



2007 DRAFTING REQUEST

Bill

Received: 10/04/2006

Received By: rryan

Wanted: As time permits

Identical to LRB:

For: Administration-Budget

By/Representing: Wavrunek

This file may be shown to any legislator: NO

Drafter: rryan

May Contact: SPD

Addl. Drafters:

Subject: Public Defender

Extra Copies:

Submit via email: YES

Requester's email:

Carbon copy (CC:) to: christiansenm@mail.opd.state.wi.us

Pre Topic:

DOA:.....Wavrunek, BB0079 -

Topic:

Eligibility for public defender representation

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rryan 10/23/2006	lkunkel 10/31/2006		_____			S&L
/1	rryan 01/24/2007	lkunkel 01/24/2007	rschluet 11/01/2006	_____	lparisi 11/01/2006		S&L
/2			rschluet 01/24/2007	_____	cduerst 01/24/2007		

FE Sent For:

<END>

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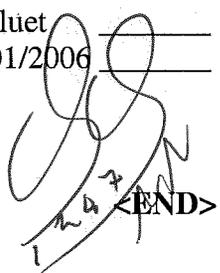
See Attached

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/?	rryan 10/23/2006	lkunkel 10/31/2006		_____			S&L
/1					rschluet 11/01/2006		lparisi 11/01/2006

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/2/mk 1/24


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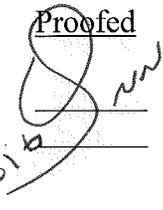
Topic:

Eligibility for public defender representation ✓

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/?	rryan	/11MK 10/31					

FE Sent For:

<END>

CRB-0459

2007-09 Budget Bill Statutory Language Drafting Request

- Topic: State Public Defender Financial Eligibility
- Tracking Code: BB0079
- SBO team: General Government and Justice
- SBO analyst: Leah Wavrunek
 - Phone: 267-0370
 - Email: leah.wavrunek@wisconsin.gov
- Agency acronym: SPD
- Agency number: 550
- Priority (Low, Medium, High): Low

The request intends to make the SPD's financial eligibility standards consistent with eligibility criteria for the Wisconsin Works (W2) program, with the exceptions that the SPD criteria limit the exclusion for home equity to \$30,000 and that the cost to retain counsel is considered. Also, eliminate the pre-representation evaluation for financial eligibility for persons applying for SPD services under Chapter 51 and Chapter 55.

The agency cites drafting instructions for 2005 AB 1219, but with effective dates of June 27, 2009.

RLR
mk

In 10/23/06

DOA:.....Leah Wavrunek, BB0079 - Eligibility for public defende representation

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

LPS: PISWIF

RMNR
D-Note

DO NOT GO

or the budget.

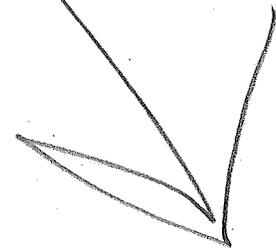
1 AN ACT ...; relating to: (??)

Analysis by the Legislative Reference Bureau

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

2

(END)



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:**

ASSEMBLY BILL 1219

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

Title Inset

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

INS A

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Further

SPD must treat

or services

ASSEMBLY BILL 1219

involuntary administration
concerning involuntary administration of psychotropic

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.

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

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

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

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

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

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

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

ASSEMBLY BILL 1219**SECTION 3**

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

ASSEMBLY BILL 1219

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~~ 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~~ 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:

ASSEMBLY BILL 1219

SECTION 11

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).

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.

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

for the person without a determination of indigency as provided in s. 51.60

by referring the person to the state public defender, who shall appoint

by referring the person to the state public defender who shall appoint

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 individual (27) 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 MINORS (27) (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

for the person without a determination of indigency as provided in

27 individual

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an individual

INQUIRY

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ASSEMBLY BILL 1219

individual (2x)

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) ^{PAYMENT (CS)} 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) ^{REPORT (CS)} 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.

INS 8-17

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

RN 55.135 (1)

ASSEMBLY BILL 1219

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 (b) 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 (c) 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

ASSEMBLY BILL 1219**SECTION 19**

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

ASSEMBLY BILL 1219

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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54-1111 (11)

ASSEMBLY BILL 1219

SECTION 24

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 ^{2.} (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 ^{3.} (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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SECTION 28

550105
(2X)

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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SECTION 30

53 @ 105
(2)

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).

INS
15-23

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

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SECTION 34

550105↑

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 (1) (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 (1) (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.

INS 17-18 →

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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SECTION 40

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

ASSEMBLY BILL 1219

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

INS
19-12

or 55.107

55.105^

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SECTION 47

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: 55.107 ⁵

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 ^{55.107} 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. e

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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(with respect to determinations of indigency)

INS 21-1

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. June 27, 2009

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

INS 21-1

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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SECTION 52

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.

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

23 (END)

INS 22 → 22 [→

Title insert:

PUBLIC DEFENDER

NOFF **Ins A:** However, a court may find that ⁶ a person is indigent even if the person does not satisfy the SPD criteria for indigency. In such a case, the court appoints counsel at county expense. ✓

NOFF **Ins B:** The bill makes the changes in eligibility for SPD representation effective June 27, 2009.

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Ins 8-17:

SECTION 1. 55.10 (4) (a) of the statutes is amended to read:

55.10 (4) (a) *Counsel; costs.* The individual sought to be protected has the right to counsel whether or not the individual is present at the hearing on the petition. The court shall require representation by full legal counsel whenever the petition alleges that the individual is not competent to refuse psychotropic medication under s. 55.14, the individual sought to be protected requested such representation at least 72 hours before the hearing, the guardian ad litem or any other person states that the individual sought to be protected is opposed to the petition, or the court determines that the interests of justice require it. If the individual sought to be protected or any other person on his or her behalf requests but is unable to obtain legal counsel, the court shall appoint refer the individual to the state public defender as provided under s. 55.105 for appointment of legal counsel. ~~Counsel shall be provided at public expense, as provided under s. 967.06 and ch. 977, if the individual~~

1 is indigent. If the individual sought to be protected is an adult who is indigent, and
 2 if counsel was not appointed under s. 977.08, the county in which the hearing is held
 3 is liable for any fees due the individual's legal counsel. If the individual sought to
 4 be protected is represented by counsel appointed under s. 977.08 in a proceeding for
 5 the appointment of a guardian under s. 880.33 [✓] ch. 54, the court shall order the
 6 counsel appointed under s. 977.08 to represent under this section the individual
 7 sought to be protected.

NOTE: NOTE: The bracketed language shows the correct cross-reference. Corrective legislation is pending. NOTE:

History: 2005 a. 264 ss. 128, 129, 130, 160; 2005 a. 387 s. 116; s. 13.93 (2) (c).

8 **SECTION 2.** 55.105 of the statutes is created to read:

9 **55.105 Appointment of counsel.** (1) If an adult individual has a right to be
 10 represented by legal counsel under s. 55.10 (4) (a), 55.15 (7) (cm), 55.18 (3) (c), or
 11 55.19 (3) (c), the individual shall be referred as soon as practicable to the state public
 12 defender, who shall appoint counsel for the person ^{individual} under s. 977.08 without a
 13 determination of indigency. ✓

14 (2) If an individual who is a minor has a right to be represented by legal counsel
 15 under s. 55.10 (4) (a), legal counsel for the child ^{minor} shall be appointed as provided in s.
 16 48.23 (4).

17 (3) Notwithstanding subs. (1) and (2), an individual who has a right to be
 18 represented by legal counsel under s. 55.10 (4) (a) is entitled to retain counsel of his
 19 or her own choosing at his or her own expense. ✓

20 **SECTION 3.** 55.107 of the statutes is created to read:

21 **55.107 Reimbursement of counsel provided by the state.** (1) At or after
 22 the conclusion of a proceeding under this chapter in which the state public defender
 23 has provided legal counsel for an adult, the court may inquire as to the individual's
 24 ability to reimburse the state for all or part of the cost of representation. If the court

individual

1 determines that the individual is able to make reimbursement for all or part of the
2 cost of representation, the court may order the individual to reimburse the state an
3 amount not to exceed the maximum amount established by the public defender board
4 under s. 977.075 ⁴(6). Upon the court's request, the state public defender shall
5 conduct a 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 4. 55.135 (1) of the statutes is amended to read:

19 55.135 (1) If, ~~upon a credible report to or~~, from personal observation of, or a
20 reliable report made by a person who identifies himself or herself to, a sheriff, police
21 officer, fire fighter, guardian, if any, or authorized representative of a county
22 department or an agency with which it contracts under s. 55.02 (2), it appears
23 probable that an individual is so totally incapable of providing for his or her own care
24 or custody as to create a substantial risk of serious physical harm to himself or herself
25 or others as a result of developmental disabilities, degenerative brain disorder,

1 serious and persistent mental illness, or other like incapacities if not immediately
 2 placed, the individual under this paragraph who received the credible report or who
 3 personally made the observation or to whom the report is made may take into custody
 4 and transport the individual to an appropriate medical or protective placement
 5 facility. The person making emergency protective placement shall prepare a
 6 statement at the time of detention providing specific factual information concerning
 7 the person's observations or reports made to the person and the basis for emergency
 8 placement. The statement shall be filed with the director of the facility and with any
 9 petition under s. 55.075. At the time of emergency protective placement the
 10 individual shall be informed by the director of the facility or the director's designee,
 11 orally and in writing, of his or her right to contact an attorney and a member of his
 12 or her immediate family and the right to have an attorney provided at public
 13 expense, as provided under s. 967.06 and ch. 977, if the individual is a minor or is
 14 indigent s. 55.105. The director or designee shall also provide the individual with
 15 a copy of the statement by the person making emergency protective placement.

NOTE: NOTE: Sub. (1) is shown as affected by 2 acts of the 2005 Wisconsin legislature and as merged by the revisor under s. 13.93 (2) (c). The bracketed language was inserted by 2005 Wis. Act 388 but is redundant and surplusage as a result of the treatment by 2005 Wis. Act 264. NOTE:

History: 2005 a. 264 ss. 144 to 149, 164; 2005 a. 388 s. 165; s. 13.93 (2) (c).

16 SECTION 5. 55.14 (7) of the statutes is amended to read:

17 55.14 (7) Upon the filing of a petition under this section, the court shall appoint
 18 make a referral for appointment of counsel as provided under s. 55.105. A petition
 19 under this section shall be heard under s. 55.10 (4) (a) s. 55.06 within 30 days after
 20 it is filed. ✓

NOTE: NOTE: Sub. (7) is shown as created by 2 acts of the 2005 Wisconsin legislature and as merged by the revisor under s. 13.93 (2) (c). The bracketed language indicates an incorrect cross-reference. NOTE:

History: 2005 a. 264 ss. 165, 195; 2005 a. 387 ss. 121, 302; s. 13.93 (2) (c).

21 SECTION 6. 55.15 (7) (cm) of the statutes is amended to read:

22 55.15 (7) (cm) The court shall appoint counsel for refer the individual under
 23 protective placement for appointment of counsel as provided under s. 55.105 if the

legal (2)

1 individual, the individual's guardian ad litem, or anyone on the individual's behalf
2 requests that counsel be appointed for the individual; ^{strike} =

3 History: 2005 a. 264.

SECTION 7. 55.18 (3) (c) (intro.) of the statutes is amended to read:

4 55.18 (3) (c) (intro.) The court shall order legal counsel for refer [✓] an individual
5 and, if the individual appears to be indigent, refer him or her to the authority for
6 indigency determinations under s. 977.07 (1) for appointment of legal counsel under
7 s. 55.105 [✓] if any of the following apply:

8 History: 2005 a. 264 ss. 140, 141, 169.

SECTION 8. 55.19 (3) (c) (intro.) of the statutes is amended to read:

9 55.19 (3) (c) (intro.) The court shall order legal counsel for refer [✓] an individual
10 and, if the individual appears to be indigent, refer him or her to the authority for
11 indigency determinations under s. 977.07 (1) for appointment of legal counsel under
12 s. 55.105 [✓] if any of the following apply:

13 History: 2005 a. 264, 387; s. 13.93 (2) (c).

14
15 **Ins 15-23:**

16 **SECTION 9.** 977.05 (4) (i) 8. of the statutes is amended to read:

17 977.05 (4) (i) 8. Cases involving individuals who are subject to petitions for
18 protective placement or involuntary administration of psychotropic medication
19 under ch. 55.

20 History: 1977 c. 29; 1979 c. 34, 352, 356; 1981 c. 20, 27, 289; 1983 a. 377; 1987 a. 27; 1989 a. 12, 31, 56, 334; 1991 a. 263, 269; 1993 a. 318, 437, 451, 479, 481; 1995
a. 27, 77; 1997 a. 35, 283; 2001 a. 16, 61, 103, 109; 2005 a. 264; 2005 a. 443 s. 265.

21
22 **Ins 17-18:**

23 **SECTION 10.** 977.07 (1) (c) of the statutes is amended to read:

1 977.07 (1) (c) For all referrals made under ss. 809.107, 809.30, 974.06 (3) (b)
 2 and 974.07 (11), except a referral of a child person who is entitled to be represented
 3 by counsel under s. 48.23, 51.60, 55.105, or 938.23, a representative of the state
 4 public defender shall determine indigency. For referrals made under ss. 809.107,
 5 809.30 and 974.06 (3) (b), except a referral of a child person who is entitled to be represented
 6 by counsel under s. 48.23, 51.60, 55.105, or 938.23, the representative of the state
 7 public defender may, unless a request for redetermination has been filed under s.
 8 809.30 (2) (d) or the person's request for representation states that his or her
 9 financial circumstances have materially improved, rely upon a determination of
 10 indigency made for purposes of trial representation under this section.

History: 1977 c. 29; 1979 c. 175 s. 53; 1979 c. 356; 1981 c. 20 s. 1833, 2202 (41) (a); Sup. Ct. Order, 123 Wis. 2d xi (1985); 1985 a. 29; 1987 a. 27, 61, 399; 1991 a. 39; 1993 a. 16, 451, 491; 1995 a. 27, 77; 2001 a. 16; 2005 a. 293.

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Ins 19-12:

SECTION 11. 977.075 (3) of the statutes is amended to read:

16 977.075 (3) The board shall establish by rule a fee schedule that sets the
 17 amount that a ~~person, other than a parent~~ subject to s. 48.275 (2) (b) or 938.275 (2)
 18 (b), who is client responsible for payment for legal representation shall pay for the
 19 cost of the legal representation if the ~~person~~ client does not pay the applicable discount fee
 20 under sub. (3m). The schedule shall establish a fee for a given type of case, and the
 21 fee for a given type of case shall be based on the average cost, as determined by the
 22 board, for representation for that type of case. ✓

History: 1995 a. 27, 77; 2005 a. 129.

23 **SECTION 12.** 977.075 (3m) of the statutes is amended to read:

1 977.075 (3m) The board shall establish by rule a fee schedule that sets the
 2 discount amount that a person, other than a parent subject to s. 48.275 (2) (b) or
 3 ~~938.275 (2) (b)~~, who is client responsible for payment for legal representation, may
 4 pay during a time period established by rule instead of paying the applicable fee
 5 under sub. (3). The fee schedule shall establish a discount fee for each type of case
 6 included in the schedule under sub. (3). If a person client responsible for payment
 7 pays the applicable discount fee within the time period established under this
 8 section, the person client may not be held liable for any additional payment for
 9 counsel.

History: 1995 a. 27, 77; 2005 a. 129.

Ins 21-1:

SECTION 9336. Initial applicability; Public Defender Board.

Ins 21-7:

17 The treatment of sections 51.15 (9), 51.20 (3) and (18) (c), 51.35 (1) (e) 1. and 2.
 18 c., 51.45 (12) (b) (intro.), 1., 2., and 3., and (c) 2., 51.45 (13) (b) 2., (d), and (j) and (16)
 19 (c), 51.60, 51.605, 55.10 (4) (a), 55.105, 55.107, 55.135 (1), 55.14 (7), 55.15 (7) (cm),
 20 55.18 (3) (c) (intro.), 55.19 (3) (c) (intro.), 809.30 (2) (d), 967.06 (2) (a) and (b), 977.05
 21 (4) (gm), (h), and (i) 8., 977.06 (2) (a) and (am), 977.07 (1) (a) and (c), 977.075 (1g), (3),
 22 (3m), and ~~(4)~~ and 977.08 (1) and (2) (intro.) and (d) of the statutes first applies to
 23 civil proceedings commencing, emergency detentions or emergency placements
 24 occurring, placement transfers occurring, or petitions for or annual reviews of court

and (2m)
977.02(2m)

NOT

SET

(with respect to appointment of counsel in civil proceedings)

1 orders for involuntary administration of psychotropic medication commencing on
2 June 27, 2009. ✓
3

4 **Ins 22-22:**

5 **SECTION 9436. Effective dates; Public Defender Board.**

6 (1) INDIGENCY DETERMINATIONS AND REPRESENTATION IN CIVIL COMMITMENT,
7 PROTECTIVE PLACEMENT, AND INVOLUNTARY MEDICATION CASES. The treatment of sections
8 20.550 (1) (f) and (fb), 51.15 (9), 51.20 (3) and (18) (c), 51.35 (1) (e) 1. and 2. c., 51.45
9 (12) (b) (intro.), 1., 2., and 3. and (c) 2., 51.45 (13) (b) 2., (d), and (j) and (16) (c), 51.60,
10 51.605, 55.10 (4) (a), 55.105, 55.107, 55.135 (1), 55.14 (7), 55.15 (7) (cm), 55.18 (3) (c)
11 (intro.), 55.19 (3) (c) (intro.), 303.065 (5) (dm), 809.30 (2) (d), 814.69 (1) (a), 967.06
12 (1), (2) (a) and (b), and (3), 977.03 (1) (e), 977.05 (4) (gm), (h), and (i) 8., 977.06 (1) (a)
13 and (2) (a) and (am), 977.07 (1) (a) and (c), 977.07 (2), 977.075 (1g), (3), (3m), and (4),
14 977.08 (1) and (2) (intro.) and (d), and 977.085 (3) of the statutes takes effect on June
15 27, 2009.

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973.06 (1)(e) - hypo - I had it as 976...
977.02 (2m)
(3)
(3) (a) to (d)
should be effective day after pub.

SPET

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0459/1dn

RLR:.....

mk

(date)

✓ ✓
Leah Wavrunek and Megan Christiansen:

Several 2005 acts made significant changes to chapter 55 and former chapter 880, which is now chapter 54. ✓ This is a redraft of 2005 Assembly Bill 1219. ✓ Please review the treatment of ch. 55 in this bill. ✓ Do the provisions in ch. 55 for appointing counsel without indigency determinations cover more types of proceedings than you intend? ✓ Should a person have a right to appointment of counsel without a determination of indigency for any proceeding under ch. 54? ✓

Robin Ryan
Legislative Attorney
Phone: (608) 261-6927
E-mail: robin.ryan@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0459/1dn
RLR:lmk:rs

November 1, 2006

Leah Wavrunek and Megan Christiansen:

Several 2005 acts made significant changes to chapter 55 and former chapter 880, which is now chapter 54. This is a redraft of 2005 Assembly Bill 1219. Please review the treatment of ch. 55 in this bill. Do the provisions in ch. 55 for appointing counsel without indigency determinations cover more types of proceedings than you intend? Should a person have a right to appointment of counsel without a determination of indigency for any proceeding under ch. 54?

Robin Ryan
Legislative Attorney
Phone: (608) 261-6927
E-mail: robin.ryan@legis.wisconsin.gov

Ryan, Robin

From: Wavrunek, Leah J - DOA
Sent: Thursday, January 18, 2007 2:27 PM
To: Ryan, Robin
Subject: FW: LRB-0459/1 Revisions

Hi Robin,

I was able to get some answers on the draft below.

✓ The SPD does not intend to extend their jurisdiction to Chapter 54 cases. They explained that they can only represent on cases that involve confinement (with exceptions) and Chapter 54 does not deal with confinement cases as much as setting up guardianships.

One other thing they mentioned was on page 9, line 1, where s. 55.105 is created. By including those specific types of cases for which the client has a right to counsel, does it exclude any? They thought a cross reference to s. 55.14(7) was missing.

I hope this is helpful and please let me know if you have any questions!
 Thanks,
 leah

From: Wavrunek, Leah J - DOA
Sent: Friday, January 12, 2007 9:02 AM
To: Ryan, Robin - LEGIS
Subject: LRB-0459/1 Revisions

Hi Robin,

I will be sending over a few emails today regarding revisions/questions on some of my drafts, now that we are getting some decisions!

This one is regarding 0459/1, financial eligibility for SPD representation.

1. I would like to only include financial changes regarding Chapter 51 and Chapter 55 proceedings with an effective date of July 1, 2008. *-pull on indigency determination provisions*
2. There was a drafter's note to myself and Megan Christiansen regarding Chapter 54 proceedings. If Megan did not weigh in, please let me know and I will follow up with her.
3. Regarding reimbursement for counsel, under the draft payments are made to the clerks of court, who deposit 25% to the county and send the rest to the state. Is this 25% the standard for court payments, as an administrative fee?

Thanks!
 Leah

Leah Wavrunek
 State Budget Office
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 leah.wavrunek@wisconsin.gov

01/18/2007

Ryan, Robin

From: Ryan, Robin
Sent: Tuesday, January 23, 2007 5:46 PM
To: Wavrunek, Leah J - DOA
Subject: LRB-045 (SPD)

0459

Leah,

This e-mail is in response to the SPD's comment on p. 9, line 1 of the draft, the creation of s. 55.105 (1). A hearing under 55.14 (7) is covered under proposed 55.105 (1) because 55.105 (1) covers hearings under 55.10 (4) (a) (which grants a right of counsel for all hearings under ch. 55 except for hearings under 55.15, 55.18 (3) (d), and 55.19 (3) (d)).

I can remove the citations under s. 55.105 (1) and provide that if an individual has a right to be represented by legal counsel under this chapter, the individual shall be referred to the SPD. I included the citations in the first draft in part because I was unsure whether SPD wanted to cover all types of hearings for which a person had a right to counsel, and I wanted to identify the sections that provide a right to counsel. From SPD's comment, it sounds like they want to provide SPD coverage for any type of hearing under ch. 55 for which a person has a right to counsel. I will make this change in the redraft -- I can redraft yet again if it is not what you want.

Robin