

Options for Statewide Indigency Screening Model

The Committee asks the Commission on Indigent Defense to provide details about a statewide indigency screening process including outcomes sought and options available. The agency provides the response below in its September 7, 2018 letter to the Committee.¹

Issue(s) a statewide indigency screening process seeks to address/remedy;

Issue(s) a statewide process seeks to address/remedy are (1) setting a uniform standard of what qualifies a person to be indigent; (2) establishing one specific entity to conduct the screening in a neutral but fair manner; (3) establishing a process for the determination of indigency – similar to the standard of determining child support obligation regardless of where a person is located in the state; (4) establishing a process that provides for a verification aspect of the provided information to assure that only those that are truly indigent are receiving appointed counsel;

Outcome sought from addressing the issue(s);

It is hoped that by addressing these issues, South Carolina can have (1) a screening process that will be centralized in each county and consistent throughout the state; (2) a screening process that will be fair and impartial and not deter those in need of counsel from applying to have counsel appointed, if they qualify; (3) a screening process that will deter those wanting to abuse the system, intentionally and unintentionally, by not providing accurate information regarding their ability to employ counsel; and (4) a process that will ensure that indigent defense services are provided in appropriate cases in a timely manner.

Options considered in order of preference, including a list of the pros and cons for each which the agency explained during the August 14, 2018 subcommittee meeting;

The agency, with input from other stakeholders, has looked at a couple of options regarding a screening process. These options focused on two things: (1) what entity should conduct the screening and (2) what process should the screener use to determine indigency. The options considered for the entity to conduct, in order of preference, are in Tables 1 through 5.

Table 1. Greenville Model.

Greenville Model	
Pros <ul style="list-style-type: none"> ❖ Independence <ul style="list-style-type: none"> ○ Not elected officials ○ Not affected by increase or decrease of caseloads ○ Solely dedicated to the task (screening) 	Cons <ul style="list-style-type: none"> ❖ Cost State-wide – Approximately \$2.6 million+ ❖ Questions of State or County Funding

Table 2. Clerk of Court Model.

Clerk of Court	
Pros <ul style="list-style-type: none"> ❖ Maintains Court Records ❖ Set up to take payments (Application Fee) ❖ Ease of access ❖ Clerk has access to Public Records (County) 	Cons <ul style="list-style-type: none"> ❖ Not set up for jail screenings ❖ Potential shortage of personnel ❖ Elected Official (Lack of Independence)

Table 3. Magistrate Model.

Magistrate	
Pros <ul style="list-style-type: none"> ❖ Speed of appointment (1st contact with judicial system) ❖ Helps reduce jail population ❖ Quicker case resolution due to earlier appointment of counsel 	Cons <ul style="list-style-type: none"> ❖ Potential lack of personnel ❖ Lack of appropriate screening data ❖ Potentially slows down Bond Process

Table 4. Department of Probation, Pardon and Parole Services Model.

Department of Probation, Pardon and Parole Services*	
Pros <ul style="list-style-type: none"> ❖ Independence ❖ Office located in each county ❖ Potential access to screening data 	Cons <ul style="list-style-type: none"> ❖ No experience with pre-trial matters ❖ Cost – \$10 million annually ❖ Slows down application review process

Table 5. Public Defender Office Model

Public Defender Offices*	
Pros <ul style="list-style-type: none"> ❖ Speed of appointment of counsel 	Cons <ul style="list-style-type: none"> ❖ Potential Conflict of Interest (Damage to attorney client relationship) ❖ Bias – (Public Defenders have been accused of both, accepting to many clients and also not accepting enough of clients) ❖ Not set up to accept payments ❖ Lack of appropriate screening data

Table Note: An asterisks (*) indicates the model is not an option preference of the agency but listed because they are stakeholders and considered as a screening entity.

The process that should be used, regardless of the screening entity, is the same. In general, an applicant will be required to submit an Affidavit/Application form with supporting documentation and a \$40 application fee. The application should be amended to provide information needed to make a determination. The supporting documents should be spelled out so that all applicants know what they must provide. The application fee will be either paid at time the application is submitted, paid during the course of the case, or paid at the conclusion of the case. Once the application is received, the screener will review the application using the following steps to determine if a person is indigent:

1. Determine the household income;
2. Determine if any presumptions of indigency apply;
3. Determine the value of the applicant's asset and if any assets are able to be liquidated; and
4. Determine if there are any exceptional circumstances that will qualify or disqualify the applicant

The process will also provide for a timely review process in the event an applicant is determined to not be indigent and wants a Circuit Court Judge to review the decision. Persons that are incarcerated for 10 or

more consecutive days will be presumed indigent and their application will be taken and approved by the Independent Screener or by the Public Defender and then forwarded to the Clerk of Court or Chief Magistrate for approval.

¹ S.C. House of Representatives, House Legislative Oversight Committee, "Letter from SCCID to Oversight Subcommittee with attachments (Sept. 7, 2018), Agency's Response to Oversight Subcommittee's August 17, 2018 Letter, Questions #25," under "Committee Postings and Reports," under "House Legislative Oversight Committee," under "Indigent Defense, Commission on," and under "Correspondence," [https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/IndigentDefense/Letter%20from%20SCCID%20to%20Oversight%20Subcommittee%20with%20attachments%20\(Sept.%207,%202018\).pdf](https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/IndigentDefense/Letter%20from%20SCCID%20to%20Oversight%20Subcommittee%20with%20attachments%20(Sept.%207,%202018).pdf) (accessed October 12, 2018).