



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-1220/1
EAW:amn

2017 ASSEMBLY BILL 23

January 12, 2017 - Introduced by Representative OTT, by request of State Public Defender. Referred to Committee on Judiciary.

1 **AN ACT to amend** 809.30 (2) (d), 977.02 (3) (intro.), 977.05 (4) (gm), 977.05 (4) (h),
2 977.06 (2) (a), 977.06 (2) (am), 977.07 (1) (a) and 977.07 (1) (c) of the statutes;
3 **relating to:** the determination of indigency prior to the state public defender
4 appointing an attorney to represent a parent in a proceeding under chapters 48
5 and 938 (suggested as remedial legislation by the State Public Defender).

Analysis by the Legislative Reference Bureau

Under current law, the state public defender is required to appoint counsel to a person entitled to representation under the Children's Code or the Juvenile Justice Code without first determining whether the person is indigent and therefore eligible for such an appointment. Under current law, indigency can be determined in these cases after the eligible person is appointed an attorney. This bill specifies that a determination of indigency is not required before the state public defender may appoint an attorney to represent a child in a proceeding under the Children's Code or the Juvenile Justice Code.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

ASSEMBLY BILL 23**SECTION 1**

1 **SECTION 1.** 809.30 (2) (d) of the statutes is amended to read:

2 809.30 **(2)** (d) *Indigency redetermination.* Except as provided in this
3 paragraph, whenever a person whose trial counsel is appointed by the state public
4 defender files a notice under par. (b) requesting public defender representation for
5 purposes of postconviction or postdisposition relief, the prosecutor may, within 5
6 days after the notice is served and filed, file in the circuit court and serve upon the
7 state public defender a request that the person's indigency be redetermined before
8 counsel is appointed or transcripts are requested. This paragraph does not apply to
9 a child who is entitled to be represented by counsel under s. 48.23 or 938.23 or a
10 person who is entitled to be represented by counsel under s. 48.23, 51.60 (1), or
11 55.105, or 938.23.

12 **SECTION 2.** 977.02 (3) (intro.) of the statutes is amended to read:

13 977.02 **(3)** (intro.) Promulgate rules regarding the determination of indigency
14 of persons entitled to be represented by counsel, other than children who are entitled
15 to be represented by counsel under s. 48.23 or 938.23 or persons who are entitled to
16 be represented by counsel under s. 48.23, 51.60, or 55.105, or 938.23, including the
17 time period in which the determination must be made and the criteria to be used to
18 determine indigency and partial indigency. The rules shall specify that, in
19 determining indigency, the representative of the state public defender shall do all of
20 the following:

21 **SECTION 3.** 977.05 (4) (gm) of the statutes is amended to read:

22 977.05 **(4)** (gm) In accordance with the standards under pars. (h) and (i), accept
23 referrals from judges and courts for the provision of legal services without a
24 determination of indigency of children who are entitled to be represented by counsel
25 under s. 48.23 or 938.23 or persons who are entitled to be represented by counsel

ASSEMBLY BILL 23

1 under s. ~~48.23~~, 51.60, or 55.105, ~~or 938.23~~, appoint counsel in accordance with
2 contracts and policies of the board, and inform the referring judge or court of the
3 name and address of the specific attorney who has been assigned to the case.

4 **SECTION 4.** 977.05 (4) (h) of the statutes is amended to read:

5 977.05 (4) (h) Accept requests for legal services from children who are entitled
6 to be represented by counsel under s. 48.23 or 938.23 or persons who are entitled to
7 be represented by counsel under s. ~~48.23~~, 51.60, or 55.105, ~~or 938.23~~ and from
8 indigent persons who are entitled to be represented by counsel under s. 967.06 or who
9 are otherwise so entitled under the constitution or laws of the United States or this
10 state and provide such persons with legal services when, in the discretion of the state
11 public defender, such provision of legal services is appropriate.

12 **SECTION 5.** 977.06 (2) (a) of the statutes is amended to read:

13 977.06 (2) (a) A person seeking to have counsel assigned for him or her under
14 s. 977.08, other than a child who is entitled to be represented by counsel under s.
15 48.23 or 938.23 or a person who is entitled to be represented by counsel under s.
16 ~~48.23~~, 51.60, or 55.105, ~~or 938.23~~, shall sign a statement declaring that he or she has
17 not disposed of any assets for the purpose of qualifying for that assignment of
18 counsel. If the representative or authority making the indigency determination
19 finds that any asset was disposed of for less than its fair market value for the purpose
20 of obtaining that assignment of counsel, the asset shall be counted under rules
21 promulgated under s. 977.02 (3) at its fair market value at the time it was disposed
22 of, minus the amount of compensation received for the asset.

23 **SECTION 6.** 977.06 (2) (am) of the statutes is amended to read:

24 977.06 (2) (am) A person seeking to have counsel assigned for him or her under
25 s. 977.08, other than a child who is entitled to be represented by counsel under s.

ASSEMBLY BILL 23**SECTION 6**

1 48.23 or 938.23 or a person who is entitled to be represented by counsel under s.
2 ~~48.23~~, 51.60, or 55.105, ~~or 938.23~~, shall sign a statement declaring that the
3 information that he or she has given to determine eligibility for assignment of
4 counsel he or she believes to be true and that he or she is informed that he or she is
5 subject to the penalty under par. (b).

6 **SECTION 7.** 977.07 (1) (a) of the statutes is amended to read:

7 977.07 (1) (a) Determination of indigency for persons entitled to counsel shall
8 be made as soon as possible and shall be in accordance with the rules promulgated
9 by the board under s. 977.02 (3) and the system established under s. 977.06. No
10 determination of indigency is required for a child who is entitled to be represented
11 by counsel under s. 48.23 or 938.23 or a person who is entitled to be represented by
12 counsel under s. ~~48.23~~, 51.60, or 55.105, ~~or 938.23~~.

13 **SECTION 8.** 977.07 (1) (c) of the statutes is amended to read:

14 977.07 (1) (c) For all referrals made under ss. 809.107, 809.30, 974.06 (3) (b)
15 and 974.07 (11), except a referral of a child who is entitled to be represented by
16 counsel under s. 48.23 or 938.23 or a person who is entitled to be represented by
17 counsel under s. ~~48.23~~, 51.60, or 55.105, ~~or 938.23~~, a representative of the state public
18 defender shall determine indigency. For referrals made under ss. 809.107, 809.30
19 and 974.06 (3) (b), except a referral of a child who is entitled to be represented by
20 counsel under s. 48.23 or 938.23 or a person who is entitled to be represented by
21 counsel under s. ~~48.23~~, 51.60, or 55.105, ~~or 938.23~~, the representative of the state
22 public defender may, unless a request for redetermination has been filed under s.
23 809.30 (2) (d) or the person's request for representation states that his or her

ASSEMBLY BILL 23

1 financial circumstances have materially improved, rely upon a determination of
2 indigency made for purposes of trial representation under this section.

3 (END)