

# State of Wisconsin



2009 Senate Bill 263

Date of enactment: **March 15, 2010**  
Date of publication\*: **March 29, 2010**

## 2009 WISCONSIN ACT 164

**AN ACT** to repeal 977.07 (2); to renumber and amend 977.02 (3); to amend 20.550 (1) (fb), 303.065 (5) (dm), 973.06 (1) (e), 977.06 (1) (a), 977.06 (2) (a) and 977.085 (3); and to create 977.02 (3) (a) to (d) of the statutes; relating to: criteria for determining indigency for purposes of representation by the State Public Defender and requiring the exercise of rule-making authority.

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

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

20.550 (1) (fb) *Payments from clients; administrative costs.* The amounts in the schedule for the costs of determining, collecting and processing the payments received from persons as payment for legal representation under s. ~~977.07 (2)~~, 977.075 or 977.076.

**SECTION 2.** 303.065 (5) (dm) of the statutes is amended to read:

303.065 (5) (dm) Payment for legal representation under s. ~~977.07 (2)~~, 977.075 or 977.076;

**SECTION 3.** 973.06 (1) (e) of the statutes is amended to read:

973.06 (1) (e) Attorney fees payable to the defense attorney by the county or the state. If the court determines at the time of sentencing that the defendant's financial circumstances are changed, the court may adjust the amount in accordance with s. 977.07 (1) (a) and ~~(2)~~ rules promulgated under s. 977.02 (3).

**SECTION 4.** 977.02 (3) of the statutes is renumbered 977.02 (3) (intro.) and amended to read:

977.02 (3) (intro.) Promulgate rules regarding the determination of indigency of persons entitled to be rep-

resented by counsel, other than persons who are entitled to be represented by counsel under s. 48.23, 51.60, 55.105, or 938.23, 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:

**SECTION 5.** 977.02 (3) (a) to (d) of the statutes are created to read:

977.02 (3) (a) Consider the anticipated costs of effective representation for the type of case in which the person seeks representation.

(b) Subject to par. (d), consider assets in the manner described in s. 49.145 (3) (a) and treat assets as available to the person to pay the costs of legal representation if the assets exceed the resource limitations under s. 49.145 (3) (a), except that the representative of the state public defender shall exclude only the first \$30,000 of the equity value of the home that serves as the individual's home-  
stead.

(c) Subject to par. (d), treat income as available to the person to pay the costs of legal representation only if the income exceeds the income limitations in s. 49.145 (3) (b).

\* Section 991.11, WISCONSIN STATUTES 2007-08 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

(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.

**SECTION 6.** 977.06 (1) (a) of the statutes is amended to read:

977.06 (1) (a) Verify the information necessary to determine indigency under ~~s. 977.07 (2) 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. (1m), income records, value of assets, eligibility for public assistance, and claims of expenses.

**SECTION 7.** 977.06 (2) (a) of the statutes is amended to read:

977.06 (2) (a) A person seeking to have counsel assigned for him or her under s. 977.08, other than a person who is entitled to be represented by counsel under s. 48.23, 51.60, 55.105, or 938.23, 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. 977.07 (2) rules promulgated 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.

**SECTION 8.** 977.07 (2) of the statutes is repealed.

**SECTION 9.** 977.085 (3) of the statutes is amended to read:

977.085 (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, ~~977.07 (2)~~, 977.075 and 977.076, 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.

**SECTION 10. Nonstatutory provisions.**

(1) POSITION INCREASE. The authorized FTE positions for the public defender board are increased by 45.4 GPR positions on the effective date of this subsection, to be funded from the appropriation under section 20.550 (1) (c) of the statutes, for the purpose of providing legal representation to persons for whom the state public defender assigns counsel.

**SECTION 11. Initial applicability.**

(1) INDIGENCY DETERMINATIONS. This act first applies to cases opened on the effective date of this subsection.

**SECTION 12. Effective dates.** This act takes effect on June 19, 2011, except as follows:

(1) The renumbering and amendment of section 977.02 (3) of the statutes, and the creation of section 977.02 (3) (a) to (d) of the statutes take effect on the day after publication.

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