



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2003 Assembly Bill 616

**Assembly Substitute
Amendment 1**

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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 whom the SPD determines are indigent under rules that the SPD adopts.

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 (AFDC) program. But 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 private counsel and the county in which the court sits must pay the appointed counsel.

Assembly Substitute Amendment 1 changes the criteria for determining indigency for the purposes of SPD representation. Under the substitute amendment, 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 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% of the federal poverty line.)

Third, 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 that the person allegedly committed.

In addition, the **substitute amendment** 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 proceeding, or a proceeding to appoint a guardian because the person is alleged to be not competent to refuse psychotropic medication. Finally, the **substitute amendment** provides the Public Defender Board with 44.25 new full-time equivalent general purpose revenue positions on May 1, 2005 (the day on which the substitute amendment's other changes become effective).

Legislative History

On January 28, 2004, the Assembly Committee on Corrections and the Courts recommended for adoption Assembly Substitute Amendment 1 by a vote of Ayes, 8; Noes, 0.

The Assembly Committee on Corrections and the Courts recommended passage of the bill, as amended, by a vote of Ayes, 5; Noes, 3.

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