

2007 SENATE BILL 321

November 9, 2007 – Introduced by Senators SULLIVAN, COGGS, BRESKE, LASSA, OLSEN, PLALE, RISSER, ROESSLER, TAYLOR, VINEHOUT and ERPENBACH, cosponsored by Representatives BIES, HINTZ, GRIGSBY, SEIDEL, ALBERS, BERCEAU, CULLEN, HINES, HRAYCHUCK, JESKEWITZ, KESSLER, KRAMER, KREUSER, MASON, MOLEPSKE, MONTGOMERY, MUSSER, NELSON, PARISI, POCAN, POPE-ROBERTS, SHILLING, SOLETSKI, STASKUNAS, TAUCHEN, TOWNSEND, TURNER, VAN ROY and WOOD. Referred to Committee on Judiciary, Corrections, and Housing.

1 **AN ACT to repeal** 977.07 (2); **to renumber and amend** 977.02 (3); **to amend**
2 20.550 (1) (fb), 303.065 (5) (dm), 973.06 (1) (e), 977.06 (1) (a), 977.06 (2) (a) and
3 977.085 (3); and **to create** 977.02 (3) (a) to (d) of the statutes; **relating to:**
4 criteria for determining indigency for purposes of representation by the State
5 Public Defender and requiring the exercise of rule-making authority.

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. However, 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

SENATE BILL 321

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.) Additionally, 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. The bill provides the Public Defender Board with 51.30 new full-time equivalent general purpose revenue positions on July 1, 2009, 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.

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

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

2 20.550 (1) (fb) *Payments from clients; administrative costs.* The amounts in the
3 schedule for the costs of determining, collecting and processing the payments
4 received from persons as payment for legal representation under s. ~~977.07 (2)~~,
5 977.075 or 977.076.

6 **SECTION 2.** 303.065 (5) (dm) of the statutes is amended to read:

7 303.065 (5) (dm) Payment for legal representation under s. ~~977.07 (2)~~ (2m),
8 977.075 or 977.076;

9 **SECTION 3.** 973.06 (1) (e) of the statutes is amended to read:

SENATE BILL 321

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

5 **SECTION 4.** 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 who are entitled
9 to be represented by counsel under s. 48.23 or 938.23, including the time period in
10 which the determination must be made and the criteria to be used to determine
11 indigency and partial indigency. The rules shall specify that, in determining
12 indigency, the representative of the state public defender shall do all of the following:

13 **SECTION 5.** 977.02 (3) (a) to (d) of the statutes are created to read:

14 977.02 (3) (a) Consider the anticipated costs of effective representation for the
15 type of case in which the person seeks representation.

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

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

23 (b).

SENATE BILL 321

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 6.** 977.06 (1) (a) of the statutes is amended to read:

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

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

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

20 **SECTION 8.** 977.07 (2) of the statutes is repealed.

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

22 977.085 (3) The board shall provide quarterly reports to the joint committee
23 on finance on the status of reimbursement for or recoupment of payments under ss.
24 48.275, 757.66, 938.275, 977.06, ~~977.07 (2)~~, 977.075 and 977.076, including the
25 amount of revenue generated by reimbursement and recoupment. The quarterly

SENATE BILL 321

1 reports shall include any alternative means suggested by the board to improve
2 reimbursement and recoupment procedures and to increase the amount of revenue
3 generated. The department of justice, district attorneys, circuit courts and
4 applicable county agencies shall cooperate by providing any necessary information
5 to the state public defender.

6 **SECTION 10. Nonstatutory provisions.**

7 (1) POSITION INCREASE. The authorized FTE positions for the public defender
8 board are increased by 51.30 GPR positions on the effective date of this subsection,
9 to be funded from the appropriation under section 20.550 (1) (c) of the statutes, for
10 the purpose of providing legal representation to persons for whom the state public
11 defender assigns counsel.

12 **SECTION 11. Initial applicability.**

13 (1) INDIGENCY DETERMINATIONS. This act first applies to cases opened on the
14 effective date of this subsection.

15 **SECTION 12. Effective dates.** This act takes effect on July 1, 2009, except as
16 follows:

17 (1) The renumbering and amendment of section 977.02 (3) of the statutes, and
18 the creation of section 977.02 (3) (a) to (d) of the statutes take effect on the day after
19 publication.

20 (END)