



State of Wisconsin  
2017 - 2018 LEGISLATURE

LRB-4724/1  
MLJ:emw

## 2017 ASSEMBLY BILL 828

January 12, 2018 - Introduced by Representatives TUSLER, GOYKE, ANDERSON, BALLWEG, BROSTOFF, GENRICH, HEBL, KESSLER, SINICKI, SPREITZER, SUBECK, TAUCHEN, SARGENT, BERCEAU and POPE, cosponsored by Senators L. TAYLOR, BEWLEY, ERPENBACH and VINEHOUT. Referred to Committee on Judiciary.

1     **AN ACT to renumber and amend** 977.08 (3) (b); **to amend** 977.02 (5) and 977.08  
2           (3) (c); and **to create** 977.02 (7t), 977.08 (3) (b) 2. and 977.08 (4m) (d) of the  
3           statutes; **relating to:** Public Defender Board regulation and pay of private bar  
4           attorneys and making an appropriation.

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### *Analysis by the Legislative Reference Bureau*

Under current law, private local attorneys appointed by the Public Defender Board to represent clients are paid \$40 per hour for time spent related to a case. Under the bill, these attorneys would be paid \$55, \$60, or \$70 per hour, based upon the case type, for time spent related to a case.

Under current law, the board may promulgate rules to assure that representation of indigent clients by the private bar is at the same level as the representation provided by the state public defender. Under the bill, the board's authority to promulgate rules is expanded to include setting standards for and imposing conditions upon private bar attorney certification, decertification, or recertification to represent clients. The bill also adds the following list of reasons as grounds for which the office of the state public defender may exclude a private bar attorney from a public defender list: 1) the attorney has failed to meet minimum attorney performance standards adopted by the state public defender; 2) the attorney has failed to comply with the supreme court rules of professional conduct for attorneys; 3) the attorney has engaged in conduct that is contrary to the interests of clients, the interests of justice, or the interests of the state public defender; or 4)

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the state public defender learns of any information that raises a concern about the attorney's character, performance, ability, or behavior.

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

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

1           **SECTION 1.** 977.02 (5) of the statutes is amended to read:

2           977.02 (5) Promulgate rules establishing procedures to assure that  
3 representation of indigent clients by the private bar at the initial stages of cases  
4 assigned under this chapter is at the same level as the representation provided by  
5 the state public defender, including setting standards for and imposing conditions  
6 upon private bar attorney certification, decertification, or recertification to represent  
7 clients under this chapter.

8           **SECTION 2.** 977.02 (7t) of the statutes is created to read:

9           977.02 (7t) Promulgate rules to distribute case types into pay rate  
10 classifications as required in s. 977.08 (4m) (d).

11           **SECTION 3.** 977.08 (3) (b) of the statutes is renumbered 977.08 (3) (b) 1. and  
12 amended to read:

13           977.08 (3) (b) 1. A final set of lists for each county shall be prepared, certified,  
14 and annually updated by the state public defender. Persons may not be excluded  
15 from any a list unless only if the state public defender states in writing the reasons  
16 for such action in the context of accordance with subd. 2. and existing rules adopted  
17 by the state public defender board. Any attorney thus excluded ~~shall then have the~~  
18 ~~opportunity to~~ may appeal the state public defender's decision to the board, which  
19 shall issue a final decision in writing.

20           **SECTION 4.** 977.08 (3) (b) 2. of the statutes is created to read:

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1           977.08 (3) (b) 2. An attorney may be excluded from a list under subd. 1. if any  
2 of the following applies:

3           a. The attorney fails or has failed to meet minimum attorney performance  
4 standards adopted by the state public defender.

5           b. The attorney fails or has failed to comply with SCR chapter 20.

6           c. The attorney engages in conduct that is contrary to the interests of clients,  
7 the interests of justice, or the interests of the state public defender.

8           d. The state public defender learns of any information that raises a concern  
9 about the attorney's character, performance, ability, or behavior.

10           **SECTION 5.** 977.08 (3) (c) of the statutes is amended to read:

11           977.08 (3) (c) A person appointed from the set of lists prepared under par. (b)  
12 1. shall be appointed in order from the top of each list; if any attorney thus appointed  
13 states in writing that he or she cannot accept the appointment, he or she shall be  
14 placed on the bottom of the list, and the attorney thus elevated to the top of the list  
15 shall be appointed.

16           **SECTION 6.** 977.08 (4m) (d) of the statutes is created to read:

17           977.08 (4m) (d) Unless otherwise provided by a rule promulgated under s.  
18 977.02 (7r) or by a contract authorized under sub. (3) (f), for cases assigned on or after  
19 January 1, 2019, private local attorneys shall be paid a rate of \$55, \$60, or \$70 per  
20 hour, based upon the case type, for time spent related to a case, excluding travel.

21           **SECTION 7. Fiscal changes.**

22           (1) PUBLIC DEFENDER PAY INCREASE. In the schedule under section 20.005 (3) of  
23 the statutes for the appropriation to the public defender board under section 20.550

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**SECTION 7**

1 (1) (a) of the statutes, the dollar amount for fiscal year 2018-19 is increased by  
2 \$6,475,500 to fund pay increases for private local attorneys.

3 (END)