

OPINION NO. 90-088**Syllabus:**

1. For purposes of R.C. 2925.03(L), the term "indigent" encompasses individuals who are poor, needy, destitute, or in poverty.
2. The criteria for determining, under R.C. 2925.03(L), whether an individual is indigent, include the ready availability of real or personal property owned; employment benefits; pensions; annuities; social security; unemployment compensation; inheritances; number and age of dependents; outstanding debts, obligations and liabilities; and any other relevant considerations concerning the financial condition of an individual.

To: Dennis Watkins, Trumbull County Prosecuting Attorney, Warren, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, November 14, 1990

I have before me your request for my opinion regarding the language of R.C. 2925.03(L). Specifically, you wish to know "[w]hat constitutes indigency as it pertains to Ohio Revised Code Section 2925.03(L) and what criteria can be applied to determine that indigency."

R.C. 2925.03, in general, concerns drug trafficking offenses. The section sets out the elements for various drug trafficking offenses and the penalties which attach to those offenses. In addition, division (H) of R.C. 2925.03 requires a sentencing court to impose a mandatory fine upon an individual convicted of a drug trafficking offense enumerated in R.C. 2925.03. However,

[n]o court shall impose a mandatory fine pursuant to division (H) of this section upon an offender who alleges, in an affidavit filed with the court prior to his sentencing, that he is indigent and is unable to pay any mandatory fine imposed pursuant to that division, if the court determines that the offender is an indigent person and is unable to pay the fine.

R.C. 2925.03(L).¹ Consequently, if a court determines that an individual is an indigent person and is unable to pay a mandatory fine imposed, pursuant to R.C. 2925.03(H), the court shall not impose the mandatory fine. *See State v. Cravens*, 42 Ohio App. 3d 69, 536 N.E.2d 686 (Hamilton County 1988).

I turn now to your specific question. There is no statutory definition for the term "indigent." "Where the General Assembly has not provided or attached a specific meaning to a term, the common or plain meaning of the term is used." 1989 Op. Att'y Gen. No. 89-091 at 2-434; *see also* R.C. 1.42; *State v. Dorso*, 4 Ohio St. 3d 60, 62, 446 N.E.2d 449, 451 (1983) ("any term left undefined by statute is to be accorded its common, everyday meaning"); *Eastman v. State*, 131 Ohio St. 1, 1 N.E.2d 140 (1936) (syllabus, paragraph five) ("[w]ords in common use will be construed in their ordinary acceptation and significance and with the meaning commonly attributed to them"), *appeal dismissed mem. for the want of a final judgment*, 299 U.S. 505 (1936).

The term "indigent," as defined in *Webster's New World Dictionary* 716 (2d college ed. 1978), means "in poverty; poor; needy; destitute." *See Black's Law Dictionary* 773 (6th ed. 1990) ("one who is needy and poor, or one who has not sufficient property to furnish him a living nor anyone able to support him to whom he is entitled to look for support"); *Webster's Third New International Dictionary* 1151 (3rd ed. 1971) ("being in a condition of indigence: being poor [usually] without being destitute: impoverished, needy"). The term "indigent," thus, is construed in modern parlance as encompassing individuals who are poor, needy, destitute, or in poverty. *See generally State v. Wood*, 7 Ohio App. 3d 81, 82, 454 N.E.2d 554, 556 (Franklin County 1982) ("under our modern understanding, indigency does not mean destitute. A person may have limited resources and still be considered indigent under our modern understanding of the term"); *Risner v. State ex rel. Martin*, 55 Ohio App. 151, 9 N.E.2d 151 (Hancock County 1936) (for purposes of G.C. 2555,²

¹ Language similar to that contained in R.C. 2925.03(L), has been enacted recently in R.C. 2925.02, R.C. 2925.11-14, R.C. 2925.22-23, R.C. 2925.31-32, and R.C. 2925.36-37. Am. Sub. S.B. 258, 118th Gen. A. (1990) (eff. Nov. 20, 1990).

² G.C. 2555 was recodified at R.C. 337.29. *See* 1953-1954 Ohio Laws 7 (Am. H.B. 1, eff. Oct. 1, 1953). R.C. 337.29 was repealed, subsequently, by 1956-1957 Ohio Laws 999 (Am. Sub. H.B. 926, eff. Sept. 14, 1957). In its stead, the General Assembly enacted the analogous provisions of R.C. 5155.29. *Id.*

which concerned the transportation of poor or indigent persons into the State of Ohio, the phrase poor or indigent person is limited to persons who are entirely destitute, helpless, and dependent on public charity or actually receiving public aid); *Edgeter v. Kemper*, 73 Ohio Law Abs. 297, 303, 136 N.E.2d 630, 635 (P. Ct. Montgomery County 1955) (in construing whether a trust was charitable or private, the court adopted the definition of "indigent" set forth in *Webster's New International Dictionary* 1266 (2d ed. 1934), which read: "1. Wanting; lacking; also, void; free; destitute. 2. Destitute of property or means of comfortable subsistence; needy; poor; in want; necessitous"). In accordance with the foregoing, I find that, for purposes of R.C. 2925.03(L), the term "indigent" encompasses individuals who are poor, needy, destitute, or in poverty.

With respect to the second portion of your question, I note that R.C. 2925.03(L) does not set forth any criteria for determining whether an individual is indigent. In addition, there is a marked paucity of Ohio law concerning the criteria to be applied in determining whether an individual is indigent. *But see generally* 1 Ohio Admin. Code 120-1-03 (setting forth standards of indigency to be used by the public defender's office in determining whether to provide an individual with legal representation); Ohio R. Juv. P. 2(12) (defining "indigent person," for purposes of the Ohio Rules of Juvenile Procedure, as "a person who, at the time his need is determined, is unable by reason of lack of property or income to provide for full payment of legal counsel and all other necessary expenses of representation").

Respectable authorities from various other jurisdictions, however, have determined that it is impossible to lay down specific and intricate rules defining standards of indigency.³ *People v. Chism*, 17 Mich. App. 196, 199-200, 169 N.W.2d 192, 194 (1969); *People v. Rocha*, 13 Mich. App. 596, 597, 164 N.W.2d 680, 681 (1968) (per curiam); *State v. Lande*, 180 Mont. 157, 164, 589 P.2d 666, 669 (1979); *State ex rel. Partain v. Oakley*, 159 W. Va. 805, 810, 227 S.E.2d 314, 317 (1976). Instead, courts have determined that it is more pragmatic and preferable to determine an individual's indigency on a case by case basis. *See People v. Chism*, 17 Mich. App. at 199-200, 169 N.W.2d at 194; *People v. Rocha*, 13 Mich. App. at 597, 164 N.W.2d at 681; *see also Hardy v. U.S.*, 375 U.S. 277, 289 n.7 (1964) (Goldberg, J., concurring) (indigence is a relative concept); *Minniefield v. State*, 47 Ala. App. 699, 705, 260 So. 2d 607, 613 (Crim. App. 1972) (a trial court's determination of indigency should be based on a thorough and wide ranging examination of the facts); *Morgan v. Rhay*, 78 Wash. 2d 116, 119, 470 P.2d 180, 182 (1970) (per curiam) ("[i]ndigence is a relative term, and must be considered and measured in each case by reference to the need or service to be met or furnished"). *See generally State v. Tymcio*, 42 Ohio St. 2d 39, 43-44, 325 N.E.2d 556, 560 (1975) ("a rigid requirement would be arguable if indigency were judicially definable as an abstract term without regard to the circumstances of the particular case, and if indigency, as so defined, were the only actual fact bearing on the inability to obtain counsel in this and other cases"), *appeal dismissed mem. for want of jurisdiction*, 423 U.S. 993 (1975). Courts, in conjunction with the foregoing, have set forth broad criteria for determining whether an individual is indigent. *See generally* W. LaFave & J. Israel, *Criminal Procedure* § 11.2(e) (1984); Annotation, *Determination of Indigency of Accused Entitling Him to Transcript or Similar Record for Purposes of Appeal*, 66 A.L.R. 3d 954 (1975); Annotation, *Determination of Indigency of Accused Entitling Him to Appointment of Counsel*, 51 A.L.R. 3d 1108 (1973). These criteria include the ready availability of real or personal property owned; employment benefits; pensions; annuities; social security; unemployment compensation; inheritances; number and age of dependents; outstanding debts, obligations and liabilities; and any other considerations concerning the financial condition of an individual. *See, e.g., Bramlett v. Peterson*, 307 F. Supp. 1311, 1323-24 (M.D. Fla. 1969); *In re Smiley*, 66 Cal. 2d 606, 619-20, 427 P.2d 179, 187 (1967); *Williams v. Superior Ct. of County of Stanislaus*, 226 Cal.

³ I note that the majority of criminal cases which have tried to determine whether an individual is indigent concern an individual's attempt to secure court appointed counsel or a free transcript or similar record for purposes of appeal.

App. 2d 666, 672, 38 Cal. Rptr. 291, 294 (Dist. Ct. App. 1964); *Quinlivan v. State*, 94 Idaho 334, 335, 487 P.2d 928, 929 (1971); *Bolds v. Bennett*, 159 N.W.2d 425, 428 (Iowa 1968); *Morgan v. Rhay*, 78 Wash. 2d at 119-20, 470 P.2d at 182-83; *State v. Rutherford*, 63 Wash. 2d 949, 954, 389 P.2d 895, 899 (1964), *appeal dismissed mem. for want of jurisdiction*, 384 U.S. 267 (1966); cf. 1 Ohio Admin. Code 120-1-03(A)(1) (in determining whether to provide an individual with legal representation, the following criteria shall be used to determine an individual's financial eligibility: "The amount of income, household expenses, assets, liabilities, ability to borrow and insolvency").

A gleaning of the aforementioned authorities clearly reveals that there are no set criteria for determining whether an individual is indigent. Rather, the preferred approach is to determine indigency on a case by case basis so as to accord attention to any and all factors tending to indicate an individual's financial condition.

Since no two individuals' financial affairs are similar, I am in full agreement with the aforementioned authorities' determination that any criteria concerning an individual's financial condition should be utilized to determine whether that individual is indigent. Hence, I find that the criteria for determining, under R.C. 2925.03(L), whether an individual is indigent, include the ready availability of real or personal property owned; employment benefits; pensions; annuities; social security; unemployment compensation; inheritances; number and age of dependents; outstanding debts, obligations and liabilities; and any other relevant considerations concerning the financial condition of an individual.

Therefore, it is my opinion and you are hereby advised that:

1. For purposes of R.C. 2925.03(L), the term "indigent" encompasses individuals who are poor, needy, destitute, or in poverty.
2. The criteria for determining, under R.C. 2925.03(L), whether an individual is indigent, include the ready availability of real or personal property owned; employment benefits; pensions; annuities; social security; unemployment compensation; inheritances; number and age of dependents; outstanding debts, obligations and liabilities; and any other relevant considerations concerning the financial condition of an individual.