



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-5092/1
MLJ&EAW:emw

2017 ASSEMBLY BILL 839

January 16, 2018 - Introduced by LAW REVISION COMMITTEE. Referred to Committee on Rules.

1 **AN ACT to amend** 809.30 (2) (d), 885.10, 938.32 (5) (title), 977.02 (3) (intro.),
2 977.05 (4) (g), 977.05 (4) (gm), 977.05 (4) (h), 977.06 (1) (d), 977.06 (2) (a), 977.06
3 (2) (am), 977.07 (1) (a), 977.07 (1) (c) and 977.07 (2m) of the statutes; **relating**
4 **to:** the determination of indigency prior to the state public defender appointing
5 an attorney to represent a parent in a proceeding under chapters 48 and 938,
6 the description of defendant indigency for public defender fees, and recusal
7 from juvenile justice proceedings (suggested as remedial legislation by the
8 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.

The bill also amends the statutes that describe the procedure for collecting attorney fees for defendants who have been determined to be indigent. It removes

ASSEMBLY BILL 839

the words “in part” from the description of indigency because defendants can be found to be only indigent or not indigent, they cannot be found to be indigent “in part.”

In addition, the bill amends the title of a statutory section that addresses when a judge must recuse himself or herself from further juvenile justice proceedings from “refusal” to “recusal,” which is a more accurate legal description of the process.

For further information, see the NOTES provided by the Law Revision Committee of the Joint Legislative Council.

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:

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the State Public Defender and introduced by the Law Revision Committee under s. 13.83 (1) (c) 4. and 5., stats. After careful consideration of the various provisions of the bill, the Law Revision Committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

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~~.

NOTE: SECTIONS 1, 4, 6, 7, 9, 10, 11, and 12 clarify that “a child,” rather than “a person,” is entitled to be represented by counsel under s. 48.23, stats., or s. 938.23, stats., without first having a determination of indigency.

12 **SECTION 2.** 885.10 of the statutes is amended to read:

ASSEMBLY BILL 839

1 **885.10 Witness for indigent respondent or defendant.** Upon satisfactory
2 proof of the financial inability of the respondent or defendant to procure the
3 attendance of witnesses for his or her defense, the judge or supplemental court
4 commissioner, in any paternity proceeding or criminal action or proceeding, or in any
5 other case in which the respondent or defendant is represented by the state public
6 defender or by assigned counsel under s. 977.08, to be tried or heard before him or
7 her, may direct the witnesses to be subpoenaed as he or she determines is proper and
8 necessary, upon the respondent's or defendant's oath or affidavit or that of the
9 respondent's or defendant's attorney. Witnesses so subpoenaed shall be paid their
10 fees in the manner that witnesses for the state therein are paid. Determination of
11 indigency, ~~in full or in part,~~ under s. 977.07 is proof of the respondent's or defendant's
12 financial inability to procure the attendance of witnesses for his or her defense.

NOTE: SECTIONS 2, 5, 8, and 13 delete references to a determination that a person is indigent "in part," as a person can only be found indigent or not indigent.

13 **SECTION 3.** 938.32 (5) (title) of the statutes is amended to read:

14 938.32 (5) (title) ~~REFUSAL~~ RECUSAL FROM SUBSEQUENT PROCEEDINGS.

NOTE: SECTION 3 amends the title of the subsection without making substantive changes to the statutory language.

15 **SECTION 4.** 977.02 (3) (intro.) of the statutes is amended to read:

16 977.02 (3) (intro.) Promulgate rules regarding the determination of indigency
17 of persons entitled to be represented by counsel, other than children who are entitled
18 to be represented by counsel under s. 48.23 or 938.23 or persons who are entitled to
19 be represented by counsel under s. ~~48.23~~, 51.60, or 55.105, ~~or 938.23~~, including the
20 time period in which the determination must be made and the criteria to be used to
21 determine indigency and partial indigency. The rules shall specify that, in

ASSEMBLY BILL 839**SECTION 4**

1 determining indigency, the representative of the state public defender shall do all of
2 the following:

3 **SECTION 5.** 977.05 (4) (g) of the statutes is amended to read:

4 977.05 (4) (g) In accordance with the standards under pars. (h) and (j), accept
5 referrals from judges, courts or appropriate state agencies for the determination of
6 indigency of persons who claim or appear to be indigent. If a referral is accepted and
7 if the person is determined to be indigent ~~in full or in part~~, the state public defender
8 shall appoint counsel in accordance with contracts and policies of the board, and
9 inform the referring judge, court or agency of the name and address of the specific
10 attorney who has been assigned to the case.

11 **SECTION 6.** 977.05 (4) (gm) of the statutes is amended to read:

12 977.05 (4) (gm) In accordance with the standards under pars. (h) and (i), accept
13 referrals from judges and courts for the provision of legal services without a
14 determination of indigency of children who are entitled to be represented by counsel
15 under s. 48.23 or 938.23 or persons who are entitled to be represented by counsel
16 under s. 48.23, 51.60, or 55.105, ~~or 938.23~~, appoint counsel in accordance with
17 contracts and policies of the board, and inform the referring judge or court of the
18 name and address of the specific attorney who has been assigned to the case.

19 **SECTION 7.** 977.05 (4) (h) of the statutes is amended to read:

20 977.05 (4) (h) Accept requests for legal services from children who are entitled
21 to be represented by counsel under s. 48.23 or 938.23 or persons who are entitled to
22 be represented by counsel under s. 48.23, 51.60, or 55.105, ~~or 938.23~~ and from
23 indigent persons who are entitled to be represented by counsel under s. 967.06 or who
24 are otherwise so entitled under the constitution or laws of the United States or this

ASSEMBLY BILL 839

1 state and provide such persons with legal services when, in the discretion of the state
2 public defender, such provision of legal services is appropriate.

3 **SECTION 8.** 977.06 (1) (d) of the statutes is amended to read:

4 977.06 (1) (d) Collect for the cost of representation from persons who are
5 indigent ~~in part~~ or who have been otherwise determined to be able to reimburse the
6 state public defender for the cost of providing counsel.

7 **SECTION 9.** 977.06 (2) (a) of the statutes is amended to read:

8 977.06 (2) (a) A person seeking to have counsel assigned for him or her under
9 s. 977.08, other than a child who is entitled to be represented by counsel under s.
10 48.23 or 938.23 or a person who is entitled to be represented by counsel under s.
11 ~~48.23, 51.60, or 55.105, or 938.23~~, shall sign a statement declaring that he or she has
12 not disposed of any assets for the purpose of qualifying for that assignment of
13 counsel. If the representative or authority making the indigency determination
14 finds that any asset was disposed of for less than its fair market value for the purpose
15 of obtaining that assignment of counsel, the asset shall be counted under rules
16 promulgated under s. 977.02 (3) at its fair market value at the time it was disposed
17 of, minus the amount of compensation received for the asset.

18 **SECTION 10.** 977.06 (2) (am) of the statutes is amended to read:

19 977.06 (2) (am) A person seeking to have counsel assigned for him or her under
20 s. 977.08, other than a child who is entitled to be represented by counsel under s.
21 48.23 or 938.23 or a person who is entitled to be represented by counsel under s.
22 ~~48.23, 51.60, or 55.105, or 938.23~~, shall sign a statement declaring that the
23 information that he or she has given to determine eligibility for assignment of
24 counsel he or she believes to be true and that he or she is informed that he or she is
25 subject to the penalty under par. (b).

ASSEMBLY BILL 839**SECTION 11**

1 **SECTION 11.** 977.07 (1) (a) of the statutes is amended to read:

2 977.07 (1) (a) Determination of indigency for persons entitled to counsel shall
3 be made as soon as possible and shall be in accordance with the rules promulgated
4 by the board under s. 977.02 (3) and the system established under s. 977.06. No
5 determination of indigency is required for a child who is entitled to be represented
6 by counsel under s. 48.23 or 938.23 or a person who is entitled to be represented by
7 counsel under s. ~~48.23~~, 51.60, or 55.105, ~~or 938.23~~.

8 **SECTION 12.** 977.07 (1) (c) of the statutes is amended to read:

9 977.07 (1) (c) For all referrals made under ss. 809.107, 809.30, 974.06 (3) (b)
10 and 974.07 (11), except a referral of a child who is entitled to be represented by
11 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~~, a representative of the state public
13 defender shall determine indigency. For referrals made under ss. 809.107, 809.30
14 and 974.06 (3) (b), except a referral of a child who is entitled to be represented by
15 counsel under s. 48.23 or 938.23 or a person who is entitled to be represented by
16 counsel under s. ~~48.23~~, 51.60, or 55.105, ~~or 938.23~~, the representative of the state
17 public defender may, unless a request for redetermination has been filed under s.
18 809.30 (2) (d) or the person's request for representation states that his or her
19 financial circumstances have materially improved, rely upon a determination of
20 indigency made for purposes of trial representation under this section.

21 **SECTION 13.** 977.07 (2m) of the statutes is amended to read:

22 977.07 (2m) If the person is found to be indigent ~~in full or in part~~, the person
23 shall be promptly informed of the state's right to payment or recoupment under s.
24 48.275 (2), 757.66, 938.275 (2), 973.06 (1) (e), or 977.076 (1), and the possibility that
25 the payment of attorney fees may be made a condition of probation, should the person

ASSEMBLY BILL 839

1 be placed on probation. Furthermore, if found to be indigent ~~in part~~, the person shall
2 be promptly informed of the extent to which he or she will be expected to pay for
3 counsel, and whether the payment shall be in the form of a lump sum payment or
4 periodic payments. The person shall be informed that the payment amount may be
5 adjusted if his or her financial circumstances change by the time of sentencing. The
6 payment and payment schedule shall be set forth in writing. This subsection does
7 not apply to persons who have paid under s. 977.075 (3m).

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(END)