



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-0459/1

RLR:lmk/rs

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In 1/24/07

DOA:.....Wavrunek, BB0079 - Eligibility for public defender representation

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

RMNR
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1 AN ACT ...; relating to: the budget. ✓

Analysis by the Legislative Reference Bureau

PUBLIC DEFENDER

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 who are indigent.

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, a court may find that 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.

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

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the person is involved. The SPD must treat assets and income 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 entire 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. Further, 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 or services proceeding, or a proceeding 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. The bill makes the changes in eligibility for SPD representation effective ~~June 27, 2009~~ *July 1, 2008*.

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) (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.

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

2 51.15 (9) NOTICE OF RIGHTS. At the time of detention the individual shall be
3 informed by the director of the facility or such person's designee, both orally and in
4 writing, of his or her right to contact an attorney and a member of his or her
5 immediate family, the right to have an attorney provided at public expense, as
6 provided under s. 967.06 and ch. 977, if the individual is a child or is indigent, 51.60,
7 and the right to remain silent and that the individual's statements may be used as
8 a basis for commitment. The individual shall also be provided with a copy of the
9 statement of emergency detention.

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

11 51.20 (3) LEGAL COUNSEL. At the time of the filing of the petition the court shall
12 assure that the subject individual is represented by adversary counsel. ~~If the~~
13 ~~individual claims or appears to be indigent, the court shall refer the person to the~~
14 ~~authority for indigency determinations specified under s. 977.07 (1).~~ ~~If the~~
15 ~~individual is a child, the court shall refer that child by referring the individual~~ to the
16 state public defender, who shall appoint counsel for the child individual without a
17 determination of indigency, as provided in s. 48.23(4) 51.60.

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

19 51.20 (18) (c) Expenses of the proceedings from the presentation of the
20 statement of emergency detention or petition for commitment to the conclusion of the
21 proceeding shall be allowed by the court and paid by the county from which the
22 subject individual is detained, committed, or released, in the manner that the
23 expenses of a criminal prosecution are paid, as provided in s. 59.64 (1). ~~Payment of~~
24 ~~attorney fees for appointed attorneys in the case of children and indigents shall be~~
25 ~~in accordance with ch. 977.~~

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

2 51.35 (1) (e) 1. Whenever any transfer between different treatment facilities
3 results in a greater restriction of personal freedom for the patient and whenever the
4 patient is transferred from outpatient to inpatient status, the department or the
5 county department specified under par. (a) shall inform the patient both orally and
6 in writing of his or her right to contact an attorney and a member of his or her
7 immediate family, the right to have counsel provided at public expense, as provided
8 under s. ~~967.06~~ and ch. ~~977~~, if the patient is a child or is indigent 51.60, and the right
9 to petition a court in the county in which the patient is located or the committing
10 court for a review of the transfer.

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

12 51.35 (1) (e) 2. c. The patient's right to have counsel provided at public expense,
13 as provided under s. ~~967.06~~ and ch. ~~977~~, if the patient is a child or is indigent 51.60.

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

16 51.45 (12) (b) The physician, spouse, guardian, or a relative of the person
17 sought to be committed, or any other responsible person, may petition a circuit court
18 commissioner or the circuit court of the county in which the person sought to be
19 committed resides or is present for commitment under this subsection. The petition
20 shall: ~~1. State state facts to support the need for emergency treatment;~~ ~~3. Be and~~
21 ~~be~~ supported by one or more affidavits which ~~that~~ aver with particularity the factual
22 basis for the allegations contained in the petition.

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

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

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

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

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

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

17 51.45 (13) (d) Whenever it is desired to involuntarily commit a person, a
18 preliminary hearing shall be held under this paragraph. The purpose of the
19 preliminary hearing shall be to determine if there is probable cause for believing that
20 the allegations of the petition under par. (a) are true. The court shall assure that the
21 person shall be is represented by counsel at the preliminary hearing and, if the
22 person is a child or is indigent, by referring the person to the state public defender,
23 who shall appoint counsel shall timely be appointed at public expense, as provided
24 in s. 967.06 and ch. 977 for the person without a determination of indigency, as
25 provided in s. 51.60. Counsel shall have access to all reports and records, psychiatric

1 and otherwise, which have been made prior to the preliminary hearing. The person
2 shall be present at the preliminary hearing and shall be afforded a meaningful
3 opportunity to be heard. Upon failure to make a finding of probable cause under this
4 paragraph, the court shall dismiss the petition and discharge the person from the
5 custody of the county department.

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

7 51.45 (13) (j) Upon the filing of a petition for recommitment under par. (h), the
8 court shall fix a date for a recommitment hearing within 10 days, and assure that the
9 person sought to be recommitted is represented by counsel and, if the person is
10 indigent, appoint by referring the person to the state public defender, who shall
11 appoint counsel for him or her, unless waived for the person without a determination
12 of indigency, as provided in s. 51.60. The provisions of par. (e) relating to notice and
13 to access to records, names of witnesses, and summaries of their testimony shall
14 apply to recommitment hearings under this paragraph. At the recommitment
15 hearing, the court shall proceed as provided under pars. (f) and (g).

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

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

18 **51.60 Appointment of counsel. (1) ADULTS.** (a) In any situation under this
19 chapter in which an adult individual has a right to be represented by counsel, the
20 individual shall be referred as soon as practicable to the state public defender, who
21 shall appoint counsel for the individual under s. 977.08 without a determination of
22 indigency.

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

1 **(2) MINORS.** In any situation under this chapter in which a minor has a right
2 to be represented by counsel, counsel for the minor shall be appointed as provided
3 in s. 48.23 (4).

4 **(3) RETAINED COUNSEL.** Notwithstanding subs. (1) and (2), an individual subject
5 to proceedings under this chapter is entitled to retain counsel of his or her own
6 choosing at his or her own expense.

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

8 **51.605 Reimbursement for counsel provided by the state. (1) INQUIRY.**

9 At or after the conclusion of a proceeding under this chapter in which the state public
10 defender has provided counsel for an adult individual, the court may inquire as to
11 the individual's ability to reimburse the state for all or part of the cost of
12 representation. If the court determines that the individual is able to make
13 reimbursement for all or part of the cost of representation, the court may order the
14 individual to reimburse the state an amount not to exceed the maximum amount
15 established by the public defender board under s. 977.075 (4). Upon the court's
16 request, the state public defender shall conduct a determination of indigency under
17 s. 977.07 and report the results of the determination to the court.

18 **(2) PAYMENT.** Reimbursement ordered under this section shall be made to the
19 clerk of courts of the county where the proceedings took place. The clerk of courts
20 shall transmit payments under this section to the county treasurer, who shall deposit
21 25 percent of the payment amount in the county treasury and transmit the
22 remainder to the secretary of administration. Payments transmitted to the
23 secretary of administration shall be deposited in the general fund and credited to the
24 appropriation account under s. 20.550 (1) (L).

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

5 **SECTION 17.** 55.10 (4) (a) of the statutes is amended to read:

6 55.10 (4) (a) ~~Counsel; costs.~~ The individual sought to be protected has the right
7 to counsel whether or not the individual is present at the hearing on the petition.
8 The court shall require representation by full legal counsel whenever the petition
9 alleges that the individual is not competent to refuse psychotropic medication under
10 s. 55.14, the individual sought to be protected requested such representation at least
11 72 hours before the hearing, the guardian ad litem or any other person states that
12 the individual sought to be protected is opposed to the petition, or the court
13 determines that the interests of justice require it. If the individual sought to be
14 protected or any other person on his or her behalf requests but is unable to obtain
15 legal counsel, the court shall ~~appoint~~ refer the individual to the state public defender
16 as provided under s. 55.105 for appointment of legal counsel. ~~Counsel shall be~~
17 ~~provided at public expense, as provided under s. 967.06 and ch. 977, if the individual~~
18 ~~is indigent. If the individual sought to be protected is an adult who is indigent, and~~
19 ~~if counsel was not appointed under s. 977.08, the county in which the hearing is held~~
20 ~~is liable for any fees due the individual's legal counsel.~~ If the individual sought to
21 be protected is represented by counsel appointed under s. 977.08 in a proceeding for
22 the appointment of a guardian under s. ~~880.33~~ ch. 54, the court shall order the
23 counsel appointed under s. 977.08 to represent under this section the individual
24 sought to be protected.

25 **SECTION 18.** 55.105 of the statutes is created to read:

*Use by
In any situation
under this
chapter in
which*

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

6 (2) If a minor has a right to be represented by legal counsel under s. 55.10 (4)
7 (a), legal counsel for the minor shall be appointed as provided in s. 48.23 (4).

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

subject to proceedings under this chapter

11 **SECTION 19.** 55.107 of the statutes is created to read:

12 **55.107 Reimbursement of counsel provided by the state.** (1) At or after
13 the conclusion of a proceeding under this chapter in which the state public defender
14 has provided legal counsel for an adult individual, the court may inquire as to the
15 individual's ability to reimburse the state for all or part of the cost of representation.
16 If the court determines that the individual is able to make reimbursement for all or
17 part of the cost of representation, the court may order the individual to reimburse
18 the state an amount not to exceed the maximum amount established by the public
19 defender board under s. 977.075 (4). Upon the court's request, the state public
20 defender shall conduct a determination of indigency under s. 977.07 and report the
21 results of the determination to the court.

22 (2) Reimbursement ordered under this section shall be made to the clerk of
23 courts of the county where the proceedings took place. The clerk of courts shall
24 transmit payments under this section to the county treasurer, who shall deposit 25
25 percent of the payment amount in the county treasury and transmit the remainder

1 to the secretary of administration. Payments transmitted to the secretary of
2 administration shall be deposited in the general fund and credited to the
3 appropriation account under s. 20.550 (1) (L).

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

8 **SECTION 20.** 55.135 (1) of the statutes is amended to read:

9 55.135 (1) ~~If, upon a credible report to or, from personal observation of, or a~~
10 reliable report made by a person who identifies himself or herself to, a sheriff, police
11 officer, fire fighter, guardian, if any, or authorized representative of a county
12 department or an agency with which it contracts under s. 55.02 (2), it appears
13 probable that an individual is so totally incapable of providing for his or her own care
14 or custody as to create a substantial risk of serious physical harm to himself or herself
15 or others as a result of developmental disabilities, degenerative brain disorder,
16 serious and persistent mental illness, or other like incapacities if not immediately
17 placed, the individual ~~under this paragraph who received the credible report or who~~
18 personally made the observation or to whom the report is made may take into custody
19 and transport the individual to an appropriate medical or protective placement
20 facility. The person making emergency protective placement shall prepare a
21 statement at the time of detention providing specific factual information concerning
22 the person's observations or reports made to the person and the basis for emergency
23 placement. The statement shall be filed with the director of the facility and with any
24 petition under s. 55.075. At the time of emergency protective placement the
25 individual shall be informed by the director of the facility or the director's designee,

1 orally and in writing, of his or her right to contact an attorney and a member of his
2 or her immediate family and the right to have an attorney provided at public
3 expense, as provided under ~~s. 967.06 and ch. 977, if the individual is a minor or is~~
4 ~~indigent~~ s. 55.105. The director or designee shall also provide the individual with
5 a copy of the statement by the person making emergency protective placement.

6 **SECTION 21.** 55.14 (7) of the statutes is amended to read:

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

11 **SECTION 22.** 55.15 (7) (cm) of the statutes is amended to read:

12 55.15 (7) (cm) The court shall ~~appoint counsel for~~ refer the individual under
13 protective placement for appointment of legal counsel as provided under s. 55.105 if
14 the individual, the individual's guardian ad litem, or anyone on the individual's
15 behalf requests that counsel be appointed for the individual.

16 **SECTION 23.** 55.18 (3) (c) (intro.) of the statutes is amended to read:

17 55.18 (3) (c) (intro.) The court shall ~~order legal counsel for~~ refer an individual
18 ~~and, if the individual appears to be indigent, refer him or her to the authority for~~
19 ~~indigency determinations under s. 977.07 (1) for appointment of legal counsel under~~
20 s. 55.105 if any of the following apply:

21 **SECTION 24.** 55.19 (3) (c) (intro.) of the statutes is amended to read:

22 55.19 (3) (c) (intro.) The court shall ~~order legal counsel for~~ refer an individual
23 ~~and, if the individual appears to be indigent, refer him or her to the authority for~~
24 ~~indigency determinations under s. 977.07 (1) for appointment of legal counsel under~~
25 s. 55.105 if any of the following apply:

1 **SECTION 25.** 303.065 (5) (dm) of the statutes is amended to read:

2 303.065 (5) (dm) Payment for legal representation under s. ~~977.07 (2) (2m)~~,
3 977.075 or 977.076;

4 **SECTION 26.** 809.30 (2) (d) of the statutes is amended to read:

5 809.30 (2) (d) *Indigency redetermination.* Except as provided in this
6 paragraph, whenever a person whose trial counsel is appointed by the state public
7 defender files a notice under par. (b) requesting public defender representation for
8 purposes of postconviction or postdisposition relief, the prosecutor may, within 5
9 days after the notice is served and filed, file in the circuit court and serve upon the
10 state public defender a request that the person's indigency be redetermined before
11 counsel is appointed or transcripts are requested. This paragraph does not apply to
12 a ~~child or juvenile~~ person who is entitled to be represented by counsel under s. 48.23,
13 51.60 (1), 55.105, or 938.23.

14 **SECTION 27.** 814.69 (1) (a) of the statutes is amended to read:

15 814.69 (1) (a) For a transcript under SCR 71.04, a fee at the rate of \$1.50 per
16 25-line page for the original and 50 cents per 25-line page for the duplicate. Except
17 as provided in s. 967.06 (3), the fee shall be paid by the county treasurer upon the
18 certificate of the clerk of court.

19 **SECTION 28.** 967.06 of the statutes is renumbered 967.06 (1) and amended to
20 read:

21 967.06 (1) As soon as practicable after a person has been detained or arrested
22 in connection with any offense ~~which~~ that is punishable by incarceration, or in
23 connection with any civil commitment proceeding, or in any other situation in which
24 a person is entitled to counsel regardless of ability to pay under the constitution or

1 laws of the United States or this state, the person shall be informed of his or her right
2 to counsel. Persons

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

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

17 **SECTION 29.** 967.06 (2) (b) of the statutes is created to read:

18 967.06 (2) (b) If the person indicating that he or she wants to be represented
19 by a lawyer is detained under ch. 48, 51, 55, or 938, the person shall be referred for
20 appointment of counsel as provided under s. 48.23 (4), 51.60, 55.105, or 938.23 (4),
21 whichever is applicable.

22 **SECTION 30.** 973.06 (1) (e) of the statutes is amended to read:

23 973.06 (1) (e) Attorney fees payable to the defense attorney by the county or
24 the state. If the court determines at the time of sentencing that the defendant's

1 financial circumstances are changed, the court may adjust the amount in accordance
2 with s. 977.07 (1) (a) and (2) rules promulgated under s. 977.02 (3).

3 **SECTION 31.** 977.02 (2m) of the statutes is amended to read:

4 977.02 (2m) Promulgate rules regarding eligibility for legal services under this
5 chapter, including legal services for children persons who are entitled to be
6 represented by counsel without a determination of indigency, as provided in s. 48.23
7 (4), 51.60, 55.105, or 938.23 (4).

8 *LRS: PSCM comp.* **SECTION 32.** 977.02 (3) of the statutes is renumbered 977.02 (3) (intro.) and
9 amended to read:

10 977.02 (3) (intro.) Promulgate rules regarding the determination of indigency
11 of persons entitled to be represented by counsel, other than children persons who are
12 entitled to be represented by counsel under s. 48.23, 51.60, 55.105, or 938.23,
13 including the time period in which the determination must be made and the criteria
14 to be used to determine indigency and partial indigency. The rules shall specify that,
15 in determining indigency, the representative of the state public defender shall do all
16 of the following:

17 **SECTION 33.** 977.02 (3) (a) to (d) of the statutes are created to read:

18 977.02 (3) (a) Consider the anticipated costs of effective representation for the
19 type of case in which the person seeks representation.

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

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

4 ~~(d) Treat assets or income of the person's spouse as the person's assets or~~
5 ~~income, unless the spouse was the victim of a crime that the person allegedly~~
6 ~~committed.~~

7 **SECTION 34.** 977.05 (4) (gm) of the statutes is amended to read:

8 977.05 (4) (gm) In accordance with the standards under pars. (h) and (i), accept
9 referrals from judges and courts for the provision of legal services without a
10 determination of indigency of children persons who are entitled to be represented by
11 counsel under s. 48.23, 51.60, 55.105, or 938.23, appoint counsel in accordance with
12 contracts and policies of the board, and inform the referring judge or court of the
13 name and address of the specific attorney who has been assigned to the case.

14 **SECTION 35.** 977.05 (4) (h) of the statutes is amended to read:

15 977.05 (4) (h) Accept requests for legal services from children persons who are
16 entitled to be represented by counsel under s. 48.23, 51.60, 55.105, or 938.23 and
17 from indigent persons who are entitled to be represented by counsel under s. 967.06
18 or who are otherwise so entitled under the constitution or laws of the United States
19 or this state and provide such persons with legal services when, in the discretion of
20 the state public defender, such provision of legal services is appropriate.

21 **SECTION 36.** 977.05 (4) (i) 8. of the statutes is amended to read:

22 977.05 (4) (i) 8. Cases involving individuals who are subject to petitions for
23 protective placement or involuntary administration of psychotropic medication
24 under ch. 55.

25 **SECTION 37.** 977.06 (1) (a) of the statutes is amended to read:

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 38.** 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, 55.105, or 938.23, shall sign a statement declaring that he or she has
10 not disposed of any assets for the purpose of qualifying for that assignment of
11 counsel. If the representative or authority making the indigency determination
12 finds that any asset was disposed of for less than its fair market value for the purpose
13 of obtaining that assignment of counsel, the asset shall be counted under s. 977.07
14 (2) rules promulgated under s. 977.02 (3) at its fair market value at the time it was
15 disposed of, minus the amount of compensation received for the asset.

16 **SECTION 39.** 977.06 (2) (am) of the statutes is amended to read:

17 977.06 (2) (am) A person seeking to have counsel assigned for him or her under
18 s. 977.08, other than a child person who is entitled to be represented by counsel under
19 s. 48.23, 51.60, 55.105, or 938.23, shall sign a statement declaring that the
20 information that he or she has given to determine eligibility for assignment of
21 counsel he or she believes to be true and that he or she is informed that he or she is
22 subject to the penalty under par. (b).

23 **SECTION 40.** 977.07 (1) (a) of the statutes is amended to read:

24 977.07 (1) (a) Determination of indigency for persons entitled to counsel shall
25 be made as soon as possible and shall be in accordance with the rules promulgated

1 by the board under s. 977.02 (3) and the system established under s. 977.06. No
2 determination of indigency is required for a child person who is entitled to be
3 represented by counsel under s. 48.23, 51.60, 55.105, or 938.23.

4 **SECTION 41.** 977.07 (1) (c) of the statutes is amended to read:

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

15 **SECTION 42.** 977.07 (2) of the statutes is repealed.

16 **SECTION 43.** 977.075 (1g) of the statutes is created to read:

17 977.075 (1g) In this section, "client responsible for payment" means a client of
18 the state public defender other than a client entitled to legal representation without
19 a determination of indigency.

20 **SECTION 44.** 977.075 (3) of the statutes is amended to read:

21 977.075 (3) The board shall establish by rule a fee schedule that sets the
22 amount that a ~~person, other than a parent subject to s. 48.275 (2) (b) or 938.275 (2)~~
23 ~~(b), who is~~ client responsible for payment for legal representation shall pay for the
24 cost of the legal representation if the ~~person~~ client does not pay the applicable
25 discount fee under sub. (3m). The schedule shall establish a fee for a given type of

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

3 **SECTION 45.** 977.075 (3m) of the statutes is amended to read:

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

13 **SECTION 46.** 977.075 (4) of the statutes is created to read:

14 977.075 (4) 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 or 55.107 shall pay as reimbursement for legal services. The
18 maximum amounts under this subsection shall be based on the average cost, as
19 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, 55.105, or 938.23 (4), the
24 state public defender shall assign counsel according to subs. (3) and (4). If a

1 defendant makes a request for change of attorney assignment, the change of attorney
2 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, 55.105, or 938.23 (4)
7 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, 55.107, 757.66, 938.275, 977.06, 977.07 (2), 977.075 and 977.076,
13 including the amount of revenue generated by reimbursement and recoupment. The
14 quarterly reports shall include any alternative means suggested by the board to
15 improve reimbursement and recoupment procedures and to increase the amount of
16 revenue generated. The department of justice, district attorneys, circuit courts and
17 applicable county agencies shall cooperate by providing any necessary information
18 to the state public defender.

19 **SECTION 9336. Initial applicability; Public Defender Board.**

20 (1) INDIGENCY DETERMINATIONS. The treatment of sections 20.550 (1) (fb),
21 303.065 (5) (dm), 973.06 (1) (e), 977.06 (1) (a), 977.06 (2) (a) (with respect to
22 determinations of indigency), 977.07 (2), and 977.085 (3) of the statutes, the
23 renumbering and amendment of section 977.02 (3) of the statutes, and the creation
24 of section 977.02 (3) (a) to (d) of the statutes first apply to cases opened on June 27,
25 2009.

create A.R.C.

20.550 (1) (L)

1 (b) REPRESENTATION IN CIVIL COMMITMENT, PROTECTIVE PLACEMENT, AND
 2 INVOLUNTARY MEDICATION CASES. The treatment of sections 51.15 (9), 51.20 (3) and (18)
 3 (c), 51.35 (1) (e) 1. and 2. c., 51.45 (12) (b) (intro.), 1., 2., and 3. and (c) 2., 51.45 (13)
 4 (b) 2., (d), and (j) and (16) (c), 51.60, 51.605, 55.10 (4) (a), 55.105, 55.107, 55.135 (1),
 5 55.14 (7), 55.15 (7) (cm), 55.18 (3) (c) (intro.), 55.19 (3) (c) (intro.), 809.30 (2) (d),
 6 967.06 (2) (a) and (b), 977.02 (2m), 977.05 (4) (gm), (h), and (i) 8., 977.06 (2) (a) (with
 7 respect to appointment of counsel in civil proceedings) and (am), 977.07 (1) (a) and
 8 (c), 977.075 (1g), (3), (3m), and (4), and 977.08 (1) and (2) (intro.) and (d) of the
 9 statutes first applies to civil proceedings commencing, emergency detentions or
 10 emergency placements occurring, placement transfers occurring, or petitions for, or
 11 annual reviews of, court orders for involuntary administration of psychotropic
 12 medication commencing on June 27, 2009.

July 1, 2008

SECTION 9436. Effective dates; Public Defender Board.

14 (1) INDIGENCY DETERMINATIONS AND REPRESENTATION IN CIVIL COMMITMENT,
 15 PROTECTIVE PLACEMENT, AND INVOLUNTARY MEDICATION CASES. The treatment of sections
 16 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
 17 (12) (b) (intro.), 1., 2., and 3. and (c) 2., 51.45 (13) (b) 2., (d), and (j) and (16) (c), 51.60,
 18 51.605, 55.10 (4) (a), 55.105, 55.107, 55.135 (1), 55.14 (7), 55.15 (7) (cm), 55.18 (3) (c)
 19 (intro.), 55.19 (3) (c) (intro.), 303.065 (5) (dm), 809.30 (2) (d), 814.69 (1) (a), 967.06 (1),
 20 (2) (a) and (b), and (3), 973.08 (1) (e), 977.05 (4) (gm), (h), and (i) 8., 977.06 (1) (a) and
 21 (2) (a) and (am), 977.07 (1) (a) and (c), 977.07 (2), 977.075 (1g), (3), (3m), and (4),
 22 977.08 (1) and (2) (intro.) and (d), and 977.085 (3) of the statutes takes effect on June

27, 2009. July 1, 2008

and SECTION 9336 (1) of this act
↑
use ARC

(END)

**2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0459/2ins
RLR:.....

1 **Ins 2-11:**

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

3 20.550 (1) (L) *Private bar and investigator reimbursement; payments for legal*

4 *representation.* All moneys received, after first deducting the amounts appropriated

5 under par. (fb), from persons as payment for legal representation to be used for the

6 reimbursement of private attorneys appointed to act as counsel ~~for a child or an~~

7 ~~indigent person~~ ✓ under s. 977.08 and for reimbursement for contracting for services

8 of private investigators.

History: 1977 c. 29, 418; 1979 c. 34, 356; 1981 c. 20; 1983 a. 27; 1987 a. 27; 1989 a. 31, 336; 1991 a. 39; 1993 a. 16, 437, 451; 1995 a. 27; 1999 a. 9; 2001 a. 16; 2005 a. 25.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0459/2dn

RLR:.....

mk

(date)

Leah Wavrunek:

This redraft removes the portions of the bill that relate to standards for determining indigence. ✓ The redraft also changes the effective date for SPD representation in proceedings under chs. 51 and 55 without indigency determinations to July 1, 2008. ✓ I amended proposed s. 55.105 (1) as indicated in my e-mail message of January 23, 2007. I also amended s. 20.550 (1) (L), to cover reimbursement for private bar attorneys appointed in ch. 51 and 55 cases. This last change should have been included in the prior draft. --let me know if it you don't want it.

emdash

Robin Ryan
Legislative Attorney
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**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0459/2dn
RLR:lmk:rs

January 24, 2007

Leah Wavrunek:

This redraft removes the portions of the bill that relate to standards for determining indigence. The redraft also changes the effective date for SPD representation in proceedings under chs. 51 and 55 without indigency determinations to July 1, 2008. I amended proposed s. 55.105 (1) as indicated in my e-mail message of January 23, 2007. I also amended s. 20.550 (1) (L), to cover reimbursement for private bar attorneys appointed in ch. 51 and 55 cases. This last change should have been included in the prior draft—let me know if it you don't want it.

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State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-0459/2

RLR:lmk:rs

DOA:.....Wavrunek, BB0079 - Eligibility for public defender representation

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

PUBLIC DEFENDER

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 who are indigent.

This 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 or services proceeding, or a proceeding 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. The bill makes the changes in eligibility for SPD representation effective July 1, 2008.

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) (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) (L) of the statutes is amended to read:

8 20.550 (1) (L) *Private bar and investigator reimbursement; payments for legal*
9 *representation.* All moneys received, after first deducting the amounts appropriated
10 under par. (fb), from persons as payment for legal representation to be used for the
11 reimbursement of private attorneys appointed to act as counsel for a child or an
12 indigent person under s. 977.08 and for reimbursement for contracting for services
13 of private investigators.

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

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

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

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:

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 referring the person to the state public defender,~~
16 who shall appoint counsel shall timely be appointed at public expense, as provided
17 ~~in s. 967.06 and ch. 977~~ for the person without a determination of indigency, as
18 provided in s. 51.60. Counsel shall have access to all reports and records, psychiatric
19 and otherwise, which have been made prior to the preliminary hearing. The person
20 shall be present at the preliminary hearing and shall be afforded a meaningful
21 opportunity to be heard. Upon failure to make a finding of probable cause under this
22 paragraph, the court shall dismiss the petition and discharge the person from the
23 custody of the county department.

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

1 51.45 (13) (j) Upon the filing of a petition for recommitment under par. (h), the
2 court shall fix a date for a recommitment hearing within 10 days, and assure that the
3 person sought to be recommitted is represented by counsel and, ~~if the person is~~
4 ~~indigent, appoint~~ by referring the person to the state public defender, who shall
5 appoint counsel for him or her, unless waived for the person without a determination
6 of indigency, as provided in s. 51.60. The provisions of par. (e) relating to notice and
7 to access to records, names of witnesses, and summaries of their testimony shall
8 apply to recommitment hearings under this paragraph. At the recommitment
9 hearing, the court shall proceed as provided under pars. (f) and (g).

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

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

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

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

19 **(2) MINORS.** In any situation under this chapter in which a minor has a right
20 to be represented by counsel, counsel for the minor shall be appointed as provided
21 in s. 48.23 (4).

22 **(3) RETAINED COUNSEL.** Notwithstanding subs. (1) and (2), an individual subject
23 to proceedings under this chapter is entitled to retain counsel of his or her own
24 choosing at his or her own expense.

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

51.605 Reimbursement for counsel provided by the state. (1) INQUIRY.

At or after the conclusion of a proceeding under this chapter in which the state public defender has provided counsel for an adult individual, the court may inquire as to the individual's ability to reimburse the state for all or part of the cost of representation. If the court determines that the individual is able to make reimbursement for all or part of the cost of representation, the court may order the individual to reimburse the state an amount not to exceed the maximum amount established by the public defender board under s. 977.075 (4). Upon the court's request, the state public defender shall conduct a determination of indigency under s. 977.07 and report the results of the determination to the court.

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

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

SECTION 17. 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

1 alleges that the individual is not competent to refuse psychotropic medication under
2 s. 55.14, the individual sought to be protected requested such representation at least
3 72 hours before the hearing, the guardian ad litem or any other person states that
4 the individual sought to be protected is opposed to the petition, or the court
5 determines that the interests of justice require it. If the individual sought to be
6 protected or any other person on his or her behalf requests but is unable to obtain
7 legal counsel, the court shall ~~appoint~~ refer the individual to the state public defender
8 as provided under s. 55.105 for appointment of legal counsel. ~~Counsel shall be~~
9 ~~provided at public expense, as provided under s. 967.06 and ch. 977, if the individual~~
10 ~~is indigent. If the individual sought to be protected is an adult who is indigent, and~~
11 ~~if counsel was not appointed under s. 977.08, the county in which the hearing is held~~
12 ~~is liable for any fees due the individual's legal counsel.~~ If the individual sought to
13 be protected is represented by counsel appointed under s. 977.08 in a proceeding for
14 the appointment of a guardian under s. ~~880.33~~ ch. 54, the court shall order the
15 counsel appointed under s. 977.08 to represent under this section the individual
16 sought to be protected.

17 **SECTION 18.** 55.105 of the statutes is created to read:

18 **55.105 Appointment of counsel.** (1) In any situation under this chapter in
19 which an adult individual has a right to be represented by legal counsel, the
20 individual shall be referred as soon as practicable to the state public defender, who
21 shall appoint counsel for the individual under s. 977.08 without a determination of
22 indigency.

23 (2) In any situation under this chapter in which a minor has a right to be
24 represented by legal counsel, legal counsel for the minor shall be appointed as
25 provided in s. 48.23 (4).

1 (3) Notwithstanding subs. (1) and (2), an individual subject to proceedings
2 under this chapter is entitled to retain counsel of his or her own choosing at his or
3 her own expense.

4 **SECTION 19.** 55.107 of the statutes is created to read:

5 **55.107 Reimbursement of counsel provided by the state.** (1) At or after
6 the conclusion of a proceeding under this chapter in which the state public defender
7 has provided legal counsel for an adult individual, the court may inquire as to the
8 individual's ability to reimburse the state for all or part of the cost of representation.
9 If the court determines that the individual is able to make reimbursement for all or
10 part of the cost of representation, the court may order the individual to reimburse
11 the state an amount not to exceed the maximum amount established by the public
12 defender board under s. 977.075 (4). Upon the court's request, the state public
13 defender shall conduct a determination of indigency under s. 977.07 and report the
14 results of the determination to the court.

15 (2) Reimbursement ordered under this section shall be made to the clerk of
16 courts of the county where the proceedings took place. The clerk of courts shall
17 transmit payments under this section to the county treasurer, who shall deposit 25
18 percent of the payment amount in the county treasury and transmit the remainder
19 to the secretary of administration. Payments transmitted to the secretary of
20 administration shall be deposited in the general fund and credited to the
21 appropriation account under s. 20.550 (1) (L).

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

1 **SECTION 20.** 55.135 (1) of the statutes is amended to read:

2 55.135 (1) If, ~~upon a credible report to or,~~ from personal observation of, or a
3 reliable report made by a person who identifies himself or herself to, a sheriff, police
4 officer, fire fighter, guardian, if any, or authorized representative of a county
5 department or an agency with which it contracts under s. 55.02 (2), it appears
6 probable that an individual is so totally incapable of providing for his or her own care
7 or custody as to create a substantial risk of serious physical harm to himself or herself
8 or others as a result of developmental disabilities, degenerative brain disorder,
9 serious and persistent mental illness, or other like incapacities if not immediately
10 placed, the individual ~~under this paragraph who received the credible report or who~~
11 personally made the observation or to whom the report is made may take into custody
12 and transport the individual to an appropriate medical or protective placement
13 facility. The person making emergency protective placement shall prepare a
14 statement at the time of detention providing specific factual information concerning
15 the person's observations or reports made to the person and the basis for emergency
16 placement. The statement shall be filed with the director of the facility and with any
17 petition under s. 55.075. At the time of emergency protective placement the
18 individual shall be informed by the director of the facility or the director's designee,
19 orally and in writing, of his or her right to contact an attorney and a member of his
20 or her immediate family and the right to have an attorney provided at public
21 expense, as provided under s. 967.06 and ch. 977, ~~if the individual is a minor or is~~
22 ~~indigent~~ s. 55.105. The director or designee shall also provide the individual with
23 a copy of the statement by the person making emergency protective placement.

24 **SECTION 21.** 55.14 (7) of the statutes is amended to read:

1 55.14 (7) Upon the filing of a petition under this section, the court shall appoint
2 make a referral for appointment of legal counsel as provided under s. 55.105. A
3 petition under this section shall be heard under s. 55.10(4)(a) s. 55.06 within 30 days
4 after it is filed.

5 **SECTION 22.** 55.15 (7) (cm) of the statutes is amended to read:

6 55.15 (7) (cm) The court shall ~~appoint counsel for~~ refer the individual under
7 protective placement for appointment of legal counsel as provided under s. 55.105 if
8 the individual, the individual's guardian ad litem, or anyone on the individual's
9 behalf requests that counsel be appointed for the individual.

10 **SECTION 23.** 55.18 (3) (c) (intro.) of the statutes is amended to read:

11 55.18 (3) (c) (intro.) The court shall ~~order legal counsel for~~ refer an individual
12 and, if the individual appears to be indigent, ~~refer him or her to the authority for~~
13 ~~indigency determinations under s. 977.07(1)~~ for appointment of legal counsel under
14 s. 55.105 if any of the following apply:

15 **SECTION 24.** 55.19 (3) (c) (intro.) of the statutes is amended to read:

16 55.19 (3) (c) (intro.) The court shall ~~order legal counsel for~~ refer an individual
17 and, if the individual appears to be indigent, ~~refer him or her to the authority for~~
18 ~~indigency determinations under s. 977.07(1)~~ for appointment of legal counsel under
19 s. 55.105 if any of the following apply:

20 **SECTION 25.** 809.30 (2) (d) of the statutes is amended to read:

21 809.30 (2) (d) *Indigency redetermination.* Except as provided in this
22 paragraph, whenever a person whose trial counsel is appointed by the state public
23 defender files a notice under par. (b) requesting public defender representation for
24 purposes of postconviction or postdisposition relief, the prosecutor may, within 5
25 days after the notice is served and filed, file in the circuit court and serve upon the

1 state public defender a request that the person's indigency be redetermined before
2 counsel is appointed or transcripts are requested. This paragraph does not apply to
3 a ~~child or juvenile~~ person who is entitled to be represented by counsel under s. 48.23,
4 51.60 (1), 55.105, or 938.23.

5 **SECTION 26.** 814.69 (1) (a) of the statutes is amended to read:

6 814.69 (1) (a) For a transcript under SCR 71.04, a fee at the rate of \$1.50 per
7 25-line page for the original and 50 cents per 25-line page for the duplicate. Except
8 as provided in s. 967.06 (3), the fee shall be paid by the county treasurer upon the
9 certificate of the clerk of court.

10 **SECTION 27.** 967.06 of the statutes is renumbered 967.06 (1) and amended to
11 read:

12 967.06 (1) As soon as practicable after a person has been detained or arrested
13 in connection with any offense ~~which~~ that is punishable by incarceration, or in
14 connection with any civil commitment proceeding, or in any other situation in which
15 a person is entitled to counsel regardless of ability to pay under the constitution or
16 laws of the United States or this state, the person shall be informed of his or her right
17 to counsel. ~~Persons~~

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

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

7 **SECTION 28.** 967.06 (2) (b) of the statutes is created to read:

8 967.06 **(2)** (b) If the person indicating that he or she wants to be represented
9 by a lawyer is detained under ch. 48, 51, 55, or 938, the person shall be referred for
10 appointment of counsel as provided under s. 48.23 (4), 51.60, 55.105, or 938.23 (4),
11 whichever is applicable.

12 **SECTION 29.** 977.02 (2m) of the statutes is amended to read:

13 977.02 **(2m)** Promulgate rules regarding eligibility for legal services under this
14 chapter, including legal services for ~~children~~ persons who are entitled to be
15 represented by counsel without a determination of indigency, as provided in s. 48.23
16 (4), 51.60, 55.105, or 938.23 (4).

17 **SECTION 30.** 977.02 (3) of the statutes is amended to read:

18 977.02 **(3)** Promulgate rules regarding the determination of indigency of
19 persons entitled to be represented by counsel, other than ~~children~~ persons who are
20 entitled to be represented by counsel under s. 48.23, 51.60, 55.105, or 938.23,
21 including the time period in which the determination must be made and the criteria
22 to be used to determine indigency and partial indigency.

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

24 977.05 **(4)** (gm) In accordance with the standards under pars. (h) and (i), accept
25 referrals from judges and courts for the provision of legal services without a

1 determination of indigency of children persons who are entitled to be represented by
2 counsel under s. 48.23, 51.60, 55.105, or 938.23, appoint counsel in accordance with
3 contracts and policies of the board, and inform the referring judge or court of the
4 name and address of the specific attorney who has been assigned to the case.

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

6 977.05 (4) (h) Accept requests for legal services from children persons who are
7 entitled to be represented by counsel under s. 48.23, 51.60, 55.105, or 938.23 and
8 from indigent persons who are entitled to be represented by counsel under s. 967.06
9 or who are otherwise so entitled under the constitution or laws of the United States
10 or this state and provide such persons with legal services when, in the discretion of
11 the state public defender, such provision of legal services is appropriate.

12 **SECTION 33.** 977.05 (4) (i) 8. of the statutes is amended to read:

13 977.05 (4) (i) 8. Cases involving individuals who are subject to petitions for
14 protective placement or involuntary administration of psychotropic medication
15 under ch. 55.

16 **SECTION 34.** 977.06 (2) (a) of the statutes is amended to read:

17 977.06 (2) (a) A person seeking to have counsel assigned for him or her under
18 s. 977.08, other than a child person who is entitled to be represented by counsel under
19 s. 48.23, 51.60, 55.105, or 938.23, shall sign a statement declaring that he or she has
20 not disposed of any assets for the purpose of qualifying for that assignment of
21 counsel. If the representative or authority making the indigency determination
22 finds that any asset was disposed of for less than its fair market value for the purpose
23 of obtaining that assignment of counsel, the asset shall be counted under s. 977.07
24 (2) at its fair market value at the time it was disposed of, minus the amount of
25 compensation received for the asset.

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

2 977.06 (2) (am) A person seeking to have counsel assigned for him or her under
3 s. 977.08, other than a child person who is entitled to be represented by counsel under
4 s. 48.23, 51.60, 55.105, or 938.23, shall sign a statement declaring that the
5 information that he or she has given to determine eligibility for assignment of
6 counsel he or she believes to be true and that he or she is informed that he or she is
7 subject to the penalty under par. (b).

8 **SECTION 36.** 977.07 (1) (a) of the statutes is amended to read:

9 977.07 (1) (a) Determination of indigency for persons entitled to counsel shall
10 be made as soon as possible and shall be in accordance with the rules promulgated
11 by the board under s. 977.02 (3) and the system established under s. 977.06. No
12 determination of indigency is required for a child person who is entitled to be
13 represented by counsel under s. 48.23, 51.60, 55.105, or 938.23.

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

15 977.07 (1) (c) For all referrals made under ss. 809.107, 809.30, 974.06 (3) (b)
16 and 974.07 (11), except a referral of a child person who is entitled to be represented
17 by counsel under s. 48.23, 51.60, 55.105, or 938.23, a representative of the state
18 public defender shall determine indigency. For referrals made under ss. 809.107,
19 809.30 and 974.06 (3) (b), except a referral of a child person who is entitled to be
20 represented by counsel under s. 48.23, 51.60, 55.105, or 938.23, the representative
21 of the state public defender may, unless a request for redetermination has been filed
22 under s. 809.30 (2) (d) or the person's request for representation states that his or her
23 financial circumstances have materially improved, rely upon a determination of
24 indigency made for purposes of trial representation under this section.

25 **SECTION 38.** 977.075 (1g) of the statutes is created to read:

1 977.075 (1g) In this section, “client responsible for payment” means a client of
2 the state public defender other than a client entitled to legal representation without
3 a determination of indigency.

4 **SECTION 39.** 977.075 (3) of the statutes is amended to read:

5 977.075 (3) The board shall establish by rule a fee schedule that sets the
6 amount that a person, other than a parent subject to s. 48.275 (2) (b) or 938.275 (2)
7 (b), who is client responsible for payment for legal representation shall pay for the
8 cost of the legal representation if the person client does not pay the applicable
9 discount fee under sub. (3m). The schedule shall establish a fee for a given type of
10 case, and the fee for a given type of case shall be based on the average cost, as
11 determined by the board, for representation for that type of case.

12 **SECTION 40.** 977.075 (3m) of the statutes is amended to read:

13 977.075 (3m) The board shall establish by rule a fee schedule that sets the
14 discount amount that a person, other than a parent subject to s. 48.275 (2) (b) or
15 938.275 (2) (b), who is client responsible for payment for legal representation, may
16 pay during a time period established by rule instead of paying the applicable fee
17 under sub. (3). The fee schedule shall establish a discount fee for each type of case
18 included in the schedule under sub. (3). If a person client responsible for payment
19 pays the applicable discount fee within the time period established under this
20 section, the person client may not be held liable for any additional payment for
21 counsel.

22 **SECTION 41.** 977.075 (4) of the statutes is created to read:

23 977.075 (4) The board shall establish by rule a fee schedule that sets the
24 maximum amount that a parent subject to s. 48.275 (2) (b) or 938.275 (2) (b) shall pay
25 as reimbursement for legal services and sets the maximum amount that a person

1 subject to s. 51.605 or 55.107 shall pay as reimbursement for legal services. The
2 maximum amounts under this subsection shall be based on the average cost, as
3 determined by the board, for each applicable type of case.

4 **SECTION 42.** 977.08 (1) of the statutes is amended to read:

5 977.08 (1) If the representative or the authority for indigency determinations
6 specified under s. 977.07 (1) refers a case to or within the office of the state public
7 defender or if a case is referred under s. 48.23 (4), 51.60, 55.105, or 938.23 (4), the
8 state public defender shall assign counsel according to subs. (3) and (4). If a
9 defendant makes a request for change of attorney assignment, the change of attorney
10 must be approved by the circuit court.

11 **SECTION 43.** 977.08 (2) (intro.) of the statutes is amended to read:

12 977.08 (2) (intro.) All attorneys in a county shall be notified in writing by the
13 state public defender that a set of lists is being prepared of attorneys willing to
14 represent children persons referred under s. 48.23 (4), 51.60, 55.105, or 938.23 (4)
15 and indigent clients in the following:

16 **SECTION 44.** 977.08 (2) (d) of the statutes is repealed.

17 **SECTION 45.** 977.085 (3) of the statutes is amended to read:

18 977.085 (3) The board shall provide quarterly reports to the joint committee
19 on finance on the status of reimbursement for or recoupment of payments under ss.
20 48.275, 51.605, 55.107, 757.66, 938.275, 977.06, 977.07 (2), 977.075 and 977.076,
21 including the amount of revenue generated by reimbursement and recoupment. The
22 quarterly reports shall include any alternative means suggested by the board to
23 improve reimbursement and recoupment procedures and to increase the amount of
24 revenue generated. The department of justice, district attorneys, circuit courts and

1 applicable county agencies shall cooperate by providing any necessary information
2 to the state public defender.

3 **SECTION 9336. Initial applicability; Public Defender Board.**

4 (1) REPRESENTATION IN CIVIL COMMITMENT, PROTECTIVE PLACEMENT, AND
5 INVOLUNTARY MEDICATION CASES. The treatment of sections 20.550 (1) (L), 51.15 (9),
6 51.20 (3) and (18) (c), 51.35 (1) (e) 1. and 2. c., 51.45 (12) (b) (intro.), 1., 2., and 3. and
7 (c) 2., 51.45 (13) (b) 2., (d), and (j) and (16) (c), 51.60, 51.605, 55.10 (4) (a), 55.105,
8 55.107, 55.135 (1), 55.14 (7), 55.15 (7) (cm), 55.18 (3) (c) (intro.), 55.19 (3) (c) (intro.),
9 809.30 (2) (d), 967.06 (2) (a) and (b), 977.02 (2m), 977.05 (4) (gm), (h), and (i) 8., 977.06
10 (2) (a) and (am), 977.07 (1) (a) and (c), 977.075 (1g), (3), (3m), and (4), and 977.08 (1)
11 and (2) (intro.) and (d) of the statutes first applies to civil proceedings commencing,
12 emergency detentions or emergency placements occurring, placement transfers
13 occurring, or petitions for, or annual reviews of, court orders for involuntary
14 administration of psychotropic medication commencing on July 1, 2008.

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

16 (1) REPRESENTATION IN CIVIL COMMITMENT, PROTECTIVE PLACEMENT, AND
17 INVOLUNTARY MEDICATION CASES. The treatment of sections 20.550 (1) (f), 51.15 (9),
18 51.20 (3) and (18) (c), 51.35 (1) (e) 1. and 2. c., 51.45 (12) (b) (intro.), 1., 2., and 3. and
19 (c) 2., 51.45 (13) (b) 2., (d), and (j) and (16) (c), 51.60, 51.605, 55.10 (4) (a), 55.105,
20 55.107, 55.135 (1), 55.14 (7), 55.15 (7) (cm), 55.18 (3) (c) (intro.), 55.19 (3) (c) (intro.),
21 809.30 (2) (d), 814.69 (1) (a), 967.06 (1), (2) (a) and (b), and (3), 977.05 (4) (gm), (h),
22 and (i) 8., 977.06 (2) (a) and (am), 977.07 (1) (a) and (c), 977.075 (1g), (3), (3m), and
23 (4), 977.08 (1) and (2) (intro.) and (d), and 977.085 (3) of the statutes and SECTION
24 9336 (1) of this act takes effect on July 1, 2008.

25 (END)