please describe the process for recovering money from parents. _____

Average amount of money collected annually from parents \$ _____

PARTIAL PAYMENT/CONTRIBUTION (722 D)

Is appointed counsel provided to people who are able to contribute toward the cost of their representation?

Yes No

If yes, please describe the process for collecting the money that the defendant can contribute (e.g., who collects the money--the county or the public defense provider; is the court involved; at what point in the representation is the money collected, etc.). _____

Average amount of money collected annually from partial payment/contribution \$ _____

RECOUPMENT/REPAYMENT FROM DEFENDANTS

Are defendants informed that they may be responsible to repay all or part of the cost of their representation in the event they become able to pay after representation?

Yes No

If yes, please describe the process for seeking repayment. _____

Average amount of money recouped annually \$ _____

Does the amount of money collected from parents of minors and/or client contributions and/or recoupment offset the cost associated with collecting these monies?

Yes No

Comments: _____

OTHER MEASURES USED TO OFFSET THE COST OF PUBLIC DEFENSE SERVICES

Please describe any other measures used by your public defense program and/or county to offset the cost of public defense services. _____

THANK YOU!