

2007 ASSEMBLY BILL 434

July 3, 2007 – Introduced by Representative KESSLER. Referred to Committee on Corrections and Courts.

1 **AN ACT** *to amend* 977.07 (1) (a), 977.08 (1), 977.08 (3) (b), 977.08 (4) and 977.08
2 (4m) (c); and *to create* 977.07 (2g), 977.08 (3m) and 977.08 (4m) (d) of the
3 statutes; **relating to:** the State Public Defender reimbursement rate for
4 private attorneys and time for the State Public Defender to make indigency
5 determinations and assign counsel.

Analysis by the Legislative Reference Bureau

Under current law, the State Public Defender (SPD) provides indigent people legal representation for certain types of proceedings including criminal, commitment, protective placement, paternity, and juvenile delinquency proceedings. The SPD also provides children legal counsel in certain types of cases regardless of the child's economic status. The SPD must make indigency determinations with respect to persons who request appointment of counsel on the basis of indigency and must assign counsel for all people who are eligible for SPD representation. The SPD may assign cases to attorneys employed by the SPD or to private attorneys. The SPD reimburses private attorneys \$40 an hour for time spent related to a case, excluding travel time. (The SPD reimburses private attorneys \$25 an hour for out-of-county travel.)

This bill requires the SPD to make an indigency determination for a criminal defendant within one business day of the defendant's initial appearance, and requires the SPD to appoint counsel for a criminal defendant who is determined to be indigent within one business day of the indigency determination or two business

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days of the initial appearance, whichever is later. If the SPD does not meet these deadlines, the circuit court judge may make the indigency determination and appoint counsel. The bill also increases the reimbursement rate for private attorneys from \$40 an hour to \$70 an hour.

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:

1 **SECTION 1.** 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 for a defendant in a criminal proceeding shall be
4 made within one business day after the defendant's initial appearance.
5 Determinations shall be made in accordance with the rules promulgated by the board
6 under s. 977.02 (3) and the system established under s. 977.06. No determination
7 of indigency is required for a child who is entitled to be represented by counsel under
8 s. 48.23 or 938.23.

9 **SECTION 2.** 977.07 (2g) of the statutes is created to read:

10 977.07 **(2g)** Notwithstanding sub. (1), if an indigency determination in a
11 criminal proceeding is not made in the time allotted under sub. (1), the circuit court
12 judge may determine whether the defendant is indigent using the standard for
13 indigency provided in sub. (2). If the court determines under this subsection that a
14 defendant is indigent, the state public defender shall appoint counsel under s.
15 977.08.

16 **SECTION 3.** 977.08 (1) of the statutes is amended to read:

17 977.08 **(1)** If the representative or the authority for indigency determinations
18 specified under s. 977.07 (1) refers a case to or within the office of the state public
19 defender ~~or~~, if a case is referred under s. 48.23 (4), or if a court determines a defendant

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1 is indigent under s. 977.07 (2g), the state public defender shall assign counsel
2 according to subs. (3) and (4). In criminal cases, the state public defender shall assign
3 counsel within 2 business days after the initial appearance or within one business
4 day after a determination of indigency is made, whichever is later. If a defendant
5 makes a request for change of attorney assignment, the change of attorney must be
6 approved by the circuit court.

7 **SECTION 4.** 977.08 (3) (b) of the statutes is amended to read:

8 977.08 (3) (b) A final set of lists for each county shall be prepared, certified and
9 annually updated by the state public defender. The state public defender shall
10 submit a copy of the list for each county to the chief judge of the judicial
11 administrative district. Persons may not be excluded from any list unless the state
12 public defender states in writing the reasons for such action in the context of existing
13 rules adopted by the state public defender board. Any attorney thus excluded shall
14 then have the opportunity to appeal the state public defender's decision to the board,
15 which shall issue a final decision in writing.

16 **SECTION 5.** 977.08 (3m) of the statutes is created to read:

17 977.08 (3m) Notwithstanding subs. (1) and (3), if the state public defender does
18 not within the time allotted under sub. (1) appoint counsel for a criminal defendant
19 who has been determined to be indigent, the court may appoint counsel from a list
20 of attorneys maintained by the chief judge of the judicial administrative district.

21 **SECTION 6.** 977.08 (4) of the statutes is amended to read:

22 977.08 (4) At the conclusion of each case, any private local attorney who has
23 been appointed under sub. (3) or (3m) shall submit a copy of his or her bill to the state
24 public defender. The state public defender shall review the bill and reject it or
25 approve it in whole or in part. The state public defender shall then pay the bill

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1 according to the rates under sub. (4m). Any attorney dissatisfied with the decision
2 of the state public defender regarding the bill may have the decision reviewed by the
3 board. This subsection does not apply if the attorney is working under an agreement
4 authorized under s. 977.02 (7m) or a contract authorized under sub. (3) (f).

5 **SECTION 7.** 977.08 (4m) (c) of the statutes is amended to read:

6 977.08 **(4m)** (c) Unless otherwise provided by a rule promulgated under s.
7 977.02 (7r) or by a contract authorized under sub. (3) (f), for cases assigned on or after
8 July 29, 1995, and before the effective date of this paragraph [revisor inserts date],
9 private local attorneys shall be paid \$40 per hour for time spent related to a case,
10 excluding travel, and \$25 per hour for time spent in travel related to a case if any
11 portion of the trip is outside the county in which the attorney's principal office is
12 located or if the trip requires traveling a distance of more than 30 miles, one way,
13 from the attorney's principal office.

14 **SECTION 8.** 977.08 (4m) (d) of the statutes is created to read:

15 977.08 **(4m)** (d) Unless otherwise provided by a rule promulgated under s.
16 977.02 (7r) or by a contract authorized under sub. (3) (f), for cases assigned on or after
17 the effective date of this paragraph [revisor inserts date], private local attorneys
18 shall be paid \$70 per hour for time spent related to a case, excluding travel, and \$25
19 per hour for time spent in travel related to a case if any portion of the trip is outside
20 the county in which the attorney's principal office is located or if the trip requires
21 traveling a distance of more than 30 miles, one way, from the attorney's principal
22 office.

23 **(END)**