



appointment

of counsel was ordered. Based upon the information provided by the court clerk, the public defender enters an appearance of counsel notice and usually requests discovery from the prosecutors.

At the next court hearing, the defendant meets with the public defender to discuss the case. If the prosecution has provided discovery, the case may be resolved immediately. If not, the case may be rescheduled for another court date or for trial.

***How long does appointment of counsel last?***

Appointment of the public defender is case specific. In other words, the public defender is appointed to work on a specific case, not for a specific person. If a person has multiple court cases, a separate appointment must be requested and ordered in each case. The public defender is required to represent the defendant in each case until the case is fully resolved and until the court allows him/her to withdraw.

***What if I want a different public defender? What if I don't like my appointed attorney?***

Generally, indigent defendants are not allowed to pick and choose who will represent them. Any concerns that

you might have about the attorney appointed to represent you should be told to the judge. The judge can then independently determine if new counsel should be appointed. The judge is required to weigh several factors to determine if a different attorney should be appointed.

***What happens if I do not qualify for Court Appointed Counsel?***

You have the right to represent yourself in court. With that right comes the responsibility for the decisions you make in defending yourself in court. You may also hire an attorney to represent you. You may ask friends and family members for recommendations or look for attorneys online or in telephone directories. The Utah State Bar also provides a referral service which will provide you with names and contact information of attorneys. ([www.utahbar.org](http://www.utahbar.org))

***What happens if I am convicted?***

If you are convicted, the prosecution is entitled to recover a recoupment fee. The recoupment fee represents the cost of appointment of counsel. At a minimum, recoupment fees are \$150.00 and may be more if there are additional costs associated with the appointment of counsel (such as appointing more than one public defender to your case). This fee is in addition to restitution to the victim and any fines or forfeiture ordered by the court. If you are found not guilty, no recoupment fee is imposed.



**Utah's Justice Courts**

*Improving the Quality of Life in Our Communities*

**Getting Legal Help:**

**Questions and Answers about Court Appointed Counsel**

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### ***Do I need an attorney?***

The constitutions of the United States of America and the State of Utah guarantee both the right to be represented by an attorney and the right to self-representation. Whether you choose to obtain the services of an attorney is a choice you will have to make for yourself. You should consider the nature of the charges against you, the existence of possible legal defenses, the potential cost of obtaining an attorney (if one is not appointed to you) and the strength of the evidence for and against you. An attorney may be better able to help you consider these factors. Keep in mind that the government will be represented by an attorney who is familiar with the law and the rules governing criminal cases. Unless you are familiar with these laws and rules, you may be at a disadvantage.

### ***Why do we appoint lawyers to represent criminal defendants?***

The right to be represented in court by an independent, effective lawyer goes back to the founding of our nation. It is a humane provision in the law to ensure, to the best of our ability, that innocent people are not wrongfully convicted of a crime. Public defenders are appointed to ensure that there is "equal justice for all" regardless of a person's ability to afford a lawyer.

The Utah Supreme Court has held that a person's "right to have the assistance of counsel in a criminal trial is a fundamental constitutional right which must

be jealously protected by the trial court."

### ***How does a person request a public defender?***

A person may request appointment of a public defender at any stage of the proceedings. If a person is charged with a Class A misdemeanor or felony, an affidavit of indigency must be filed with the court. Tell the judge that you would like to have an attorney appointed in your case.

### ***How does a person qualify for appointment of a public defender?***

First, the person must be charged with an offense for which a jail term can be imposed. In Utah, a person may be incarcerated for any class of misdemeanor or felony. If a person



is charged with a misdemeanor or felony and the court does not appoint an attorney to a qualified individual on demand, it may not impose any

term of incarceration as a part of its sentence, even if the jail time is suspended.

Second, the court must determine if the person is indigent. To determine that a person is indigent, the court must find out if the person has sufficient income, assets, credit or other means to hire an attorney without depriving that person or the family of that person of food, shelter, clothing, and other necessities. A person is presumed to lack sufficient income if they earn less than 150% of the federal poverty guidelines set forth by the U.S. Department of Health and Human Services. The court may also consider factors such as the recent transfer or disposition of assets and the volun-

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tary nature of a person's unemployment or under-employment.

In addition, the court must take into consideration:

- the probable expense and burden of defending the case;
- the ownership of, or any interest in, any tangible or intangible personal property or real property, or reasonable expectancy of any such interest;
- the amounts of debts owned by the defendant or that might reasonably be incurred by the defendant because of illness or other needs within the defendant's family;
- number, ages, and relationships of any dependents; and
- other relevant factors.

Lastly, if the person is charged with a misdemeanor or felony and the court determines that the person is indigent, the court must appoint counsel upon request.

### ***What happens once a public defender is appointed?***

You will be given a new court date to meet with the public defender. The court clerk notifies the prosecutor and the appointed public defender that an

