

CHAPTER 977

STATE PUBLIC DEFENDER

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977.01 Definitions. In this chapter, unless the context requires otherwise, "board" means the public defender board.

History: 1977 c. 29

977.02 Board; duties. The board shall:

(1) Appoint the state public defender and establish the state public defender's salary under s. 20.923 (4) (d) 10m.

(2) Submit the budget of the state public defender to the governor after such budget is submitted to the board by the state public defender and approved by the board.

(4) Promulgate rules regarding the determination of indigency of persons entitled to be represented by counsel.

(5) For each county, fix the hourly rate to be paid to local counsel appointed from the assigned counsel lists.

(6) For each county, establish the percentage of cases, for each category of cases as specified in s. 977.08 (2) (a) to (f), to be handled by local counsel, after considering the interest of local counsel in representing indigents and the amount of available resources.

(7) Review decisions of the state public defender regarding bill payments, as provided under s. 977.08 (4). The board may affirm, modify or reject the decision of the state public defender.

(8) Perform all other duties necessary and incidental to the performance of any duty enumerated in this chapter.

History: 1977 c. 29

977.03 Board; powers. The board may remove the state public defender pursuant to the procedure under s. 977.05 (2). The board may enter into contracts with federal governmental agencies and local public defender organizations for the provision of legal services under this chapter.

History: 1977 c. 29

977.04 Board; restrictions. The board shall not make any decision regarding the handling of

any case nor interfere with the state public defender or any member of his or her staff in carrying out professional duties.

History: 1977 c. 29

977.05 State public defender. (1) APPOINTMENT AND TERM. The board shall appoint a state public defender, who shall be a member of the state bar of Wisconsin. The state public defender shall serve for a period of 5 years and shall continue until a successor is appointed. He or she shall devote full time to the performance of duties as state public defender.

(2) **REMOVAL.** During the 5-year term, the state public defender may be discharged only for cause by the board after a public hearing.

(3) **SALARY.** The salary of the state public defender shall not be decreased during his or her term.

(4) **DUTIES.** The state public defender shall:

(a) Supervise the operation, activities, policies and procedures of the office of the state public defender.

(b) Be the chief legal officer of the office of the state public defender and make all final decisions regarding the disposition of any case handled by the office.

(c) Prepare and submit to the board for its approval the annual and biennial budget of the office of the state public defender.

(d) Prepare and submit to the board for its approval such personnel and employment policies as the board shall require.

(e) Prepare and submit to the board and such other persons as may be appropriate an annual report of the activities of the office in such form as the board shall direct.

(f) Determine when and where it is necessary to establish offices for the state public defender and arrange for the rental of such space consistent with the policy and procedure of the department of administration.

(g) Accept referrals from judges, courts or appropriate state agencies for the determination

of indigency, make appointments for the provision of any appropriate legal services 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 each case.

(h) Accept requests for legal services from indigent persons entitled to counsel under s. 967.06 or 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.

(i) Provide legal services in:

1. Cases involving persons charged with a crime against life under ss. 940.01 to 940.12.
2. Cases involving persons charged with a felony not specified under subd. 1.
3. Cases involving persons charged with a misdemeanor not specified under subd. 1.
4. Cases involving persons subject to emergency detention or involuntary civil commitment under ch. 51.
5. Cases involving children subject to adjudication as a delinquent.
6. Cases involving persons attacking the conditions of their confinement.

(j) At the request of any person determined by the state public defender to be indigent or upon referral of any court to prosecute a writ of error, appeal, writ of habeas corpus or other post-conviction or post-commitment remedy on behalf of such person before any court, if the state public defender is first satisfied there is arguable merit to such proceedings.

(k) Represent members of the staff of the office of the state public defender who are named as defendants in lawsuits arising from their duties within the office. The attorney general may also, if appropriate, represent such staff members in such litigation. In cases where a member could be represented by either the public defender or the attorney general, the public defender shall determine who shall represent the member.

(l) Commence actions in the name of the state public defender or any client or group of clients to seek declaratory judgment on any matter of concern to persons being represented by the office.

(m) Perform all other duties necessary or incidental to the performance of any duty enumerated in this chapter.

(5) POWERS. The state public defender may:

(a) Delegate the legal representation of any person to any member of the state bar of Wisconsin certified under s. 977.08.

(b) Designate persons as representatives of the state public defender for the purpose of

making indigency determinations and appointing counsel.

(c) Negotiate contracts with the United States or any executive, legislative or judicial branch thereof to provide legal services to persons appearing before the federal district courts located in this state or who are incarcerated in federal custody in this state and to take whatever legal action such representation requires, including appeal or the commencement of any appropriate original actions.

(d) Negotiate contracts with local public defender organizations as directed by the board.

History: 1977 c. 29.

977.06 Personnel. (1) APPOINTMENT. The state public defender shall appoint all staff necessary for the carrying out of the duties of the department, all of whom shall be under the classified service except 2 deputy state public defenders. Each such deputy state public defender shall be appointed by the state public defender.

History: 1977 c. 29.

977.07 Determination of Indigency. (1)

Determination of indigency for persons referred to or contacting the state public defender shall be made as soon as possible and shall be in accordance with the rules promulgated by the board under s. 977.02 (4). During the time period of July 1, 1978, to June 30, 1979, the state public defender shall permit judicial determination of indigency and judicial assignment of counsel as provided in chapter 29, laws of 1977, section 1655 (34m) (b). During the time period of July 1, 1978, to June 30, 1979, counties shall pay the legal fees for indigent representation where it has been determined that there will be judicial determination of indigency and judicial assignment of counsel as provided in chapter 29, laws of 1977, section 1655 (34m) (b).

(2) The representative of the state public defender making a determination shall ascertain the assets of the person which exceed the amount needed for the payment of reasonable and necessary expenses incurred, or which must be incurred to support the person and the person's immediate family. Such assets shall include disposable income, cash in hand, stocks and bonds, bank accounts and other property which can be converted to cash within a reasonable period of time and is not needed to hold a job, or shelter, clothe and care for the person and the person's immediate family. Assets which cannot be converted to cash within a reasonable period of time, such as a person's home, car,

household furnishings, clothing and other property which has been declared exempt from attachment or execution by law, shall be calculated to be assets equivalent in dollars to the amount of the loan which could be, in fact, raised by using these assets as collateral. If the person's assets, less reasonable and necessary living expenses, are not sufficient to cover the anticipated cost of effective representation when the length and complexity of the anticipated proceedings are taken fully into account, the person shall be determined to be indigent in full or in part. The determination of the ability of the person to contribute to the cost of legal services shall be based upon specific written standards relating to income, assets and the anticipated cost of representation. If found to be indigent in full or in part, the person shall be promptly informed of the state's right to recoupment under s. 256.66, and the possibility that such payment of attorney's fees may be made a condition of probation, should the person be placed on probation. Furthermore, if found to be indigent in part, the person shall be promptly informed of the extent to which he or she will be expected to pay for counsel, and whether such payment shall be in the form of a lump sum payment or periodic payments. The payment and payment schedule shall be set forth in writing. Payments for services of the state public defender or other counsel provided under this chapter shall be paid to the state public defender for deposit in the state treasury.

History: 1977 c. 29.

977.08 Appointment of counsel. (1) If the representative of the state public defender determines that a person is indigent in full or in part under s. 977.07, the representative shall assign counsel according to the lists prepared under sub. (3) and according to the percentage established by the board under s. 977.02 (6) for that type of case in that county.

(2) 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 indigent clients in the following:

(a) Cases involving persons charged with a crime against life under ss. 940.01 to 940.12.

(b) Cases involving persons charged with a felony not specified under par. (a).

(c) Cases involving persons charged with a misdemeanor not specified under par. (a).

(d) Cases involving persons subject to emergency detention or involuntary civil commitment under ch. 51.

(e) Cases involving children subject to adjudication as a delinquent.

(f) Cases involving persons attacking the conditions of their confinement.

(g) Cases involving persons entitled to counsel under ch. 48.

(3) (a) Attorneys notified under sub. (2) shall have a reasonable time to submit their names for inclusion on any or all of the lists. Attorneys shall, in submitting their names, set forth their legal education and experience which qualifies them to provide representation in the types of cases they have expressed an interest in handling. The state public defender shall compile the names and qualifications submitted, and submit such names and qualifications to the district attorney of that county, all judges presiding regularly in that county and the president of the county bar association. Such persons may submit written comments on the attorneys named on such lists.

(b) A final set of lists for each county shall be prepared, certified and annually updated by the state public defender. Persons may not be excluded from any list unless the state public defender states in writing the reasons for such action in the context of existing rules adopted by the state public defender board. Any attorney thus excluded shall then have the opportunity to appeal the state public defender's decision to the board, which shall issue a final decision in writing.

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

(d) Whenever the director of a local public defender organization is appointed as counsel, he or she may assign the case to any qualified attorney or attorneys employed by the local public defender organization.

(4) At the conclusion of each case, any private local attorney who has been appointed shall submit his or her bill to the state public defender who shall review the bill and reject it or approve it in whole or in part. The state public defender shall then pay the bill according to the payment schedule established by the board. Any attorney dissatisfied with the decision of the state public defender regarding the bill may have the decision reviewed by the board.

History: 1977 c. 29, 354.

977.09 Confidentiality of files. The files maintained by the office of the state public

defender which relate to the handling of any case shall be considered confidential and shall not be open to inspection by any person unless

authorized by law, court order, the board or the state public defender.

History: 1977 c. 29