

Assembly Bill 301

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CHAPTER 519

AN ACT to renumber 957.26 (3) and (4); to amend 59.44 (1) and (2), 954.036 (1) and 954.038; to repeal and recreate 957.26 (1) and (2); and to create 59.44 (4) and 957.26 (3) and (4) of the statutes, relating to appointment of counsel and procedure in criminal matters.

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

SECTION 1. 59.44 (1) and (2) of the statutes are amended to read:

59.44 (1) When there is no district attorney for the county, or he is absent from the ~~court~~ county, or has acted as counsel or attorney for a

party accused in relation to the matter of which the accused stands charged and for which he is to be tried, or is near of kin to the party to be tried on a criminal charge, or is unable to attend to his duties, or is serving in the armed forces of the United States, or if the district attorney stands charged with a crime and the governor has not acted under s. 17.11, the circuit court, by an order entered in the minutes stating the cause therefor, may appoint some suitable person to perform, for the time being, or for the trial of such accused person, the duties of such district attorney, and the person so appointed shall have all the powers of the district attorney while so acting.

(2) ~~The Any court of record may upon application of the district attorney, in the same manner, and in its discretion, appoint counsel to assist the district attorney, in the prosecution of persons charged with a crime punishable by imprisonment in the state prison, and in case of prosecutions before a grand jury, and upon indictments found by grand juries, and in bastardy cases. Such counsel shall be paid such sums as the court, by order entered in the minutes, certifies to be a reasonable compensation therefor, which sum shall in no case exceed twenty-five dollars per day for each day actually occupied in such prosecution, and not to exceed fifteen dollars per day for not more than five days actually and necessarily occupied in preparing for trial in any case; the same to be paid in the manner provided by law for the payment of counsel for indigent criminals and in grand jury and John Doe proceedings and in any other investigations.~~

SECTION 2. 59.44 (4) of the statutes is created to read:

59.44 (4) The court shall fix the amount of compensation for counsel appointed under this section, which shall be such as is customarily charged by attorneys of this state for comparable services, and shall provide for the repayment of disbursements in such sum as the court deems proper.

SECTION 3. 954.036 (1) of the statutes is amended to read:

954.036 (1) If a defendant charged with a misdemeanor is brought, according to the warrant, before a magistrate or judge who does not preside over a court with jurisdiction to try the crime, he shall be committed to jail to await trial in county court, or be bailed. ~~But in counties over 500,000 population, if the case is not within the trial jurisdiction of the county court, a preliminary examination shall be held in the county court unless waived, and the defendant may be bound over to the circuit court for trial as in felony cases, and a copy of the docket together with all the papers shall be transmitted forthwith to the county court.~~

SECTION 4. 954.038 of the statutes is amended to read:

954.038 There shall be no preliminary examination on a charge of a misdemeanor, ~~except in counties over 500,000 population in cases of which the county court does not have trial jurisdiction.~~

SECTION 5. 957.26 (1) and (2) of the statutes are repealed and recreated to read:

957.26 (1) A person charged with a crime shall, at his initial appearance before a court or magistrate, be advised of his right to counsel and, that in any case where required by the United States or Wisconsin constitution, counsel, unless waived, will be appointed to represent him at county expense if he is financially unable to employ counsel. A record of such advice and of the defendant's reply, if any, shall be made in the docket or reported.

(2) Courts of record and magistrates who are judges of courts of record shall, unless waived by a defendant, appoint counsel for a defendant charged with a crime and who is without adequate means to employ counsel in all cases where required by the United States or Wisconsin constitution. Such appointment shall be made prior to any plea and prior to any preliminary examination. The judges of courts of record in each county shall establish as rules of court, procedures for the appointment of counsel in that county; except that in any county having a population of 500,000 or more, where a defendant is charged with a felony not triable in the county court and claims to be indigent, unless he waives his right to counsel or waives preliminary hearing, the magistrate before whom he appears shall transfer the case to the circuit court of the county for a determination of the claim, and the clerk of the circuit court, shall assign the same to one of the criminal branches of that court. A determination of indigency shall thereupon be made and the case remanded to the magistrate together with the appointment of counsel, if any.

SECTION 6. 957.26 (3) and (4) of the statutes are renumbered 957.26 (5) and (6), respectively.

SECTION 7. 957.26 (3) and (4) of the statutes are created to read:

957.26 (3) Counsel appointed to represent indigent defendants shall be compensated for services commencing with the time of their appointment.

(4) The magistrate or court under this section shall fix the amount of compensation for counsel appointed hereunder, which shall be such as is customarily charged by attorneys of this state for comparable service, and shall provide for the repayment of actual disbursements for necessary travel and other expense, automobile travel to be compensated at not over 8 cents a mile. The certificate of the clerk of court shall be sufficient warrant to the county treasurer to make such payment.

Approved December 27, 1965.