CHAPTER 977
STATE PUBLIC DEFENDER

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Cross-reference: See definitions in s. 967.02.
Cross-reference: See also PD, Wis. adm. code.

977.01 Definitions. In this chapter, unless the context requires otherwise:
(1) “Board” means the public defender board.
(2) “Public assistance” means relief provided by counties under s. 59.53 (21), Wisconsin works under ss. 49.141 to 49.161, medical assistance under subch. IV of ch. 49, low-income energy assistance under s. 16.27, weatherization assistance under s. 16.26, and the food stamp program under 7 USC 2011 to 2029.

History: 1977 c. 29, 2003 a. 33 ss. 1913, 2776, 2777.

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.
(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.
(2m) Promulgate rules regarding eligibility for legal services under this chapter, including legal services for persons who are entitled to be represented by counsel without a determination of indigency, as provided in s. 48.23 (4), 51.60, 55.105, 938.23 (4), or 980.03 (2) (a).
(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 or 938.23 or persons who are entitled to be represented by counsel under s. 51.60, 55.105, or 980.03 (2) (a), including the time period in which the determination must be made and the criteria to be used to determine indigency and partial indigency. The rules shall specify that, in determining indigency, the representative of the state public defender shall do all of the following:
(a) Consider the anticipated costs of effective representation for the type of case in which the person seeks representation.
(b) Subject to par. (d), treat assets as available to the person to pay the costs of legal representation if the assets exceed $2,500 in combined equity value. In determining the combined equity value of assets, the representative of the state public defender shall exclude the equity value of vehicles up to a total equity value of $10,000 and shall exclude the first $30,000 of the equity value of the home that serves as the individual’s homestead.
(c) Subject to par. (d), treat income as available to the person to pay the costs of legal representation only if the gross income exceeds 115 percent of the federal poverty guideline, as defined in 42 USC 9902 (2) (2011). In calculating gross income under this paragraph, the representative of the state public defender shall include all earned and unearned income of the person, except any amount received under section 32 of the Internal Revenue Code, as defined in s. 71.01 (6), any amount received under s. 71.07 (9e), any payment made by an employer under section 3507 of the Internal Revenue Code, as defined in s. 71.01 (6), any student financial aid received under any federal or state program, any scholarship used for tuition and books, and any assistance received under s. 49.148. In determining the earned and unearned income of the individual, the representative of the state public defender may not include income earned by a dependent child of the person.
(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.
(4) Promulgate rules regarding the determination of payments required of persons found to be indigent in part.
(4m) Promulgate rules for payments to the state public defender under s. 977.075.
(4r) Promulgate rules that establish procedures to provide the department of administration with any information concerning the collection of payment ordered under s. 48.275 (2), 757.66, 938.275 (2), 973.06 (1) (e) or 977.076 (1).
(5) Promulgate rules establishing procedures to assure that representation of indigent clients by the private bar at the initial stages of cases assigned under this chapter is at the same level as the representation provided by the state public defender.
(6) Promulgate rules to accommodate the handling of certain potential conflict of interest cases by the office of the state public defender. The rules shall not provide for the automatic referral of all potential conflict of interest cases to private counsel.
(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.
(7m) Establish agreements with the state bar association, local bar associations, law firms and private counsel designed to encourage a certain amount of legal representation under this chapter without compensation as a service to the state.
(7r) (a) Promulgate rules to allow the reduction of payment rates for cases assigned by the state public defender under s. 977.08 (4m) for any of the following:
1. A reduction of not more than $2 per hour for time spent in court.
2. A reduction of not more than $2 per hour for time spent out of court, excluding travel.
(b) Any reduction under par. (a) applies to cases assigned on or after the effective date of the applicable rule promulgated under par. (a).
(8) Perform all other duties necessary and incidental to the performance of any duty enumerated in this chapter.
(9) Promulgate rules establishing the maximum fees that the state public defender may pay for copies, in any format, of materials that are subject to discovery in cases in which the state public defender or counsel assigned under s. 977.08 provides legal representation. In promulgating the rules under this subsection, the board shall consider information regarding the actual, necessary, and direct cost of producing copies of materials that are subject to discovery.


Cross-reference: See also PD, Wis. adm. code.

2021–22 Wisconsin Statutes updated through 2023 Wis. Act 18 and through all Supreme Court and Controlled Substances Board Orders filed before and in effect on August 10, 2023. Published and certified under s. 35.18. Changes effective after August 10, 2023, are designated by NOTES. (Published 8–10–23)
977.03 STATE PUBLIC DEFENDER

977.03 Board; powers. (1) 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.

(2) The board may promulgate rules to establish exceptions to limiting the amount that may be reimbursed for investigative or expert services under s. 977.05 (4r).

(2m) The board may promulgate rules that establish procedures to collect payment ordered under s. 48.275 (2), 757.66, 938.275 (2), 973.06 (1) (e) or 977.076 (1) from a prisoner’s prison financial account.

(3) The state public defender may establish procedures by rule under which the state public defender may appoint attorneys without regard to s. 977.08 (3) (c) and (d) based on the state public defender’s evaluation of the attorneys’ performance.


Cross-reference: See also PD, Wis. adm. code.

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. 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, except that at the conclusion of the 5-year term of the state public defender in office as of July 1, 1980, the state public defender shall be appointed to serve at the pleasure of the board. He or she shall devote full time to the performance of duties as state public defender.

(2) REMOVAL. During a 5-year term commencing prior to July 1, 1980, the state public defender may be discharged only for cause by the board after a public hearing. If the state public defender is serving at the pleasure of the board, he or she is subject to removal under s. 17.07.

(3) SALARY. The salary of the state public defender shall not be decreased while he or she serves in that position.

(4) DUTIES. The state public defender shall:

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

(ama) Establish a case management system for use by the trial court and appellate staff attorneys of the office of the state public defender. The system shall require the attorneys to record time spent on each case and to classify or describe the type of work done.

(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 biennial budget of the office of the state public defender.

(amm) Appoint one deputy, the number of division administrators specified in s. 230.08 (2) (e) 8m. and all staff attorneys in the unclassified service and appoint all other employees in the classified service.

(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) 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, 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.

(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 or 938.23 or persons who are entitled to be represented by counsel under s. 51.60, 55.105, or 980.03 (2) (a), 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.

(h) Accept requests for legal services from children who are entitled to be represented by counsel under s. 48.23 or 938.23 or persons who are entitled to be represented by counsel under s. 51.60, 55.105, or 980.03 (2) (a) 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 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 that is punishable by imprisonment but is not specified under subd. 1.

4. Cases involving persons subject to emergency detention or involuntary civil commitment under ch. 51.

5. Cases involving children who are entitled to counsel or are provided counsel at the discretion of the court under s. 48.23 or 938.23.

6. Cases involving paternity determinations, as specified under s. 767.83, in which the state is the petitioner under s. 767.80 (1) (g) or in which the action is commenced on behalf of the child by an attorney appointed under s. 767.407 (1) (c).

7. Cases involving individuals who are subject to petitions for protective placement or involuntary administration of psychotropic medication under ch. 55.

8. Cases involving persons who are subject to petitions under ch. 980.

(j) Subject to sub. (6) (e) and (f), at the request of any person determined by the state public defender to be indigent or upon referral of any court, prosecute a writ of error, appeal, action or proceeding for habeas corpus or other postconviction or postcommitment remedy on behalf of the person before any court, if the state public defender determines the case should be pursued.

9. Cases involving the public defender determines the case should be pursued.

(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.
STATE PUBLIC DEFENDER

**977.06** Indigency determinations; redeterminations; verification; collection. (1) DUTIES. The state public defender shall determine whether persons are indigent and shall establish a system to do all of the following:

(a) Verify the information necessary to determine indigency under 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. (1)(m), income records, value of assets, eligibility for public assistance, and claims of expenses.

(b) Redetermine indigency during the course of representation of persons receiving representation.
(c) Record the amount of time spent on each case by the attorney appointed under s. 977.08.

(d) Collect for the cost of representation from persons who are indigent or who have been otherwise determined to be able to reimburse the state public defender for the cost of providing counsel.

(1m) **APPLICATION FOR REPRESENTATION.** The state public defender shall request each 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 or 938.23, to provide the state public defender with his or her social security number and the social security numbers of his or her spouse and dependent children, if any.

(2) **VERIFICATIONS.** (a) 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 or 938.23 or a person who is entitled to be represented by counsel under s. 51.60, 55.105, or 980.03 (2) (a), 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. 977.02 (3) at its fair market value at the time it was disposed of, minus the amount of compensation received for the asset.

(3) **REDETERMINATIONS.** (a) Unless the court has made an adjustment under s. 973.06 (1) (e), upon determination at the conclusion of a case that a person’s financial circumstances are changed, the state public defender may adjust the amount of payment for counsel.

(b) The state public defender may petition a court that ordered payment under s. 757.66, 973.06 (1) (e) or 977.076 (1) to modify an order or judgment to adjust the amount of payment or the scheduled amounts at any time.

(c) Except as provided in ss. 48.275 (2) (b) and 938.275 (2) (b), an adjustment under this subsection shall be based on the person’s ability to pay and on the fee schedule established by the board under s. 977.075 (3).

(4) **OVERTURE.** (a) A circuit court may review any indigency determination upon its own motion or the motion of the defendant and shall review any indigency determination upon the motion of the district attorney or the state public defender. The court, district attorney or state public defender may summon the defendant. The defendant may be compelled to testify only as to his or her financial eligibility under this section. If the defendant refuses to testify, the court may find the defendant is not entitled to have counsel assigned for him or her under s. 977.08. If the defendant testifies at this hearing, his or her testimony as to his or her financial eligibility under this section may not be used directly or indirectly in any criminal action, except in a criminal action regarding a subsequent charge of perjury or false swearing.

(b) The state public defender shall promptly release a copy of any statement, affidavit or other information provided by a person regarding financial eligibility under s. 977.07 only if the state public defender or a circuit court finds all of the following:

1. The person is not eligible to have counsel assigned under s. 977.08.

2. The person disposed of an asset for less than its fair market value for the purpose of obtaining assignment of counsel.

(bm) In response to a request for information under s. 49.22 (2m) made by the department of children and families or a county child support agency under s. 59.53 (5), the state public defender shall provide the name and address of an individual, the name and address of the individual’s employer and financial information related to the individual, if the name, address or financial information is included in any statement, affidavit or other information provided by the individual regarding financial eligibility under s. 977.07 and if, at the time the request for information is made, the individual is represented by the state public defender or by counsel assigned under s. 977.08.

(c) Paragraphs (b) and (bm) do not limit the authority of the state public defender to release a copy of a statement, affidavit or other information regarding financial eligibility under s. 977.07 under other circumstances.


**Cross-reference:** See also ch. PD 3, Wis. adm. code.


977.07 Determination of indigency. **(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) and the system established under s. 977.06. No determination of indigency is required for a child who is entitled to be represented by counsel under s. 48.23 or 938.23 or a person who is entitled to be represented by counsel under s. 51.60, 55.105, or 980.03 (2) (a).

(b) For referrals not made under ss. 809.30, 974.06, and 974.07, a representative of the state public defender is responsible for making indigency determinations unless the county became responsible under s. 977.07 (1) (b) 2., or 3., 1983 stats., for these determinations. Subject to the provisions of par. (bn), those counties may continue to be responsible for making indigency determinations. Any such county may change the agencies or persons who are designated to make indigency determinations only upon the approval of the state public defender.

(bn) Notwithstanding par. (b), if the state public defender board determines that standards under s. 977.02 (3) are not being met or that there is a pattern of improper denial of indigency findings in a county, the state public defender board shall transfer indigency determination authority in the county to the state public defender. In addition, if less than 100 percent of the cases at the trial level are assigned to private bar attorneys in a county, the public defender board may transfer indigency determination authority in the county to the state public defender.

(c) For all referrals made under ss. 809.107, 809.30, 974.06 (3) (b) and 974.07 (11), except a referral of a child who is entitled to be represented by counsel under s. 48.23 or 938.23, a person who is entitled to be represented by counsel under s. 51.60, 55.105, or 980.03 (2) (a), a representative of the state public defender shall determine indigency. For referrals made under ss. 809.107, 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 or 938.23, a person who is entitled to be represented by counsel under s. 51.60, 55.105, or 980.03 (2) (a), a representative of the state public defender may, unless a request for redetermination has been filed under s. 809.30 (2) (d) or the person’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.

(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.
(2m) If the person is found to be indigent, the person shall be promptly informed of the state’s right to payment or recoupment under s. 48.275 (2), 757.66, 938.275 (2), 973.06 (1) (e), or 977.076 (1), and the possibility that the payment of attorney fees may be made a condition of probation, should the person be placed on probation. Furthermore, if found to be indigent, the person shall be promptly informed of the extent to which he or she will be expected to pay for counsel, and whether the payment shall be in the form of a lump sum payment or periodic payments. The person shall be informed that the payment amount may be based in whole or in part on his or her financial circumstances change by the time of sentencing. The payment and payment schedule shall be set forth in writing. This subsection does not apply to persons who have paid under s. 977.075 (3m).

History: 1997 c. 29; 1997 c. 175 s. 53; 1997 c. 356; 1981 c. 20 s. 1833; 2002 (41)

Cross-reference: See also ch. PD 3, Wis. adm. code.

Judicial Council Note, 1984; Sub. (1) (c) is amended by dispensing with redetermination of indigency unless the notice under s. 809.30 (2) (b) indicates that the defendant’s financial circumstances have materially improved or the district attorney timely requests a redetermination under s. 809.30 (2) (d). The intent is to limit the cost and delay associated with indigency redeterminations to cases in which there is reason to believe that the defendant no longer qualifies for public defender assistance. [Re order effective July 1, 1985]


A determination by the public defender is not the end of a circuit inquiry of the right to counsel. State v. Dean, 163 Wis. 2d 503, 471 N.W.2d 310 (Ct. App. 1991).

In making its separate determination of whether a defendant is indigent for purposes of court-appointed counsel, the trial court should consider federal poverty guidelines. If a defendant has no assets and an income well below the poverty level, the court should set forth why it determined that the defendant could be forced counsel. State v. Nieves–Gonzales, 2001 WI App 90, 242 Wis. 2d 782, 625 N.W.2d 913, 00–2135.

Under a dean, a trial court is only obligated to advise a defendant of the right to counsel. The trial court is not required to conduct a colloquy that includes specific advice to a defendant that the right to appointed counsel is broader than the right to counsel provided by the state public defender and includes the right to counsel appointed by the court and paid for by the county. State v. Drextler, 2003 WI App 169, 266 Wis. 2d 438, 669 N.W.2d 182, 02–1313.

The procedures set forth in Decur suggest that the inherent power of the circuit court shall be exercised to cover situations when a defendant cooperated with the SPD’s financial analysis, was found not to be indigent under the legislative criteria, but based on the individual circumstances of the case, public justice, and sound policy was in fact indigent. The inherent power of the court should not be invoked when a defendant fails to so an SPD appointment, fails to cooperate with the SPD for the indigency assessment, or fails to submit the required information to make a proper assessment. A defendant in this position carries the burden of submitting proof to the circuit court that it is reasonable to make such an assessment. State v. Kennedy, 2008 WI App 106, 315 Wis. 2d 507, 762 N.W.2d 412, 08–0435.

The state public defender may be denied access to jail inmates who have not requested counsel, and jail authorities need only provide by telephone that information necessary for the public defender to assess the need to make an indigency determination in person under s. 977.07 (1) for an inmate who has requested counsel and claims indigency. 78 Att’y Gen. 133.

977.075 Payment for legal representation. (1g) In this section, “client responsible for payment” means a client of the state public defender other than a client entitled to legal representation without a determination of indigency.

(3) The board shall establish by rule a fee schedule that sets the amount that a client responsible for payment shall pay for the cost of the legal representation if the client does not pay the applicable discount fee under sub. (3m). The schedule shall establish a fee for a given type of case, and the fee for a given type of case shall be based on the average cost, as determined by the board, for representation for that type of case.

(3m) The board shall establish by rule a fee schedule that sets the discount amount that a client responsible for payment may pay during a time period established by rule instead of paying the applicable fee under sub. (3). The schedule shall establish a discount fee for each type of case included in the schedule under sub. (3). If a client responsible for payment pays the applicable discount fee within the time period established under this section, the client may not be held liable for any additional payment for counsel.

(4) The board shall establish by rule a fee schedule that sets the maximum amount that a parent subject to s. 48.275 (2) (b) or 938.275 (2) (b) shall pay as reimbursement for legal services and sets the maximum amount that a person subject to s. 51.605, 55.107, or 980.0305 shall pay as reimbursement for legal services. The maximum amounts under this subsection shall be based on the average cost, as determined by the board, for each applicable type of case.


Cross-reference: See also ch. PD 6, Wis. adm. code.

977.076 Collections. (1) If the state public defender notifies the court in which the underlying action was filed that a person who is required to reimburse the state public defender for legal representation has failed to make the required payment or to timely make periodic payments, the court may issue a judgment on behalf of the state for the unpaid balance and direct the clerk of the circuit court to file and docket a transcript of the judgment, without fee. If the court issues a judgment for the unpaid balance, the court shall send a notice to the person at his or her last-known address that a civil judgment has been issued for the unpaid balance. The judgment has the same force and effect as judgments issued under s. 806.10. Except as provided in ss. 48.275 (2) (b) and 938.275 (2) (b), the judgment shall be based on the person’s ability to pay and on the fee schedule established by the board under s. 977.075 (3).

(2) The department of administration may collect unpaid reimbursement payments due to the state public defender ordered by a court under sub. (1) or s. 48.275 (2), 757.66, 938.275 (2) (a) or 973.06 (1) (e). The department may contract with a private collection agency to collect these payments. Section 16.705 does not apply to a contract under this subsection.

History: 1995 a. 27, 77, 352, 417; 1997 a. 35.

977.077 Deposit of payments received. Payments for services provided by the state public defender or other counsel under this chapter that are received pursuant to s. 977.07, 977.075 or 977.076 shall be deposited in the state treasury and credited to the appropriation under s. 20.550 (1) (L).

History: 1995 a. 27.

977.08 Appointment of counsel. (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 is referred under s. 48.23 (4), 51.60, 55.105, 938.23 (4), or 980.03 (2) (a), 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.

(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 persons referred under s. 48.23 (4), 51.60, 55.105, 938.23 (4), or 980.03 (2) (a) and 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 that is punishable by imprisonment but is not specified under par. (a).
(e) Cases involving children who are entitled to counsel or are provided counsel at the discretion of the court under s. 48.23 or 977.08.
(g) Cases involving persons entitled to counsel under ch. 48.
(h) Cases involving paternity determinations as provided in s. 767.83.

(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 a list of the names and qualifications submitted.
\begin{verbatim}
(b) A final set of lists for each county shall be prepared, certi-
(2) In all of the quarterly reports for fiscal years 1995−96 and
(c) Unless otherwise provided by a rule promulgated under s.
(d) Unless otherwise provided by a rule promulgated under s.
\end{verbatim}
the board shall include in the report a plan to address the problem. The plan shall include proposals for one or more of the following:

(a) Agency actions, including whether the reduced payment rates established by rules promulgated under s. 977.02 (7r) (a) will be put into effect.

(b) Requests for appropriation changes under s. 13.101.

(c) Legislation.

(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, 977.075, 977.076, and 980.0305, 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.


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.