



State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-4361/2  
RLR&MGD;jd:rs

## 2005 ASSEMBLY BILL 1219

May 4, 2006 - Introduced by Representatives McCORMICK, KRAWCZYK, MUSSER, STASKUNAS, VAN ROY and TURNER. Referred to Committee on Judiciary.

1       **AN ACT to repeal** 51.45 (12) (b) 2., 51.45 (16) (c), 977.07 (2) and 977.08 (2) (d); **to**  
2               **renumber and amend** 967.06, 977.02 (3) and 977.075 (1); **to consolidate,**  
3               **renumber and amend** 51.45 (12) (b) (intro.), 1. and 3.; **to amend** 20.550 (1)  
4               (f), 20.550 (1) (fb), 51.15 (9), 51.20 (3), 51.20 (18) (c), 51.35 (1) (e) 1., 51.35 (1) (e)  
5               2. c., 51.45 (12) (c) 2., 51.45 (13) (b) 2., 51.45 (13) (d), 51.45 (13) (j), 55.06 (11) (a),  
6               303.065 (5) (dm), 809.30 (2) (d), 814.69 (1) (a), 880.33 (2) (a) 2., 973.06 (1) (e),  
7               977.02 (2m), 977.05 (4) (gm), 977.05 (4) (h), 977.05 (4) (i) 4., 977.06 (1) (a), 977.06  
8               (2) (a), 977.06 (2) (am), 977.07 (1) (a), 977.07 (1) (c), 977.07 (2m), 977.075 (3),  
9               977.075 (4), 977.075 (5), 977.08 (1), 977.08 (2) (intro.) and 977.085 (3); and **to**  
10              **create** 51.60, 51.605, 55.06 (11) (bm), 55.065, 880.33 (2) (a) 4., 967.06 (2) (b),  
11              977.02 (3) (a) to (d), 977.075 (1g) and 977.075 (6) of the statutes; **relating to:**

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1 indigency determinations, provision of legal services by the State Public  
2 Defender, and requiring the exercise of rule-making authority.

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***Analysis by the Legislative Reference Bureau***

Under current law, the State Public Defender (SPD) provides counsel to represent people in various legal proceedings, including criminal proceedings that may result in imprisonment, emergency detention or involuntary civil commitment proceedings, proceedings for the protective placement of an adult, paternity determinations, and juvenile delinquency proceedings. The SPD provides counsel to children regardless of the child's income or assets, but only provides counsel to adults whom the SPD determines are indigent under rules that the SPD adopts.

Current law provides that a person is indigent for purposes of SPD representation if the person's income and assets, after deduction for reasonable and necessary living expenses, are insufficient to cover the cost of effective legal representation. Current law equates reasonable and necessary living expenses with benefit amounts under the former Aid to Families with Dependent Children program. But, in determining whether a person can afford counsel, courts are not limited by the SPD indigency criteria. If a person is the subject of a legal proceeding for which he or she has the right to appointed counsel if he or she cannot afford counsel, and the person offers proof that he or she cannot afford counsel, the court must independently review the person's circumstances. If the court finds that the person cannot afford counsel and does not meet the criteria for SPD appointment, the court must appoint private counsel and the county in which the court sits must pay the appointed counsel.

This bill changes the criteria for determining indigency for the purposes of SPD representation. Under the bill, the SPD must adopt rules regarding indigency determinations that require the SPD, when assessing a person's eligibility, to consider the anticipated costs of effective representation for the type of case in which the person is involved. The rules must also require that assets and income be treated as available to the person to pay the costs of legal representation if they exceed the asset and income ceilings for eligibility for the Wisconsin Works (W-2) program, except that the asset exclusion for a person's home is limited to \$30,000. (To be eligible for the W-2 program, a person's household assets, after excluding up to \$10,000 for a vehicle and the value of the person's home, cannot exceed \$2,500, and his or her household income cannot exceed 115 percent of the federal poverty line.) Third, under the rules, the SPD must 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 that the person allegedly committed.

In addition, the bill requires the SPD to provide legal representation to any person, regardless of whether the person is indigent, who seeks SPD representation and is the subject of an involuntary commitment proceeding for mental health or alcoholism treatment, a protective placement proceeding, or a proceeding to appoint a guardian because the person is alleged to be not competent to refuse psychotropic

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medication. The bill provides that the court may require such a person, who is an adult, to reimburse the SPD for all or part of the costs of legal representation if the person is able to make reimbursement. Finally, the bill provides the Public Defender Board with 59.5 new full-time equivalent general purpose revenue positions on July 1, 2007 (the day on which the bill's other changes become effective).

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

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

1           **SECTION 1.** 20.550 (1) (f) of the statutes is amended to read:

2           20.550 (1) (f) *Transcripts, discovery, and interpreters.* The amounts in the  
3           schedule for the costs of interpreters and discovery materials and for the  
4           compensation of court reporters or clerks of circuit court for preliminary  
5           examination, trial, and appeal transcripts, and the payment of related costs under  
6           s. 967.06 (3).

7           **SECTION 2.** 20.550 (1) (fb) of the statutes is amended to read:

8           20.550 (1) (fb) *Payments from clients; administrative costs.* The amounts in the  
9           schedule for the costs of determining, collecting and processing the payments  
10          received from persons as payment for legal representation under s. ~~977.07 (2)~~,  
11          977.075 or 977.076.

12          **SECTION 3.** 51.15 (9) of the statutes is amended to read:

13          51.15 (9) NOTICE OF RIGHTS. At the time of detention the individual shall be  
14          informed by the director of the facility or such person's designee, both orally and in  
15          writing, of his or her right to contact an attorney and a member of his or her  
16          immediate family, the right to have an attorney provided at public expense, as  
17          provided under s. ~~967.06~~ and ch. ~~977~~, if the individual is a child or is indigent, 51.60,  
18          and the right to remain silent and that the individual's statements may be used as

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1 a basis for commitment. The individual shall also be provided with a copy of the  
2 statement of emergency detention.

3 **SECTION 4.** 51.20 (3) of the statutes is amended to read:

4 51.20 (3) LEGAL COUNSEL. At the time of the filing of the petition the court shall  
5 assure that the subject individual is represented by adversary counsel. ~~If the~~  
6 ~~individual claims or appears to be indigent, the court shall refer the person to the~~  
7 ~~authority for indigency determinations specified under s. 977.07 (1). If the~~  
8 ~~individual is a child, the court shall refer that child~~ by referring the individual to the  
9 state public defender, who shall appoint counsel for the ~~child~~ individual without a  
10 determination of indigency, as provided in s. ~~48.23 (4)~~ 51.60.

11 **SECTION 5.** 51.20 (18) (c) of the statutes is amended to read:

12 51.20 (18) (c) Expenses of the proceedings from the presentation of the  
13 statement of emergency detention or petition for commitment to the conclusion of the  
14 proceeding shall be allowed by the court and paid by the county from which the  
15 subject individual is detained, committed, or released, in the manner that the  
16 expenses of a criminal prosecution are paid, as provided in s. 59.64 (1). ~~Payment of~~  
17 ~~attorney fees for appointed attorneys in the case of children and indigents shall be~~  
18 ~~in accordance with ch. 977.~~

19 **SECTION 6.** 51.35 (1) (e) 1. of the statutes is amended to read:

20 51.35 (1) (e) 1. Whenever any transfer between different treatment facilities  
21 results in a greater restriction of personal freedom for the patient and whenever the  
22 patient is transferred from outpatient to inpatient status, the department or the  
23 county department specified under par. (a) shall inform the patient both orally and  
24 in writing of his or her right to contact an attorney and a member of his or her  
25 immediate family, the right to have counsel provided at public expense, as provided

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1 under s. ~~967.06 and ch. 977, if the patient is a child or is indigent~~ 51.60, and the right  
2 to petition a court in the county in which the patient is located or the committing  
3 court for a review of the transfer.

4 **SECTION 7.** 51.35 (1) (e) 2. c. of the statutes is amended to read:

5 51.35 (1) (e) 2. c. The patient's right to have counsel provided at public expense,  
6 as provided under s. ~~967.06 and ch. 977, if the patient is a child or is indigent~~ 51.60.

7 **SECTION 8.** 51.45 (12) (b) (intro.), 1. and 3. of the statutes are consolidated,  
8 renumbered 51.45 (12) (b) and amended to read:

9 51.45 (12) (b) The physician, spouse, guardian, or a relative of the person  
10 sought to be committed, or any other responsible person, may petition a circuit court  
11 commissioner or the circuit court of the county in which the person sought to be  
12 committed resides or is present for commitment under this subsection. The petition  
13 shall: ~~1. State state facts to support the need for emergency treatment; 3. Be and~~  
14 be supported by one or more affidavits ~~which that~~ aver with particularity the factual  
15 basis for the allegations contained in the petition.

16 **SECTION 9.** 51.45 (12) (b) 2. of the statutes is repealed.

17 **SECTION 10.** 51.45 (12) (c) 2. of the statutes is amended to read:

18 51.45 (12) (c) 2. Assure that the person sought to be committed is represented  
19 by counsel and, ~~if the person claims or appears to be indigent, refer the person to the~~  
20 ~~authority for indigency determinations specified under s. 977.07 (1) or, if the person~~  
21 ~~is a child, refer that child~~ by referring the person to the state public defender, who  
22 shall appoint counsel for the ~~child~~ person without a determination of indigency, as  
23 provided in s. ~~48.23 (4)~~ 51.60.

24 **SECTION 11.** 51.45 (13) (b) 2. of the statutes is amended to read:

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1           51.45 (13) (b) 2. Assure that the person is represented by counsel and, if the  
2           ~~person claims or appears to be indigent, refer the person to the authority for~~  
3           ~~indigency determinations specified under s. 977.07 (1) or, if the person is a child, refer~~  
4           ~~that child~~ by referring the person to the state public defender, who shall appoint  
5           counsel for the ~~child~~ person without a determination of indigency, as provided in s.  
6           ~~48.23 (4)~~ 51.60. The person shall be represented by counsel at the preliminary  
7           hearing under par. (d). The person may, with the approval of the court, waive his or  
8           her right to representation by counsel at the full hearing under par. (f).

9           **SECTION 12.** 51.45 (13) (d) of the statutes is amended to read:

10           51.45 (13) (d) Whenever it is desired to involuntarily commit a person, a  
11           preliminary hearing shall be held under this paragraph. The purpose of the  
12           preliminary hearing shall be to determine if there is probable cause for believing that  
13           the allegations of the petition under par. (a) are true. The court shall assure that the  
14           ~~person shall be~~ is represented by counsel at the preliminary hearing and, if the  
15           ~~person is a child or is indigent, by appointing~~ counsel shall timely be appointed at  
16           ~~public expense, as provided in s. 967.06 and ch. 977 for him or her under s. 51.60.~~  
17           Counsel shall have access to all reports and records, psychiatric and otherwise,  
18           which have been made prior to the preliminary hearing. The person shall be present  
19           at the preliminary hearing and shall be afforded a meaningful opportunity to be  
20           heard. Upon failure to make a finding of probable cause under this paragraph, the  
21           court shall dismiss the petition and discharge the person from the custody of the  
22           county department.

23           **SECTION 13.** 51.45 (13) (j) of the statutes is amended to read:

24           51.45 (13) (j) Upon the filing of a petition for recommitment under par. (h), the  
25           court shall fix a date for a recommitment hearing within 10 days, and assure that the

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1 person sought to be recommitted is represented by counsel and, if the person is  
2 indigent, ~~appoint by appointing~~ counsel for him or her, ~~unless waived~~ under s. 51.60.  
3 The provisions of par. (e) relating to notice and to access to records, names of  
4 witnesses, and summaries of their testimony shall apply to recommitment hearings  
5 under this paragraph. At the recommitment hearing, the court shall proceed as  
6 provided under pars. (f) and (g).

7 **SECTION 14.** 51.45 (16) (c) of the statutes is repealed.

8 **SECTION 15.** 51.60 of the statutes is created to read:

9 **51.60 Appointment of counsel. (1) ADULTS.** (a) In any situation under this  
10 chapter in which an adult person has a right to be represented by counsel, the person  
11 shall be referred as soon as practicable to the state public defender, who shall appoint  
12 counsel for the person under s. 977.08 without a determination of indigency.

13 (b) Except as provided in s. 51.45 (13) (b) 2., par. (a) does not apply if the person  
14 knowingly and voluntarily waives counsel.

15 **(2) CHILDREN.** In any situation under this chapter in which a child has a right  
16 to be represented by counsel, counsel for the child shall be appointed as provided in  
17 s. 48.23 (4).

18 **(3) RETAINED COUNSEL.** Notwithstanding subs. (1) and (2), a person subject to  
19 proceedings under this chapter is entitled to retain counsel of his or her own choosing  
20 at his or her own expense.

21 **SECTION 16.** 51.605 of the statutes is created to read:

22 **51.605 Reimbursement for counsel provided by the state. (1)** At or after  
23 the conclusion of a proceeding under this chapter in which the state public defender  
24 has provided counsel for an adult person, the court may inquire as to the person's  
25 ability to reimburse the state for all or part of the cost of representation. If the court

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1 determines that the person is able to make reimbursement for all or part of the cost  
2 of representation, the court may order the person to reimburse the state an amount  
3 not to exceed the maximum amount established by the public defender board under  
4 s. 977.075 (6). Upon the court's request, the state public defender shall conduct a  
5 determination of indigency under s. 977.07 and report the results of the  
6 determination to the court.

7       **(2)** Reimbursement ordered under this section shall be made to the clerk of  
8 courts of the county where the proceedings took place. The clerk of courts shall  
9 transmit payments under this section to the county treasurer, who shall deposit 25  
10 percent of the payment amount in the county treasury and transmit the remainder  
11 to the secretary of administration. Payments transmitted to the secretary of  
12 administration shall be deposited in the general fund and credited to the  
13 appropriation account under s. 20.550 (1) (L).

14       **(3)** By January 31st of each year, the clerk of courts for each county shall report  
15 to the state public defender the total amount of reimbursements ordered under sub.  
16 (1) in the previous calendar year and the total amount of reimbursements paid to the  
17 clerk under sub. (2) in the previous year.

18       **SECTION 17.** 55.06 (11) (a) of the statutes is amended to read:

19       **55.06 (11)** (a) If from personal observation of a sheriff, police officer, fire fighter,  
20 guardian, if any, or authorized representative of a board designated under s. 55.02  
21 or an agency designated by it it appears probable that an individual will suffer  
22 irreparable injury or death or will present a substantial risk of serious physical harm  
23 to others as a result of developmental disabilities, infirmities of aging, chronic  
24 mental illness, or other like incapacities if not immediately placed, the person  
25 making the observation may take into custody and transport the individual to an



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1 appropriate medical or protective placement facility. The person making placement  
2 shall prepare a statement at the time of detention providing specific factual  
3 information concerning the person's observations and the basis for emergency  
4 placement. The statement shall be filed with the director of the facility and shall also  
5 be filed with any petition under sub. (2). At the time of placement the individual shall  
6 be informed by the director of the facility or the director's designee, both orally and  
7 in writing, of his or her right to contact an attorney and a member of his or her  
8 immediate family and the right to have an attorney provided at public expense, as  
9 provided under ~~s. 967.06 and ch. 977, if the individual is a child or is indigent~~ par.  
10 (bm). The director or designee shall also provide the individual with a copy of the  
11 statement by the person making emergency placement.

12 **SECTION 18.** 55.06 (11) (bm) of the statutes is created to read:

13 55.06 (11) (bm) 1. Unless an adult individual subject to an emergency  
14 placement under par. (a) knowingly and voluntarily waives counsel, the individual  
15 shall be referred as soon as practicable to the state public defender, who shall appoint  
16 counsel for the individual under s. 977.08 without a determination of indigency.

17 2. If a child is subject to an emergency placement under par. (a), counsel for the  
18 child shall be appointed as provided in s. 48.23 (4).

19 3. Notwithstanding subds. 1. and 2., a person subject to an emergency  
20 placement under par. (a) is entitled to retain counsel of his or her own choosing at  
21 his or her own expense.

22 **SECTION 19.** 55.065 of the statutes is created to read:

23 **55.065 Reimbursement for counsel provided by the state. (1)** At or after  
24 the conclusion of a proceeding under this chapter in which the state public defender  
25 has provided counsel for an adult person, the court may inquire as to the person's

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1 ability to reimburse the state for all or part of the cost of representation. If the court  
2 determines that the person is able to make reimbursement for all or part of the cost  
3 of representation, the court may order the person to reimburse the state an amount  
4 not to exceed the maximum amount established by the public defender board under  
5 s. 977.075 (6). Upon the court's request, the state public defender shall conduct a  
6 determination of indigency under s. 977.07 and report the results of the  
7 determination to the court.

8 (2) Reimbursement ordered under this section shall be made to the clerk of  
9 courts of the county where the proceedings took place. The clerk of courts shall  
10 transmit payments under this section to the county treasurer, who shall deposit 25  
11 percent of the payment amount in the county treasury and transmit the remainder  
12 to the secretary of administration. Payments transmitted to the secretary of  
13 administration shall be deposited in the general fund and credited to the  
14 appropriation account under s. 20.550 (1) (L).

15 (3) By January 31st of each year, the clerk of courts for each county shall report  
16 to the state public defender the total amount of reimbursements ordered under sub.  
17 (1) in the previous calendar year and the total amount of reimbursements paid to the  
18 clerk under sub. (2) in the previous year.

19 **SECTION 20.** 303.065 (5) (dm) of the statutes is amended to read:

20 303.065 (5) (dm) Payment for legal representation under s. 977.07 ~~(2)~~ (2m),  
21 977.075 or 977.076;

22 **SECTION 21.** 809.30 (2) (d) of the statutes is amended to read:

23 809.30 (2) (d) *Indigency redetermination.* Except as provided in this  
24 paragraph, whenever a person whose trial counsel is appointed by the state public  
25 defender files a notice under par. (b) requesting public defender representation for

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1 purposes of postconviction or postdisposition relief, the prosecutor may, within 5  
2 days after the notice is served and filed, file in the circuit court and serve upon the  
3 state public defender a request that the person's indigency be redetermined before  
4 counsel is appointed or transcripts are requested. This paragraph does not apply to  
5 a ~~child or juvenile~~ person who is entitled to be represented by counsel under s. 48.23,  
6 51.60 (1), 55.06 (11) (a), 880.33 (2) (a) 2., or 938.23.

7 **SECTION 22.** 814.69 (1) (a) of the statutes is amended to read:

8 814.69 (1) (a) For a transcript under SCR 71.04, a fee at the rate of \$1.50 per  
9 25-line page for the original and 50 cents per 25-line page for the duplicate. Except  
10 as provided in s. 967.06 (3), the fee shall be paid by the county treasurer upon the  
11 certificate of the clerk of court.

12 **SECTION 23.** 880.33 (2) (a) 2. of the statutes is amended to read:

13 880.33 (2) (a) 2. If the person requests but is unable to obtain legal counsel, the  
14 court shall appoint legal counsel. If the petition contains the allegations under s.  
15 880.07 (1m), the court shall refer the person to the state public defender, who shall  
16 appoint counsel under s. 977.08 without a determination of indigency. If the person  
17 is represented by counsel appointed under s. 977.08 in a proceeding for a protective  
18 placement under s. 55.06 ~~or for the appointment of a guardian under s. 880.07 (1m),~~  
19 the court shall order the counsel appointed under s. 977.08 to represent the person.

20 **SECTION 24.** 880.33 (2) (a) 4. of the statutes is created to read:

21 880.33 (2) (a) 4. a. At or after the conclusion of a proceeding under this chapter  
22 concerning an allegation under s. 880.07 (1m) in which the state public defender has  
23 provided counsel for a person, the court may inquire as to the person's ability to  
24 reimburse the state for all or part of the cost of representation. If the court  
25 determines that the person is able to make reimbursement for all or part of the cost

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1 of representation, the court may order the person to reimburse the state an amount  
2 not to exceed the maximum amount established by the public defender board under  
3 s. 977.075 (6). Upon the court's request, the state public defender shall conduct a  
4 determination of indigency under s. 977.07 and report the results of the  
5 determination to the court.

6 a. Reimbursement ordered under this subdivision shall be made to the clerk  
7 of courts of the county where the proceedings took place. The clerk of courts shall  
8 transmit payments under this subdivision to the county treasurer, who shall deposit  
9 25 percent of the payment amount in the county treasury and transmit the  
10 remainder to the secretary of administration. Payments transmitted to the  
11 secretary of administration shall be deposited in the general fund and credited to the  
12 appropriation account under s. 20.550 (1) (L).

13 c. By January 31st of each year, the clerk of courts for each county shall report  
14 to the state public defender the total amount of reimbursements ordered under subd.  
15 4. a. in the previous calendar year and the total amount of reimbursements paid to  
16 the clerk under subd. 4. b. in the previous year.

17 **SECTION 25.** 967.06 of the statutes is renumbered 967.06 (1) and amended to  
18 read:

19 **967.06 (1)** As soon as practicable after a person has been detained or arrested  
20 in connection with any offense ~~which~~ that is punishable by incarceration, or in  
21 connection with any civil commitment proceeding, or in any other situation in which  
22 a person is entitled to counsel regardless of ability to pay under the constitution or  
23 laws of the United States or this state, the person shall be informed of his or her right  
24 to counsel. ~~Persons~~

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1           **(2)** (a) Except as provided in par. (b), a person entitled to counsel under sub.  
2           (1) who indicate indicates at any time that ~~they wish~~ he or she wants to be  
3           represented by a lawyer, and who ~~claim that they are~~ claims that he or she is not able  
4           to pay in full for a lawyer's services, shall immediately be permitted to contact the  
5           authority for indigency determinations specified under s. 977.07 (1). The authority  
6           for indigency determination in each county shall have daily telephone access to the  
7           county jail in order to identify all persons who are being held in the jail. The jail  
8           personnel shall provide by phone information requested by the authority.

9           **(3)** In any case in which the state public defender provides representation to  
10          an indigent person, the public defender may request that the applicable court  
11          reporter or clerk of circuit court prepare and transmit any transcript or court record.  
12          The request shall be complied with. The state public defender shall, from the  
13          appropriation under s. 20.550 (1) (f), compensate the court reporter or clerk of circuit  
14          court for the cost of preparing, handling, duplicating, and mailing the documents.

15          **SECTION 26.** 967.06 (2) (b) of the statutes is created to read:

16          967.06 **(2)** (b) If the person indicating that he or she wants to be represented  
17          by a lawyer is detained under ch. 48, 51, 55, 880, or 938, the person shall be referred  
18          for appointment of counsel as provided under s. 48.23 (4), 51.60, 55.06 (11) (bm),  
19          880.33 (2) (a) 2., or 938.23 (4), whichever is applicable.

20          **SECTION 27.** 973.06 (1) (e) of the statutes is amended to read:

21          973.06 **(1)** (e) Attorney fees payable to the defense attorney by the county or  
22          the state. If the court determines at the time of sentencing that the defendant's  
23          financial circumstances are changed, the court may adjust the amount in accordance  
24          with s. 977.07 (1) (a) and ~~(2)~~ rules promulgated under s. 977.02 (3).

25          **SECTION 28.** 977.02 (2m) of the statutes is amended to read:

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1           977.02 (2m) Promulgate rules regarding eligibility for legal services under this  
2 chapter, including legal services for children persons who are entitled to be  
3 represented by counsel without a determination of indigency, as provided in s. 48.23  
4 (4), 51.60, 55.06 (11) (a), 880.33 (2) (a) 2., or 938.23 (4).

5           **SECTION 29.** 977.02 (3) of the statutes is renumbered 977.02 (3) (intro.) and  
6 amended to read:

7           977.02 (3) (intro.) Promulgate rules regarding the determination of indigency  
8 of persons entitled to be represented by counsel, other than ~~children~~ persons who are  
9 entitled to be represented by counsel under s. 48.23, 51.60, 55.06 (11) (a), 880.33 (2)  
10 (a) 2., or 938.23, including the time period in which the determination must be made  
11 and the criteria to be used to determine indigency and partial indigency. The rules  
12 shall specify that, in determining indigency, the representative of the state public  
13 defender shall do all of the following:

14           **SECTION 30.** 977.02 (3) (a) to (d) of the statutes are created to read:

15           977.02 (3) (a) Consider the anticipated costs of effective representation for the  
16 type of case in which the person seeks representation.

17           (b) Subject to par. (d), consider assets in the manner described in s. 49.145 (3)  
18 (a) and treat assets as available to the person to pay the costs of legal representation  
19 if they exceed the resource limitation in that paragraph, except that the  
20 representative of the state public defender shall exclude only the first \$30,000 of the  
21 equity value of the home that serves as the individual's homestead.

22           (c) Subject to par. (d), treat income as available to pay the costs of legal  
23 representation to the person only if it exceeds the income limitations in s. 49.145 (3)

24           (b).

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1 (d) Treat assets or income of the person's spouse as the person's assets or  
2 income, unless the spouse was the victim of a crime that the person allegedly  
3 committed.

4 **SECTION 31.** 977.05 (4) (gm) of the statutes is amended to read:

5 977.05 (4) (gm) In accordance with the standards under pars. (h) and (i), accept  
6 referrals from judges and courts for the provision of legal services without a  
7 determination of indigency of ~~children~~ persons who are entitled to be represented by  
8 counsel under s. 48.23, 51.60, 55.06 (11) (a), 880.33 (2) (a) 2., or 938.23, appoint  
9 counsel in accordance with contracts and policies of the board, and inform the  
10 referring judge or court of the name and address of the specific attorney who has been  
11 assigned to the case.

12 **SECTION 32.** 977.05 (4) (h) of the statutes is amended to read:

13 977.05 (4) (h) Accept requests for legal services from ~~children~~ persons who are  
14 entitled to be represented by counsel under s. 48.23, 51.60, 55.06 (11) (a), 880.33 (2)  
15 (a) 2., or 938.23 and from indigent persons who are entitled to be represented by  
16 counsel under s. 967.06 or who are otherwise so entitled under the constitution or  
17 laws of the United States or this state and provide such persons with legal services  
18 when, in the discretion of the state public defender, such provision of legal services  
19 is appropriate.

20 **SECTION 33.** 977.05 (4) (i) 4. of the statutes is amended to read:

21 977.05 (4) (i) 4. Cases involving persons subject to emergency detention or  
22 involuntary civil commitment under ch. 51, emergency detention under s. 55.06 (11)  
23 (a), or a guardianship petition containing the allegations under s. 880.07 (1m).

24 **SECTION 34.** 977.06 (1) (a) of the statutes is amended to read:

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1           977.06 (1) (a) Verify the information necessary to determine indigency under  
2 ~~s. 977.07 (2) rules promulgated under s. 977.02 (3)~~. The information provided by a  
3 person seeking assigned counsel that is subject to verification shall include any  
4 social security numbers provided on an application under sub. (1m), income records,  
5 value of assets, eligibility for public assistance, and claims of expenses.

6           **SECTION 35.** 977.06 (2) (a) of the statutes is amended to read:

7           977.06 (2) (a) A person seeking to have counsel assigned for him or her under  
8 s. 977.08, other than a ~~child~~ person who is entitled to be represented by counsel under  
9 s. 48.23, 51.60, 55.06 (11) (a), 880.33 (2) (a) 2., or 938.23, shall sign a statement  
10 declaring that he or she has not disposed of any assets for the purpose of qualifying  
11 for that assignment of counsel. If the representative or authority making the  
12 indigency determination finds that any asset was disposed of for less than its fair  
13 market value for the purpose of obtaining that assignment of counsel, the asset shall  
14 be counted under ~~s. 977.07 (2) rules promulgated under s. 977.02 (3)~~ at its fair market  
15 value at the time it was disposed of, minus the amount of compensation received for  
16 the asset.

17           **SECTION 36.** 977.06 (2) (am) of the statutes is amended to read:

18           977.06 (2) (am) A person seeking to have counsel assigned for him or her under  
19 s. 977.08, other than a ~~child~~ person who is entitled to be represented by counsel under  
20 s. 48.23, 51.60, 55.06 (11) (a), 880.33 (2) (a) 2., or 938.23, shall sign a statement  
21 declaring that the information that he or she has given to determine eligibility for  
22 assignment of counsel he or she believes to be true and that he or she is informed that  
23 he or she is subject to the penalty under par. (b).

24           **SECTION 37.** 977.07 (1) (a) of the statutes is amended to read:



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1           977.07 (1) (a) Determination of indigency for persons entitled to counsel shall  
2 be made as soon as possible and shall be in accordance with the rules promulgated  
3 by the board under s. 977.02 (3) and the system established under s. 977.06. No  
4 determination of indigency is required for a child person who is entitled to be  
5 represented by counsel under s. 48.23, 51.60, 55.06 (11) (a), 880.33 (2) (a) 2., or  
6 938.23.

7           **SECTION 38.** 977.07 (1) (c) of the statutes is amended to read:

8           977.07 (1) (c) For all referrals made under ss. 809.30, 974.06 (3) (b), and 974.07  
9 (11), except a referral of a child person who is entitled to be represented by counsel  
10 under s. 48.23, 51.60, 55.06 (11) (a), 880.33 (2) (a) 2., or 938.23, a representative of  
11 the state public defender shall determine indigency. For referrals made under ss.  
12 809.30 and 974.06 (3) (b), except a referral of a child person who is entitled to be  
13 represented by counsel under s. 48.23, 51.60, 55.06 (11) (a), 880.33 (2) (a) 2., or  
14 938.23, the representative of the state public defender may, unless a request for  
15 redetermination has been filed under s. 809.30 (2) (d) or the defendant's request for  
16 representation states that his or her financial circumstances have materially  
17 improved, rely upon a determination of indigency made for purposes of trial  
18 representation under this section.

19           **SECTION 39.** 977.07 (2) of the statutes is repealed.

20           **SECTION 40.** 977.07 (2m) of the statutes is amended to read:

21           977.07 (2m) If the person is found to be indigent in full or in part, the person  
22 shall be promptly informed of the state's right to payment or recoupment under s.  
23 48.275 (2), 757.66, 938.275 (2), 973.06 (1) (e) or 977.076 (1), and the possibility that  
24 the payment of attorney fees may be made a condition of probation, should the person  
25 be placed on probation. Furthermore, if found to be indigent in part, the person shall

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

7 **SECTION 41.** 977.075 (1) of the statutes is renumbered 977.075 (1r) and  
8 amended to read:

9 977.075 **(1r)** The board shall establish by rule fixed amounts as flat payments  
10 for the cost of representation that a person, other than a parent subject to s. 48.275  
11 ~~(2) (b) or 938.275 (2) (b), who is client~~ responsible for payment for legal  
12 representation, may elect to pay. The rule shall require all of the following:

13 (a) If a person client responsible for payment elects to pay the applicable fixed  
14 amount, the person client cannot be held liable for any additional payment for  
15 counsel.

16 (b) The person client responsible for payment may pay the fixed amount only  
17 at the beginning of the representation.

18 **SECTION 42.** 977.075 (1g) of the statutes is created to read:

19 977.075 **(1g)** In this section, "client responsible for payment" means a client of  
20 the state public defender other than a client entitled to legal representation without  
21 a determination of indigency.

22 **SECTION 43.** 977.075 (3) of the statutes is amended to read:

23 977.075 **(3)** The board shall establish by rule a fee schedule that sets the  
24 amount that a person, other than a parent subject to s. 48.275 (2) (b) or 938.275 (2)  
25 ~~(b), who is client~~ responsible for payment for legal representation shall pay for the

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1 cost of the legal representation. The schedule shall establish a fee for a given type  
2 of case, and the fee for a given type of case shall be based on the average cost, as  
3 determined by the board, for representation for that type of case.

4 **SECTION 44.** 977.075 (4) of the statutes is amended to read:

5 977.075 (4) The board may establish by rule a procedure for collecting a  
6 nonrefundable partial payment within 60 days after the commencement of  
7 representation for legal services from ~~persons~~ clients who are responsible for  
8 payment for legal representation. ~~This subsection does not apply to a parent who is~~  
9 ~~subject to s. 48.275 (2) (b) or 938.275 (2) (b).~~

10 **SECTION 45.** 977.075 (5) of the statutes is amended to read:

11 977.075 (5) The rules under subs. (3) and (4) do not apply to a person who has  
12 paid under sub. ~~(1)~~ (1r).

13 **SECTION 46.** 977.075 (6) of the statutes is created to read:

14 977.075 (6) The board shall establish by rule a fee schedule that sets the  
15 maximum amount that a parent subject to s. 48.275 (2) (b) or 938.275 (2) (b) shall pay  
16 as reimbursement for legal services and sets the maximum amount that a person  
17 subject to s. 51.605, 55.065, or 880.33 (2) (a) 4. shall pay as reimbursement for legal  
18 services. The maximum amounts under this subsection shall be based on the  
19 average cost, as determined by the board, for each applicable type of case.

20 **SECTION 47.** 977.08 (1) of the statutes is amended to read:

21 977.08 (1) If the representative or the authority for indigency determinations  
22 specified under s. 977.07 (1) refers a case to or within the office of the state public  
23 defender or if a case is referred under s. 48.23 (4), 51.60, 55.06 (11) (bm) 1., 880.33  
24 (2) (a) 2., or 938.23 (4), the state public defender shall assign counsel according to

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1 subs. (3) and (4). If a defendant makes a request for change of attorney assignment,  
2 the change of attorney must be approved by the circuit court.

3 **SECTION 48.** 977.08 (2) (intro.) of the statutes is amended to read:

4 977.08 (2) (intro.) All attorneys in a county shall be notified in writing by the  
5 state public defender that a set of lists is being prepared of attorneys willing to  
6 represent ~~children~~ persons referred under s. 48.23 (4), 51.60, 55.06 (11) (bm) 1.,  
7 880.33 (2) (a) 2., or 938.23 (4) and indigent clients in the following:

8 **SECTION 49.** 977.08 (2) (d) of the statutes is repealed.

9 **SECTION 50.** 977.085 (3) of the statutes is amended to read:

10 977.085 (3) The board shall provide quarterly reports to the joint committee  
11 on finance on the status of reimbursement for or recoupment of payments under ss.  
12 48.275, 51.605, 55.065, 757.66, 880.33 (2) (a) 4., 938.275, 977.06, 977.07 (2), 977.075  
13 and 977.076, including the amount of revenue generated by reimbursement and  
14 recoupment. The quarterly reports shall include any alternative means suggested  
15 by the board to improve reimbursement and recoupment procedures and to increase  
16 the amount of revenue generated. The department of justice, district attorneys,  
17 circuit courts and applicable county agencies shall cooperate by providing any  
18 necessary information to the state public defender.

19 **SECTION 51. Nonstatutory provisions.**

20 (1) POSITION INCREASE. The authorized FTE positions for the public defender  
21 board are increased by 59.5 GPR positions on the effective date of this subsection, to  
22 be funded from the appropriation under section 20.550 (1) (c) of the statutes, for the  
23 purpose of providing legal representation to persons for whom the state public  
24 defender assigns counsel.

25 **SECTION 52. Initial applicability.**

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1           (1) INDIGENCY DETERMINATIONS. The treatment of sections 20.550 (1) (fb),  
2           303.065 (5) (dm), 973.06 (1) (e), 977.06 (1) (a), 977.06 (2) (a), 977.07 (2), and 977.085  
3           (3) of the statutes, the renumbering and amendment of section 977.02 (3) of the  
4           statutes, and the creation of section 977.02 (3) (a) to (d) of the statutes first apply to  
5           cases opened on the effective date of this subsection.

6           (2) REPRESENTATION IN CIVIL COMMITMENT, PROTECTIVE PLACEMENT, AND  
7           GUARDIANSHIP CASES.

8           (a) *Emergency mental health detentions.* The treatment of sections 51.15 (9),  
9           51.60, 809.30 (2) (d), 977.02 (3), 977.05 (4) (gm), (h), and (i) 4., 977.06 (2) (a) and (am),  
10          977.07 (1) (a) and (c), and 977.08 (1) and (2) (intro.) and (d) of the statutes (with  
11          respect to the appointment of counsel for persons subject to an emergency detention  
12          under section 51.15 of the statutes) first applies to emergency detentions occurring  
13          on the effective date of this paragraph.

14          (b) *Involuntary commitments for mental health treatment.* The treatment of  
15          sections 51.20 (3) and (18) (c), 51.60, 809.30 (2) (d), 977.02 (3), 977.05 (4) (gm), (h),  
16          and (i) 4., 977.06 (2) (a) and (am), 977.07 (1) (a) and (c), and 977.08 (1) and (2) (intro.)  
17          and (d) of the statutes (with respect to the appointment of counsel for persons subject  
18          to an involuntary commitment proceeding under section 51.20 of the statutes) first  
19          applies to proceedings commenced on the effective date of this paragraph.

20          (c) *Transfers of patients.* The treatment of sections 51.35 (1) (e) 1. and 2. c.,  
21          51.60, 809.30 (2) (d), 977.02 (3), 977.05 (4) (gm), (h), and (i) 4., 977.06 (2) (a) and (am),  
22          977.07 (1) (a) and (c), and 977.08 (1) and (2) (intro.) and (d) of the statutes (with  
23          respect to the appointment of counsel for persons subject to a transfer under section  
24          51.35 of the statutes) first applies to transfers occurring on the effective date of this  
25          paragraph.

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1 (d) *Involuntary commitments for treatment of alcoholism.* The treatment of  
2 sections 51.45 (12) (b) (intro.), 1., 2., and 3., and (c) 2., (13) (b) 2., (d), and (j), and (16)  
3 (c), 51.60, 809.30 (2) (d), 977.02 (3), 977.05 (4) (gm), (h), and (i) 4., 977.06 (2) (a) and  
4 (am), 977.07 (1) (a) and (c), and 977.08 (1) and (2) (intro.) and (d) of the statutes (with  
5 respect to the appointment of counsel for persons subject to a commitment or  
6 recommitment proceeding under section 51.45 of the statutes) first applies to  
7 proceedings for commitment or recommitment commenced on the effective date of  
8 this paragraph.

9 (e) *Protective placements proceedings.* The treatment of sections 51.60, 55.06  
10 (11) (a) and (bm), 809.30 (2) (d), 977.02 (3), 977.05 (4) (gm), (h), and (i) 4., 977.06 (2)  
11 (a) and (am), 977.07 (1) (a) and (c), and 977.08 (1) and (2) (intro.) and (d) of the  
12 statutes (with respect to the appointment of counsel for persons subject to an  
13 emergency detention under section 55.06 (11) of the statutes) first applies to  
14 emergency detentions occurring on the effective date of this paragraph.

15 (f) *Guardianship proceedings.* The treatment of sections 51.60, 809.30 (2) (d),  
16 880.33 (2) (a) 2., 977.02 (3), 977.05 (4) (gm), (h), and (i) 4., 977.06 (2) (a) and (am),  
17 977.07 (1) (a) and (c), and 977.08 (1) and (2) (intro.) and (d) of the statutes (with  
18 respect to the appointment of counsel for persons subject to a guardianship  
19 proceeding under chapter 880 of the statutes) first applies to guardianship  
20 proceedings commenced on the effective date of this paragraph.

**SECTION 53. Effective date.**

21 (1) This act takes effect on July 1, 2007.

22  
23 (END)