



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #124

Civil Legal Services for the Indigent (DOA -- Office of Justice Assistance)

Bill Section

[LFB 2007-09 Budget Summary: Page 39, #5]

CURRENT LAW

Criminal Legal Services for the Indigent. The cost of providing required criminal counsel to the indigent in Wisconsin is generally the responsibility of the state through the Office of the State Public Defender (SPD). The SPD provides this counsel either through SPD staff attorneys or SPD-appointed private bar attorneys. The agency's total adjusted base funding for all GPR state operations appropriations is \$76,016,800 GPR annually.

Civil Legal Services for the Indigent. The federal government distributes funding nationally for civil legal services through its Legal Services Corporation (LSC). In 2006, Legal Action of Wisconsin Inc. and Wisconsin Judicare Inc. received \$3,993,300 in federal funding from the LSC for civil legal services.

Funding for civil legal services is also provided through the Wisconsin Trust Account Foundation, Inc. (WisTAF). The state, through the Wisconsin Supreme Court, provides the bulk of the funding for Foundation grants for civil legal services. Funding is provided through: (a) interest on lawyers' trust accounts; and (b) an annual \$50 assessment on all active attorneys of the State Bar of Wisconsin. In 2005, WisTAF reported total income of \$2,115,000 and grant awards totaling \$1,322,000.

GOVERNOR

Provide \$1,000,000 GPR in 2008-09, under a new GPR annual indigent civil legal services appropriation for the Department of Administration's Office of Justice Assistance

(OJA). Beginning in 2008-09, specify that OJA must annually pay the amounts appropriated to the Wisconsin Trust Account Foundation, Inc. Provide that the Foundation would be required to distribute the moneys received as grants to programs that provide civil legal services to indigent persons.

Stipulate that the grants could be used only for the following civil legal services: (a) serving as guardian ad litem for cases with the Bureau of Milwaukee Child Welfare of the Department of Health and Family Services; (b) coordinating insurance benefits for medical assistance recipients; (c) assisting Wisconsin Works participants in applying for supplemental security income program benefits; (d) obtaining and enforcing child support, including legal services related to domestic abuse; (e) developing discharge plans for mentally ill inmates and assisting those inmates in their community integration planning; and (f) providing ancillary services to juvenile offenders.

DISCUSSION POINTS

1. Since the mid-1970s, the federal government has distributed grant funding for civil legal services through its Legal Services Corporation (LSC). Of the individuals receiving civil legal assistance with LSC funding, most have incomes at or below 125% of the federal poverty guidelines.

2. As a condition of receiving LSC funding, grant recipients may not utilize any of their funding (including non-LSC funds) for: (a) political activities; (b) criminal cases, except for minor offenses in Indian tribal courts; (c) abortion-related litigation of any kind; (d) proceedings involving desegregation of public schools; (e) class action lawsuits; (f) challenges to welfare reform; (g) collection of attorneys' fees; (h) rulemaking; (i) lobbying; (j) litigation on behalf of prisoners; (k) representation in drug-related public housing evictions; (l) representation of certain categories of aliens; (m) redistricting activities; and (n) influencing the time or manner of census taking.

3. In the mid-1980s, the Wisconsin Supreme Court created WisTAF to distribute and oversee grants for civil legal services. These grants are funded primarily by interest earned on lawyers' trust accounts and an annual \$50 assessment on all active attorneys of the State Bar of Wisconsin.

4. On June 2, 2004, WisTAF petitioned the Supreme Court to create the \$50 assessment on Wisconsin's active attorneys to fund grants for civil legal services. In its petition, WisTAF indicated that it had experienced a drop in interest revenue from lawyer trust accounts as a result of: (a) a 45-year low in interest rates; and (b) a decrease in the use of trust accounts by attorneys. On March 24, 2005, a majority of the Wisconsin Supreme Court approved the creation of a new annual \$50 assessment on Wisconsin's active attorneys, effective July 1, 2005. If an active Wisconsin attorney refuses to pay this new \$50 assessment, his or her license to practice law will be suspended.

5. The following table identifies annual revenues, annual grant allocations, and annual

administrative and related expenditures for WisTAF over the last 15 years. During this period, the annual revenues averaged \$1,793,500 and annual grant allocations averaged \$1,540,800.

WisTAF Revenue, Grant Allocations, and Other Expenses

<u>Calendar Year</u>	<u>Revenue</u>	<u>Grant Allocations</u>	<u>Other Expenses</u>
1992	\$1,666,800	\$1,681,500	\$118,400
1993	1,172,300	1,594,800	115,800
1994	977,800	1,428,500	112,800
1995	867,200	1,232,200	112,800
1996	1,346,400	988,000	119,300
1997	1,686,400	1,012,000	136,700
1998	1,949,700	1,475,000	154,500
1999	2,020,600	1,785,300	179,500
2000	2,425,400	2,313,800	235,200
2001	2,428,100	1,956,600	236,000
2002	2,710,600	2,839,900	290,700
2003	1,302,500	1,146,700	235,500
2004	937,500	1,135,200	238,200
2005	2,115,000	1,322,000	248,500
2006*	3,296,300	1,201,000	313,400

*Revenue and expenditure data for 2006 is based on a preliminary, unaudited accounting of WisTAF activities for the calendar year.

6. Over the past two years, due to the new \$50 assessment as well as increased interest earnings on lawyers' trust accounts, annual revenue to WisTAF to fund grant allocations has improved significantly. In calendar year 2006, net income (revenue minus expenditures) to WisTAF totaled \$1,781,900 (in part due to unanticipated increases in interest earnings on lawyers' trust accounts). Under its proposed 2007 budget, WisTAF projects increasing its grants for civil legal services to \$2,176,000.

7. Wisconsin courts and local bar associations have also undertaken other efforts to make the court system more accessible to citizens of modest means. They have provided free clinics to provide legal information about procedures and forms, but no ongoing representation. Circuit courts have established a number of court-based self-help services. In addition, the Supreme Court has developed an online capability to enable individuals to prepare the necessary forms for most initial divorce, custody, or child support filings.

8. The Wisconsin Supreme Court's rules governing the professional conduct of attorneys have been fashioned to permit attorneys to be paid in many instances on a contingent fee basis, other than for family law or criminal proceedings. This practice has permitted individuals of more modest means to afford the legal assistance that might otherwise have been denied to them. These Supreme Court rules also direct attorneys to provide pro bono legal services. This directive may be met by providing legal services at no fee or a reduced fee for the indigent.

9. Despite these efforts, a recent study completed by the State Bar of Wisconsin found that more than 500,000 Wisconsin residents whose income falls at or below 200% of the federal poverty guidelines face at least one significant legal issue in a year without legal assistance. According to the report, *Bridging the Justice Gap*, the most common legal problem facing the poor is the loss or reduction of public benefits. The second most common legal problem facing the poor involves financial or consumer issues, such as unpaid medical bills.

10. In discussing the effects of increasing numbers of individuals and families going without legal representation, the report stated that,

"Three propositions stand to reason, and deserve further study: First, an unrepresented person who loses his or her benefits or his or her home in circumstances in which a lawyer could have helped avoid the loss, or at least mitigated it, likely will turn for emergency help to the government or to a community agency, the cost of which may equal or exceed the cost of supplying a lawyer in the first place. Legal Action of Wisconsin was able to document more than \$7 million in benefits that it obtained for its clients in 2005 in disputes involving housing, consumer law, family law, public benefits, and individual rights.

Second, business productivity suffers when an employee's legal problems, compounded by lack of representation, interfere with his or her attention and determination to perform the job.

Third, our state economy suffers the loss of federal dollars when persons eligible for federal or other benefits cannot secure them because they are unrepresented and unsuccessful in navigating the complexities of the benefits system. The dollars that flow into Wisconsin through these benefits programs support our state's hospitals, clinics, pharmacies, groceries, landlords, retailers, and other industries.

This third proposition is demonstrated by a successful Wisconsin program that provides legal services to the elderly and people with disabilities. The Department of Health and Family Services provides benefit specialists in almost all counties. These "ben specs" are trained and supervised by lawyers. They help clients navigate the complex rules and regulations of government benefit programs and help them secure benefits to which they are entitled by law. The department believes that for every dollar it spends on the program, Wisconsin citizens receive seven dollars in federal and state benefits, plus private insurance coverage."

11. By letter to the Co-Chairs of the Joint Committee on Finance dated March 19, 2007, the Secretary of the Department of Administration requested that the bill language governing funding for civil legal services grants be modified to: (a) eliminate the restrictions on the types of legal services that can be provided with the funding; and (b) permit the funds to be utilized to match federal and private grant funding.

12. Based on the identified need for civil legal services for the poor, the Committee could consider providing \$1,000,000 GPR in 2008-09, to a new GPR annual indigent civil legal services appropriation under OJA. Funding in 2008-09 would establish annual base resources for WisTAF in the 2009-11 biennium. Under the provisions of the bill, OJA must allocate the funding to WisTAF. Under SB 40, WisTAF is not required to apply for the funds and there is no statutory reporting requirement imposed on the Foundation, although WisTAF must distribute the amounts received as grants to programs that provide civil legal services.

13. Given the limited administrative responsibilities, if the Committee wishes to approve the recommendation, the Committee could consider creating an appropriation for the funds under the Department of Administration's Division of Administrative Services and simply have the Secretary of Administration issue an annual check to WisTAF with the requirement that WisTAF comply with the conditions for receipt of the funds.

14. In determining the level of funding to provide for civil legal services for the poor, the administration balanced identified needs with available funding. In lieu of providing \$1,000,000 GPR in 2008-09, the Committee could also consider providing \$500,000 GPR in 2008-09 (the amount of funding that was requested as a part of the 2005-07 biennial budget).

15. In light of increasing funding being provided for civil legal services grants as a result of increased interest earnings on lawyers' trust account and as a result of a \$50 assessment on active attorneys, the Committee could also consider deleting the provision. Some could argue, however, that this alternative leaves the responsibility to fund civil legal services for the poor to Wisconsin's attorneys.

ALTERNATIVES TO BILL

1. Approve the Governor's recommendation to provide \$1,000,000 GPR in 2008-09, under a new GPR annual indigent civil legal services appropriation under the Department of Administration's Office of Justice Assistance (OJA). Specify that OJA must annually pay the amounts appropriated to the Wisconsin Trust Account Foundation, Inc (WisTAF). Provide that the Foundation would be required to distribute the moneys received as grants to programs that provide civil legal services to indigent persons. The Foundation would be limited to providing grants for six types of legal services.

ALT 1	Change to Bill Funding	Change to Base Funding
GPR	\$0	\$1,000,000

2. Modify the recommendation by providing \$500,000 GPR in 2008-09, under a new GPR annual indigent civil legal services appropriation under OJA.

ALT 2	Change to Bill Funding	Change to Base Funding
GPR	- \$500,000	\$500,000

3. Delete the provision and instead provide \$1,000,000 GPR in 2008-09, under a new GPR annual indigent civil legal services appropriation under the Department of Administration's Division of Administrative Services. Specify that this Division would be required to annually pay the amounts appropriated to WisTAF. Provide that the Foundation would be required to distribute the moneys received as grants to programs that provide civil legal services to indigent persons. Under this alternative, the Secretary of Administration would issue an annual check to WisTAF from this appropriation with the requirement that WisTAF would comply with the conditions for the receipt of the funds.

ALT 3	Change to Bill Funding	Change to Base Funding
GPR	\$0	\$1,000,000

4. Delete the provision and instead provide \$500,000 GPR in 2008-09, under a new GPR annual indigent civil legal services appropriation under the Department of Administration's Division of Administrative Services. Specify that this Division would be required to annually pay the amounts appropriated to WisTAF. Provide that the Foundation would be required to distribute the moneys received as grants to programs that provide civil legal services to indigent persons. Under this alternative, the Secretary of Administration would issue an annual check to WisTAF from this appropriation with the requirement that WisTAF would comply with the conditions for the receipt of the funds.

ALT 4	Change to Bill Funding	Change to Base Funding
GPR	- \$500,000	\$500,000

5. Modify the bill language governing the usage of the funding: (a) to eliminate the restrictions on the types of legal services that can be provided with the funding; and (b) permit the funds to be utilized to match federal and private grant funding. *[This alternative reflects the administration's letter of March 19, 2007, and may be adopted in addition to any of the above alternatives.]*

6. Delete provision.

ALT 6	Change to Bill Funding	Change to Base Funding
GPR	- \$1,000,000	\$0

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