

1993 Assembly Bill 783

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1993 WISCONSIN ACT 451

AN ACT to amend 20.550 (1) (d), 20.550 (1) (e), 48.23 (4), 51.15 (9), 51.20 (3), 51.20 (18) (c), 51.35 (1) (e) 1, 51.35 (1) (e) 2, c., 51.45 (12) (b) 2, 51.45 (12) (c) 2, 51.45 (13) (a) 3, 51.45 (13) (b) 2, 51.45 (13) (d), 51.45 (16) (c), 55.06 (11) (a), 757.69 (1) (h), 809.30 (2) (d), 809.30 (2) (fm), 809.30 (3), 977.02 (3), 977.05 (4) (g), 977.05 (4) (h), 977.07 (1) (a), 977.07 (1) (c), 977.07 (1) (d), 977.07 (2) (c), 977.08 (1) and 977.08 (2) (intro.); **and to create** 977.02 (2m) and 977.05 (4) (gm) of the statutes, **relating to:** public defender representation of juveniles in juvenile court proceedings, granting rule-making authority and making appropriations.

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

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

20.550 (1) (d) *Private bar and investigator reimbursement.* Biennially, the amounts in the schedule for the reimbursement of private attorneys appointed to act as counsel for a child or an indigent person under s. 977.08 and reimbursement for contracting for services of private investigators.

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

20.550 (1) (e) *Private bar and investigator payments; administration costs.* The amounts in the schedule for the administration costs of appointing private attorneys to act as counsel for children and indigent persons under s. 977.08 and of contracting for the services of private investigators.

SECTION 3. 48.23 (4) of the statutes is amended to read:

48.23 (4) **PROVIDING COUNSEL.** In any situation under this section in which a person has a right to be represented by counsel or is provided counsel at the discretion of the court, ~~except for situations arising under sub. (2) where the child entitled to representation is a parent;~~ and counsel is not knowingly and voluntarily waived; ~~and it appears that the person is unable to afford counsel in full,~~

~~or the person so indicates;~~ the court shall refer the person to the authority for indigency determinations specified under s. 977.07 (1), except that if counsel is appointed in a petition filed under s. 48.375 (7) the indigency determination specified under s. 977.07 (1) shall be waived state public defender and counsel shall be appointed by the state public defender under s. 977.08 without a determination of indigency. If the referral is of a person who has filed a petition under s. 48.375 (7), the state public defender shall appoint counsel within 24 hours after ~~an initial appearance under s. 48.375 (7) that referral.~~ Any counsel appointed in a petition filed under s. 48.375 (7) shall continue to represent the child in any appeal brought under s. 809.105 unless the child requests substitution of counsel or extenuating circumstances make it impossible for counsel to continue to represent the child. In any situation under sub. (2) in which a parent 18 years of age or older is entitled to representation by counsel; counsel is not knowingly and voluntarily waived; and it appears that the parent is unable to afford counsel in full, or the parent so indicates; the court shall refer the parent to the authority for indigency determinations specified under s. 977.07 (1). In any other situation under this section in which a person has a right to be represented by counsel or is provided counsel at the discretion of the court, competent and independent counsel shall be provided and reimbursed in any manner suitable to the court regardless of the person's ability to pay.

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SECTION 4. 51.15 (9) of the statutes is amended to read:

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

SECTION 5. 51.20 (3) of the statutes is amended to read:

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

SECTION 6. 51.20 (18) (c) of the statutes is amended to read:

51.20 **(18)** (c) Expenses of the proceedings from the presentation of the statement of emergency detention or petition for commitment to the conclusion of the proceeding shall be allowed by the court and paid by the county from which the subject individual is detained, committed or released, in the manner that the expenses of a criminal prosecution are paid, as provided in s. 59.77. Payment of attorney fees for appointed attorneys in the case of children and indigents shall be in accordance with ch. 977.

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

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

SECTION 8. 51.35 (1) (e) 2. c. of the statutes is amended to read:

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

SECTION 9. 51.45 (12) (b) 2. of the statutes is amended to read:

51.45 **(12)** (b) 2. State that the person is a child or state facts sufficient for a determination of indigency of the person; and

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

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

SECTION 11. 51.45 (13) (a) 3. of the statutes is amended to read:

51.45 **(13)** (a) 3. State that the person is a child or state facts sufficient for a determination of indigency of the person;

SECTION 12. 51.45 (13) (b) 2. of the statutes is amended to read:

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

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

51.45 **(13)** (d) Whenever it is desired to involuntarily commit a person, a preliminary hearing shall be held under this paragraph. The purpose of the preliminary hearing shall be to determine if there is probable cause for believing that the allegations of the petition under par. (a) are true. The person shall be represented by counsel at the preliminary hearing and, if the person is a child or is indigent, counsel shall timely be appointed at public expense, as provided in s. 967.06 and ch. 977. Counsel shall have access to all reports and records, psychiatric and otherwise, which have been made prior to the preliminary hearing. The person shall be present at the preliminary hearing and shall be afforded a meaningful opportunity to be heard. Upon failure to make a finding of probable cause under this paragraph, the court shall dismiss the

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petition and discharge the person from the custody of the county department.

SECTION 14. 51.45 (16) (c) of the statutes is amended to read:

51.45 **(16)** (c) Payment of attorney's fees for appointed attorneys in the case of children and indigents shall be in accordance with ch. 977.

SECTION 15. 55.06 (11) (a) of the statutes is amended to read:

55.06 **(11)** (a) If from personal observation of a sheriff, police officer, fire fighter, guardian, if any, or authorized representative of a board designated under s. 55.02 or an agency designated by it it appears probable that an individual will suffer irreparable injury or death or will present a substantial risk of serious physical harm to others as a result of developmental disabilities, infirmities of aging, chronic mental illness or other like incapacities if not immediately placed, the person making the observation may take into custody and transport the individual to an appropriate medical or protective placement facility. The person making placement shall prepare a statement at the time of detention providing specific factual information concerning the person's observations and the basis for emergency placement. The statement shall be filed with the director of the facility and shall also be filed with any petition under sub. (2). At the time of placement the individual shall be informed by the director of the facility or the director's designee, both orally and in writing, of his or her right to contact an attorney and a member of his or her immediate family and the right to have an attorney provided at public expense, as provided under s. 967.06 and ch. 977, if the individual is a child or is indigent. The director or designee shall also provide the individual with a copy of the statement by the person making emergency placement.

SECTION 16. 757.69 (1) (h) of the statutes is amended to read:

757.69 **(1)** (h) Hear petitions for commitment and conduct probable cause hearings under ss. 51.20, 51.45 and 55.06 (11), conduct reviews of guardianships and protective placements and protective services under chs. 55 and 880, advise a person alleged to be mentally ill of his or her rights under the United States and Wisconsin constitutions and, if the person claims or appears to be unable to afford counsel, refer the person to the authority for indigency determinations specified under s. 977.07 (1) or, if the person is a child, refer that child to the state public defender who shall appoint counsel for the child without a determination of indigency, as provided in s. 48.23 (4).

SECTION 17. 809.30 (2) (d) of the statutes is amended to read:

809.30 **(2)** (d) ~~Whenever~~ Except as provided in this paragraph, whenever a defendant whose trial counsel is appointed by the state public defender files a notice under par. (b) requesting public defender representation for

purposes of postconviction relief, the district attorney may, within 5 days after the notice is served and filed, file in the trial court and serve upon the state public defender a request that the defendant's indigency be redetermined before counsel is appointed or transcripts are ordered. This paragraph does not apply to a child who is entitled to be represented by counsel under s. 48.23.

SECTION 18. 809.30 (2) (fm) of the statutes is amended to read:

809.30 **(2)** (fm) A child who has filed a notice of intent to pursue relief from a judgment or order entered in a ch. 48 proceeding shall be furnished at no cost a transcript of the proceedings or as much of it as is requested. To obtain the transcript at no cost, an affidavit must be filed stating that the ~~child or the~~ person who is legally responsible for ~~his or her~~ the child's care and support is financially unable or ~~the person responsible is~~ unwilling to purchase the transcript.

SECTION 19. 809.30 (3) of the statutes is amended to read:

809.30 **(3)** **APPEALS BY STATE OR OTHER PARTY.** In a felony case in which the state of Wisconsin, the representative of the public or any other party appeals and the defendant or subject individual is a child or claims or appears to be indigent, the court shall refer the person to the state public defender for the determination of indigency and the appointment of legal counsel under ch. 977.

SECTION 20. 977.02 (2m) of the statutes is created to read:

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

SECTION 21. 977.02 (3) of the statutes is amended to read:

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

SECTION 22. 977.05 (4) (g) of the statutes is amended to read:

977.05 **(4)** (g) In accordance with the standards under pars. (h) and (j), accept referrals from judges, courts or appropriate state agencies for the determination of indigency of persons who claim or appear to be indigent. If a referral is accepted and if the person is determined to be indigent in full or in part, the state public defender shall appoint counsel in accordance with contracts and policies of the board, and inform the referring judge, court or agency of the name and address of the specific attorney who has been assigned to the case.

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SECTION 23. 977.05 (4) (gm) of the statutes is created to read:

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

SECTION 24. 977.05 (4) (h) of the statutes is amended to read:

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

SECTION 25. 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 shall be in accordance with the rules promulgated by the board under s. 977.02 (3). No determination of indigency is required for a child who is entitled to be represented by counsel under s. 48.23.

SECTION 26. 977.07 (1) (c) of the statutes is amended to read:

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

SECTION 27. 977.07 (1) (d) of the statutes is amended to read:

977.07 **(1)** (d) If the representative of the state public defender or the county designee determines that a person is indigent or if no determination of indigency is required as provided in par. (a), the case shall be referred to or within the office of the state public defender for assignment of counsel under s. 977.08.

SECTION 28. 977.07 (2) (c) of the statutes is amended to read:

977.07 **(2)** (c) A person seeking to have counsel assigned for him or her under s. 977.08, other than a child who is entitled to be represented by counsel under s. 48.23, shall certify under oath 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 par. (a) at its fair market value at the time it was disposed of, minus the amount of compensation received for the asset.

SECTION 29. 977.08 (1) of the statutes is amended to read:

977.08 **(1)** If the representative or the authority for indigency determinations specified under s. 977.07 (1) refers a case to or within the office of the state public defender or if a case under s. 48.375 (7) is referred under s. 48.23 (4), the state public defender shall assign counsel according to subs. (3) and (4). If a defendant makes a request for change of attorney assignment, the change of attorney must be approved by the circuit court.

SECTION 30. 977.08 (2) (intro.) of the statutes is amended to read:

977.08 **(2)** (intro.) All attorneys in a county shall be notified in writing by the state public defender that a set of lists is being prepared of attorneys willing to represent children referred under s. 48.23 (4) and indigent clients in the following: