

2009 DRAFTING REQUEST

Bill

Received: 03/02/2009

Received By: rryan

Wanted: As time permits

Identical to LRB:

For: Gary Hebl (608) 266-7678

By/Representing: Kate

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.Hebl@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

State public defender indigency determinations and positions

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 03/31/2009	nmatzke 03/31/2009		_____			S&L
/1			rschluet 04/01/2009	_____	cduerst 04/01/2009	cduerst 07/31/2009	

FE Sent For:

↪ At Intro.

<END>

for Assembly
↓ Rep.
Sent to Sherman
per Hebl's office
↳ see request
at back

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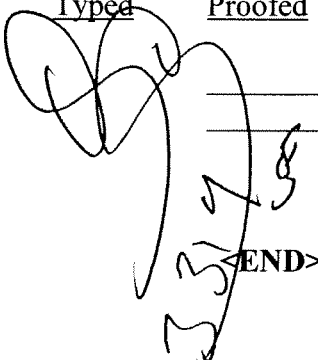
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/?	rryan	1 rryan 3/31					

FE Sent For:

END

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

3/2/09

Kate - for Rep. Hebl

Redraft 07 ARB 576

SPD indigency determination criteria

Change position # to 49.25

Effective Date - June 19, 2011

In 3/31/09

2266/1

LRB-0256/H

RLR:nwn&wlj:ph

2009 BILL

RMNR

S-N

SA ✓
X X X

Regen.

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

INSA

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 generally may provide counsel to a child or juvenile, or to an adult who is the subject of certain civil detention and commitment proceedings, regardless of the person's income or assets. Otherwise, the SPD may provide counsel only to people 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, 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

BILL

> 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 purpose of SPD representation. Under the bill, the SPD must adopt rules regarding indigency determinations that require the SPD, when assessing a person's eligibility, to consider the anticipated costs of effective representation for the type of case in which the person is involved. The rules must also require that assets and income be treated as available to the person to pay the costs of legal representation if they exceed the asset and income ceilings for eligibility for the Wisconsin Works (W-2) program, except that the asset exclusion for a person's home is limited to \$30,000. (To be eligible for the W-2 program, a person's household assets, after excluding up to \$10,000 for a vehicle and the value of the person's home, cannot exceed \$2,500, and his or her household income cannot exceed 115 percent of the federal poverty line.) Additionally, under the rules, the SPD must treat assets or income of the person's spouse as the person's assets or income, unless the spouse was the victim of a crime the person allegedly committed. The bill provides the Public Defender Board authority for 1.30 new full-time equivalent general purpose revenue positions.

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

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

1 SECTION 1. [✓] 20.550 (1) (fb) of the statutes is amended to read:

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

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

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

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

BILL

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

5 SECTION 4. [✓]977.02 (3) of the statutes is renumbered 977.02 (3) (intro.) and
6 amended to read:

7 977.02 (3) (intro.) Promulgate rules regarding the determination of indigency
8 of persons entitled to be represented by counsel, other than persons who are entitled
9 to be represented by counsel under s. 48.23, 51.60, 55.105, or 938.23, including the
10 time period in which the determination must be made and the criteria to be used to
11 determine indigency and partial indigency. The rules shall specify that, in
12 determining indigency, the representative of the state public defender shall do all of
13 the following:

14 SECTION 5. [✓]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 the costs exceed the resource limitations under s. 49.145 (3) (a), 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).

BILL**SECTION 5**

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 the person allegedly committed.

3 **SECTION 6.** [✓]977.06 (1) (a) of the statutes is amended to read:

4 977.06 (1) (a) Verify the information necessary to determine indigency under
5 ~~s. 977.07 (2) rules promulgated under s. 977.02 (3)~~. The information provided by a
6 person seeking assigned counsel that is subject to verification shall include any
7 social security numbers provided on an application under sub. (1m), income records,
8 value of assets, eligibility for public assistance, and claims of expenses.

9 **SECTION 7.** [✓]977.06 (2) (a) of the statutes is amended to read:

10 977.06 (2) (a) A person seeking to have counsel assigned for him or her under
11 s. 977.08, other than a person who is entitled to be represented by counsel under s.
12 48.23, 51.60, 55.105, or 938.23, shall sign a statement declaring that he or she has
13 not disposed of any assets for the purpose of qualifying for that assignment of
14 counsel. If the representative or authority making the indigency determination
15 finds that any asset was disposed of for less than its fair market value for the purpose
16 of obtaining that assignment of counsel, the asset shall be counted under ~~s. 977.07~~
17 ~~(2) rules promulgated under s. 977.02 (3)~~ at its fair market value at the time it was
18 disposed of, minus the amount of compensation received for the asset.

19 **SECTION 8.** [✓]977.07 (2) of the statutes is repealed.

20 **SECTION 9.** [✓]977.085 (3) of the statutes is amended to read:

21 977.085 (3) The board shall provide quarterly reports to the joint committee
22 on finance on the status of reimbursement for or recoupment of payments under ss.
23 48.275, 51.605, 55.107, 757.66, 938.275, 977.06, ~~977.07 (2)~~, 977.075 and 977.076,
24 including the amount of revenue generated by reimbursement and recoupment. The
25 quarterly reports shall include any alternative means suggested by the board to

BILL

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

5 **SECTION 10. Nonstatutory provisions.**

6 (1) POSITION INCREASE. The authorized FTE positions for the public defender
7 board are increased by 49.25 51.30 GPR positions on the effective date of this subsection,
8 to be funded from the appropriation under section 20.550 (1) (c) of the statutes, for
9 the purpose of providing legal representation to persons for whom the state public
10 defender assigns counsel. ✓

11 **SECTION 11. Initial applicability.**

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

14 **SECTION 12. Effective dates.** This act takes effect on the day after publication,
15 or on the 2nd day after publication of the 2009–11 biennial budget act, whichever is
16 later, except as follows. ✓

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

20 (END)

D-note

June 19, 2011

49.25

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2266/lins
RLR:.....

1

Ins A:

Commitment

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, and proceedings concerning emergency detention, involuntary civil commitment, protective placement, paternity determination, and juvenile delinquency. The SPD provides counsel to children and juveniles in protective services and delinquency proceedings regardless of the child's or juvenile's income or assets. The SPD provides counsel to adults in proceedings concerning involuntary commitment for mental health or alcoholism treatment, protective placement or services, or involuntary administration of psychotropic medication regardless of the adult's income or assets. In other types of proceedings, the SPD may provide counsel only to people who are indigent.

>

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2266/1dn

RLR:f:....

nwn

Date

Kate Battiato:

This bill does not include an appropriation.✓ Please let me know if you want to redraft the bill or draft and amendment to provide an appropriation increase to fund the new SPD positions from June 19, 2011, through the end of the 2010-11 fiscal year.✓

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2266/1dn
RLR:nwn:rs

April 1, 2009

Kate Battiato:

This bill does not include an appropriation. Please let me know if you want to redraft the bill or draft and amendment to provide an appropriation increase to fund the new SPD positions from June 19, 2011, through the end of the 2010-11 fiscal year.

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

Duerst, Christina

From: Battiato, Kate
Sent: Friday, July 31, 2009 4:57 PM
To: LRB.Legal
Cc: Hoey, Joseph
Subject: LRB 2266

Please release LRB 2266, relating to the public defender eligibility standards to Rep. Sherman and Joey Hoey.

Thanks,
Kate Battiato

Kate Battiato
Office of State Representative Gary Hebl
46th Assembly District
Phone: 266-7678