

2009 DRAFTING REQUEST

Bill

Received: 02/11/2009

Received By: rryan

Wanted: As time permits

Identical to LRB:

For: Frederick Kessler (608) 266-5813

By/Representing:

This file may be shown to any legislator: NO

Drafter: rryan

May Contact:

Addl. Drafters:

Subject: Public Defender

Extra Copies:

Submit via email: YES

Requester's email: Rep.Kessler@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Public defender reimbursement, indgency determinations, and appointments

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>
/?				_____			State
/1	rryan 02/24/2009	nmatzke 03/02/2009	rschluet 03/02/2009	_____	lparisi 03/02/2009		State
/2	rryan 03/06/2009	nmatzke 03/09/2009	pshenry 03/10/2009	_____	mbarman 03/10/2009	lparisi 03/12/2009	

FE Sent For: @ intro.

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/1	rryan 02/24/2009	nmatzke 03/02/2009 1/2 nwn 3/9	rschluet 03/02/2009 3 1/10 ph	_____	lparisi 03/02/2009		
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/?	rryan	1 nwn 3/2					
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FE Sent For:

<END>

2093/1

In 2/24/09

# 2007 ASSEMBLY BILL 434

PWF

RMR

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

SA ✓  
X-ref ✓

Regen.

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

INS  
RL

### *Analysis by the Legislative Reference Bureau*

Under current law, the State Public Defender (SPD) provides indigent people, legal representation for certain types of proceedings including criminal, commitment, protective placement, paternity, and juvenile delinquency proceedings. The SPD also provides children legal counsel in certain types of cases regardless of the child's economic status. The SPD must make indigency determinations with respect to persons who request appointment of counsel on the basis of indigency and must assign counsel for all people who are eligible for SPD representation. The SPD may assign cases to attorneys employed by the SPD or to private attorneys. The SPD reimburses private attorneys \$40 an hour for time spent related to a case, excluding travel time. (The SPD reimburses private attorneys \$25 an hour for out-of-county travel.) *or travel over 30 miles from the attorney's office*

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

INS  
A

INS  
B

also

**ASSEMBLY BILL 434**

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

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

INS 2-1

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

2 977.07 (1) (a) Determination of indigency for persons entitled to counsel shall  
3 be made as soon as possible, and for a defendant in a criminal proceeding shall be  
4 made within one business day after the defendant's initial appearance.  
5 Determinations shall be made in accordance with the rules promulgated by the board  
6 under s. 977.02 (3) and the system established under s. 977.06. No determination  
7 of indigency is required for a child who is entitled to be represented by counsel under  
8 s. 48.23 or 938.23.

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

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

INS 2-15

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

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

## ASSEMBLY BILL 434

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

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

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

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

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

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

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

**ASSEMBLY BILL 434****SECTION 6**

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

5 **SECTION 7.** <sup>✓</sup>977.08 (4m) (c) of the statutes is amended to read:

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

14 **SECTION 8.** <sup>✓</sup>977.08 (4m) (d) of the statutes is created to read:

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

23 (END)



2009-2010 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-2093/lins  
RLR:.....

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**Ins RC:**

indigency determination and appointment of counsel for legal representation provided by the State Public Defender and the reimbursement rate for private attorneys appointed by the State Public Defender ✓

**Ins A:**

The SPD also provides legal representation to children for certain proceedings, and to adults for certain civil commitment and protective services proceedings, regardless of the child's or adult's economic means. ✓

**Ins B:**

This bill increases the SPD reimbursement rate for private attorneys from \$40 to \$70 an hour. ✓ The

**Ins 2-1:**

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

977.07 (1) (a) Determination of indigency for persons entitled to counsel shall be made as soon as possible, and for a defendant in a criminal proceeding shall be made within one business day after the defendant's initial appearance. Determinations shall be made in accordance with the rules promulgated by the board under s. 977.02 (3) and the system established under s. 977.06. No determination

1 of indigency is required for a person who is entitled to be represented by counsel  
2 under s. 48.23, 51.60, 55.105, or 938.23. ✓

3 **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; 2007 a. 20, 97.

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5 **Ins 2-15:**

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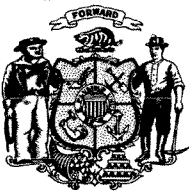
7 **SECTION 2.** ✓ 977.08 (1) of the statutes is amended to read:

8 977.08 (1) If the representative or the authority for indigency determinations  
9 specified under s. 977.07 (1) refers a case to or within the office of the state public  
10 defender or if a case is referred under s. 48.23 (4), 51.60, 55.105, or 938.23 (4), or if  
11 a court determines a defendant is indigent under s. 977.07 (2g), ✓ the state public  
12 defender shall assign counsel according to subs. (3) and (4). In criminal cases, the  
13 state public defender shall assign counsel within 2 business days after the initial  
14 appearance or within one business day after a determination of indigency is made,  
15 whichever is later. ✓ If a defendant makes a request for change of attorney assignment,  
16 the change of attorney must be approved by the circuit court. ✓

17 **History:** 1977 c. 29, 354; 1979 c. 352, 356; 1981 c. 20; 1983 a. 377; 1985 a. 29 ss. 2473 to 2476a, 3202 (42); 1985 a. 120; 1987 a. 27, 399; 1989 a. 12; 1991 a. 39, 263; 1993 a. 16, 318, 423, 451, 491; 1995 a. 27, 77; 1997 a. 27; 1999 a. 9; 2005 a. 443 s. 265; 2007 a. 20.

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State of Wisconsin  
2009 - 2010 LEGISLATURE

2  
LRB-2093/1

RLR:nwn:rs

In 3/6/09

2009 BILL

RMR

SAV

Regen Cat

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4 legal representation provided by the State Public Defender and the  
5 reimbursement rate for private attorneys appointed by the State Public  
6 Defender. ✓

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***Analysis by the Legislative Reference Bureau***

Under current law, the State Public Defender (SPD) provides indigent people legal representation for certain types of proceedings including criminal, paternity, and juvenile delinquency proceedings. The SPD also provides legal representation to children for certain proceedings, and to adults for certain civil commitment and protective services proceedings, regardless of the child's or adult's economic means. The SPD must make indigency determinations with respect to persons who request appointment of counsel on the basis of indigency and must assign counsel for all people who are eligible for SPD representation. The SPD may assign cases to attorneys employed by the SPD or to private attorneys. The SPD reimburses private attorneys \$40 an hour for time spent related to a case, excluding travel time. (The SPD reimburses private attorneys \$25 an hour for out-of-county travel or travel over 30 miles from the attorney's office.) no \$

This bill increases the SPD reimbursement rate for private attorneys from \$40 to \$70 an hour. The bill also requires the SPD to make an indigency determination

**BILL**

for a criminal defendant within one business day of the defendant's initial appearance, and requires the SPD to appoint counsel for a criminal defendant who is determined to be indigent within one business day of the indigency determination or two business days of the initial appearance, whichever is later. If the SPD does not meet these deadlines, the circuit court judge may make the indigency determination and appoint counsel.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

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14 from the attorney's principal office. LRB

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

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23 office. LRB

24 (END)

**Parisi, Lori**

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**From:** Hinkel, Andy  
**Sent:** Thursday, March 12, 2009 11:54 AM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB 09-2093/2 Topic: Public defender reimbursement, indgency determinations, and appointments

Please Jacket LRB 09-2093/2 for the ASSEMBLY.