2009 DRAFTING REQUEST

Bill

Received: **07/16/2009**

Received By: **rryan**

Wanted: **As time permits**

Identical to LRB:

For: **Spencer Coggs (608) 266-2500**

By/Representing: **Adam**

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: **Sen.Coggs@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

State public defender indigency determinations and positions

Instructions:

Same as 09-2266

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	rryan 07/16/2009	nnatzke 07/17/2009		_____ _____			S&L
/1			mduchek 07/17/2009	_____ _____	mbarman 07/17/2009	cduerst 07/20/2009	

FE Sent For:

at intro

<END>

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/?	rryan	/1 nwn 7/17	MD 7/17				

FE Sent For:

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Ryan, Robin

From: Battiato, Kate
Sent: Thursday, July 16, 2009 11:49 AM
To: Ryan, Robin
Subject: LRB 2266

Hi Robin,
You have Rep. Hebl's permission to make a companion draft of LRB 2266 for Senator Coggs. Thank you,
Kate

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

State of Wisconsin
2009 – 2010 LEGISLATURE

3142/1

LRB-~~2266~~/1
RLR:nwn&wlj:rs

In 7/16/09

2009 BILL

RMNR

SA ✓

Regen.

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

Analysis by the Legislative Reference Bureau

Under current law, the State Public Defender (SPD) provides counsel to represent people in various legal proceedings, including criminal proceedings that may result in imprisonment, 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.

Current law provides that a person is indigent for purposes of SPD representation if the person's income and assets, after deduction for reasonable and necessary living expenses, are insufficient to cover the cost of effective legal representation. Current law equates reasonable and necessary living expenses with

benefit amounts under the former Aid to Families with Dependent Children program. However, in determining whether a person can afford counsel, courts are not limited by the SPD indigency criteria. If a person is the subject of a legal proceeding for which he or she has the right to appointed counsel if he or she cannot 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 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 49.25 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;

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

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

6 **SECTION 4.** 977.02 (3) of the statutes is renumbered 977.02 (3) (intro.) and
7 amended to read:

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

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

16 977.02 **(3)** (a) Consider the anticipated costs of effective representation for the
17 type of case in which the person seeks representation.

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

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

(d) 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.

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

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

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

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

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

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

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

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

SECTION 10. Nonstatutory provisions.

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

SECTION 11. Initial applicability.

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

SECTION 12. Effective dates. This act takes effect on June 19, 2011, except as follows:

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

(END)

Duerst, Christina

From: Plotkin, Adam
Sent: Monday, July 20, 2009 3:43 PM
To: LRB.Legal
Subject: Draft Review: LRB 09-3142/1 Topic: State public defender indigency determinations and positions

Please Jacket LRB 09-3142/1 for the SENATE.