



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-4923/1
EAW:amn

2017 BILL

1 **AN ACT to amend** 809.30 (2) (d), 977.02 (3) (intro.), 977.05 (4) (gm), 977.05 (4) (h),
2 977.06 (2) (a), 977.06 (2) (am), 977.07 (1) (a) and 977.07 (1) (c) of the statutes;
3 **relating to:** the determination of indigency prior to the state public defender
4 appointing an attorney to represent a parent in a proceeding under chapters 48
5 and 938 (suggested as remedial legislation by the State Public Defender).

Analysis by the Legislative Reference Bureau

Under current law, the state public defender is required to appoint counsel to a person entitled to representation under the Children's Code or the Juvenile Justice Code without first determining whether the person is indigent and therefore eligible for such an appointment. Under current law, indigency can be determined in these cases after the eligible person is appointed an attorney. This bill specifies that a determination of indigency is not required before the state public defender may appoint an attorney to represent a child in a proceeding under the Children's Code or the Juvenile Justice Code.

For further information, see the NOTES provided by the Law Revision Committee of the Joint Legislative Council.

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

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

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the State Public Defender and introduced by the Law Revision Committee under s. 13.83 (1) (c) 4. and 5., stats. After careful consideration of the various provisions of the bill, the Law Revision Committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

1 **SECTION 1.** 809.30 (2) (d) of the statutes is amended to read:

2 809.30 (2) (d) *Indigency redetermination.* Except as provided in this
3 paragraph, whenever a person whose trial counsel is appointed by the state public
4 defender files a notice under par. (b) requesting public defender representation for
5 purposes of postconviction or postdisposition relief, the prosecutor may, within 5
6 days after the notice is served and filed, file in the circuit court and serve upon the
7 state public defender a request that the person's indigency be redetermined before
8 counsel is appointed or transcripts are requested. This paragraph does not apply to
9 a child who is entitled to be represented by counsel under s. 48.23 or 938.23 or a
10 person who is entitled to be represented by counsel under s. 48.23, 51.60 (1), or
11 55.105, or 938.23.

LAW REVISION COMMITTEE NOTE: Sections 1 to 8 clarify that "a child," rather than "a person," is entitled to be represented by counsel under s. 48.23, Stats., or s. 938.23, Stats., without first having a determination of indigency.

12 **SECTION 2.** 977.02 (3) (intro.) of the statutes is amended to read:

13 977.02 (3) (intro.) Promulgate rules regarding the determination of indigency
14 of persons entitled to be represented by counsel, other than children who are entitled
15 to be represented by counsel under s. 48.23 or 938.23 or persons who are entitled to
16 be represented by counsel under s. 48.23, 51.60, or 55.105, or 938.23, including the
17 time period in which the determination must be made and the criteria to be used to

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1 determine indigency and partial indigency. The rules shall specify that, in
2 determining indigency, the representative of the state public defender shall do all of
3 the following:

4 **SECTION 3.** 977.05 (4) (gm) of the statutes is amended to read:

5 977.05 (4) (gm) In accordance with the standards under pars. (h) and (i), accept
6 referrals from judges and courts for the provision of legal services without a
7 determination of indigency of children who are entitled to be represented by counsel
8 under s. 48.23 or 938.23 or persons who are entitled to be represented by counsel
9 under s. ~~48.23~~, 51.60, or 55.105, ~~or 938.23~~, appoint counsel in accordance with
10 contracts and policies of the board, and inform the referring judge or court of the
11 name and address of the specific attorney who has been assigned to the case.

12 **SECTION 4.** 977.05 (4) (h) of the statutes is amended to read:

13 977.05 (4) (h) Accept requests for legal services from children who are entitled
14 to be represented by counsel under s. 48.23 or 938.23 or persons who are entitled to
15 be represented by counsel under s. ~~48.23~~, 51.60, or 55.105, ~~or 938.23~~ and from
16 indigent persons who are entitled to be represented by counsel under s. 967.06 or who
17 are otherwise so entitled under the constitution or laws of the United States or this
18 state and provide such persons with legal services when, in the discretion of the state
19 public defender, such provision of legal services is appropriate.

20 **SECTION 5.** 977.06 (2) (a) of the statutes is amended to read:

21 977.06 (2) (a) A person seeking to have counsel assigned for him or her under
22 s. 977.08, other than a child who is entitled to be represented by counsel under s.
23 48.23 or 938.23 or a person who is entitled to be represented by counsel under s.
24 ~~48.23~~, 51.60, or 55.105, ~~or 938.23~~, shall sign a statement declaring that he or she has
25 not disposed of any assets for the purpose of qualifying for that assignment of

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1 counsel. If the representative or authority making the indigency determination
2 finds that any asset was disposed of for less than its fair market value for the purpose
3 of obtaining that assignment of counsel, the asset shall be counted under rules
4 promulgated under s. 977.02 (3) at its fair market value at the time it was disposed
5 of, minus the amount of compensation received for the asset.

6 **SECTION 6.** 977.06 (2) (am) of the statutes is amended to read:

7 977.06 (2) (am) A person seeking to have counsel assigned for him or her under
8 s. 977.08, other than a child who is entitled to be represented by counsel under s.
9 48.23 or 938.23 or a person who is entitled to be represented by counsel under s.
10 48.23, 51.60, or 55.105, ~~or 938.23~~, shall sign a statement declaring that the
11 information that he or she has given to determine eligibility for assignment of
12 counsel he or she believes to be true and that he or she is informed that he or she is
13 subject to the penalty under par. (b).

14 **SECTION 7.** 977.07 (1) (a) of the statutes is amended to read:

15 977.07 (1) (a) Determination of indigency for persons entitled to counsel shall
16 be made as soon as possible and shall be in accordance with the rules promulgated
17 by the board under s. 977.02 (3) and the system established under s. 977.06. No
18 determination of indigency is required for a child who is entitled to be represented
19 by counsel under s. 48.23 or 938.23 or a person who is entitled to be represented by
20 counsel under s. ~~48.23, 51.60, or 55.105,~~ or 938.23.

21 **SECTION 8.** 977.07 (1) (c) of the statutes is amended to read:

22 977.07 (1) (c) For all referrals made under ss. 809.107, 809.30, 974.06 (3) (b)
23 and 974.07 (11), except a referral of a child who is entitled to be represented by
24 counsel under s. 48.23 or 938.23 or a person who is entitled to be represented by
25 counsel under s. ~~48.23, 51.60, or 55.105,~~ or 938.23, a representative of the state public

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1 defender shall determine indigency. For referrals made under ss. 809.107, 809.30
2 and 974.06 (3) (b), except a referral of a child who is entitled to be represented by
3 counsel under s. 48.23 or 938.23 or a person who is entitled to be represented by
4 counsel under s. ~~48.23~~, 51.60, or 55.105, ~~or 938.23~~, the representative of the state
5 public defender may, unless a request for redetermination has been filed under s.
6 809.30 (2) (d) or the person's request for representation states that his or her
7 financial circumstances have materially improved, rely upon a determination of
8 indigency made for purposes of trial representation under this section.

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(END)