



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2009 Wisconsin Act 164
[2009 Senate Bill 263]

**Representation by the State Public
Defender**

2009 Wisconsin Act 164 relates to the criteria for determining indigency for purposes of representation by the State Public Defender.

Prior to Act 164, the entity making a determination of indigency for purposes of representation by the State Public Defender was required to ascertain the assets of the alleged indigent person that exceeded the amount needed for the payment of reasonable and necessary expenses incurred, or which were to be incurred to support the person and the person's immediate family. Reasonable and necessary living expenses were required to equal the applicable payment under the program known as Aid to Families with Dependent Children. Also, a court could make its own determination on the ability to afford counsel. If the court found that a person could not afford counsel and that the State Public Defender could not represent the person, the court would appoint counsel at county expense.

Act 164 provides that the State Public Defender, in accordance with its prior authority to promulgate rules regarding the determination of indigency, must specify in its rules that the representative of the State Public Defender must do all of the following:

1. Consider the anticipated costs of effective representation for the type of case in which the person seeks representation.
2. Generally consider assets in accordance with eligibility requirements under the Wisconsin Works program. Assets will be treated as available to a person to pay the costs of legal representation if the assets of the person as a member of a Wisconsin Works group does not exceed \$2,500 in combined equity value. Further, the representative of the State Public Defender must exclude only the first \$30,000 of the equity value of the home that serves as the individual's homestead.
3. Generally treat income as available to the person to pay the cost of legal representation only if the income exceeds the income limitations for the Wisconsin Works program.

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.state.wi.us/>.

4. Treat assets or income of the person's spouse as the person's assets or income, unless the spouse was the victim of a crime the person allegedly committed.

Act 164 also increases the authorized full-term employment positions for the Public Defender Board by 45.4 general program revenue positions on June 19, 2011.

Effective date: The Act generally takes effect on June 19, 2011. The portion of the Act expanding the rule-making functions of the State Public Defender Board took effect on March 30, 2010.

Prepared by: Ronald Sklansky, Senior Staff Attorney

April 27, 2010

RS:jal