

WISCONSIN STATE
LEGISLATURE
COMMITTEE HEARING
RECORDS

2007-08

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on
Corrections and
Courts
(AC-CC)

(Form Updated: 07/24/2009)

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Nowlan, Andrew

From: Ginger, Krista [GingerK@opd.wi.gov]
Sent: Tuesday, November 27, 2007 4:21 PM
To: Leighton, Kyle; Nowlan, Andrew
Subject: This afternoon's Janesville Gazette's editorial -- "More deserve public defenders in legal cases"

Found In
AB 576
Folder

More deserve public defenders in legal cases

Wisconsin's guidelines for public defender representation are sorely lacking.

Fortunately, bills to upgrade them were introduced this month—SB321 in the Senate and AB576 in the Assembly. Both have 41 co-sponsors.

A person is entitled to an attorney through the Wisconsin State Public Defenders Office if income and assets, minus living expenses, leave too little to pay for effective legal counsel.

But eligibility standards are tied to the former Aid to Families with Dependent Children program. These standards haven't been updated since 1987, the year the Dow first closed above 2,000.

So what?

Well, Wisconsin residents deserve equal protection under the law. No one should wind up in a crowded jail just because he or she couldn't afford an attorney.

Children can get state public defenders regardless of income or assets. But adults also deserve adequate legal counsel, whether they face criminal charges that might lead to imprisonment, emergency detentions, involuntary civil commitments, protective placements or paternity issues.

The proposed legislation would ensure that all 72 counties use a consistent standard. Now, a person who doesn't qualify for a public defender might be provided a court-appointed attorney in one court and yet be denied appointed counsel in an adjoining courtroom or another county.

The legislation would save county taxpayers money. A court must review a person's circumstances and appoint a lawyer at county expense if an individual is too poor to afford an attorney, even though he or she doesn't qualify for a public defender. In 2006, 70 counties reported spending about \$4.7 million to appoint attorneys for such people.

Without change, this substantial expense for courts and counties will continue to rise.

Under the proposed legislation, the public defender's office would consider the expected costs of effective representation based on the type of case. A person's assets and income would be treated as available to pay for an attorney if they exceed eligibility ceilings for the Wisconsin Works, or W-2 welfare program.

The first \$30,000 of a person's home would be excluded. A spouse's assets and income would also be factors, except if the spouse were the victim of an alleged crime.

The legislation would take effect July 1, 2009, and also add 51 full-time positions to the public defender's office.

It deserves passage.

Randy Kraft
Public Information Officer
Wisconsin State Public Defender's Office

12/03/2007

phone 608-267-3587
email krafr@opd.wi.gov

Nowlan, Andrew

From: Ginger, Krista [GingerK@opd.wi.gov]
Sent: Tuesday, November 27, 2007 4:21 PM
To: Leighton, Kyle; Nowlan, Andrew
Subject: Appleton Post Crescent - "Public defender level needs increase"

<http://www.postcrescent.com/apps/pbcs.dll/article?AID=/20071125/APC0602/711250558/1531/APCopinion>

Appleton Post Crescent - Posted November 25, 2007

Editorial: Public defender level needs increase

Here's a question: If you're a single person and are charged with a crime, how low does your income have to be for you to qualify to be represented by a state public defender?

Maybe \$15,000? Maybe the federal poverty level, which is about \$10,000?

Nope. The income level for a single person in Wisconsin to qualify for a public defender is about \$3,000. It's based on guidelines that haven't changed since 1987, when the federal poverty level was \$5,500.

It's past time for that to change — and a bill in the Legislature aims to do it.

It isn't that most poor defendants aren't getting representation. If they're charged with a serious crime and are in jail, they're likely to get a public defender because they've lost their income.

Or, even if a defendant makes too much money to qualify, a judge can rule that, because the defendant still can't afford to hire an attorney, the court will appoint one at county expense.

But county budgets are typically strained already, so some judges are reluctant to add to the strain. In those cases, typically misdemeanors or less serious felonies, defendants have to represent themselves.

The bill in Madison would raise the income level for public defender qualification to 115 percent of the federal poverty level, which for a single person would be about \$11,750. That's the same income level as the Wisconsin Works program.

The bill also would provide 33 new public defenders and 17 new support staffers, and it would mandate that consistent standards are used in each county.

It would cost about \$4.5 million a year. But Wisconsin's counties are spending more than that in court-appointed lawyers. It would basically be a cost shift, from counties to the state — and more defendants would get representation.

That's the point — people aren't getting the representation that they're ensured under our constitution. Even if it were to cost more money, justice demands it. The fact that it should save a little money is a bonus.

This bill demands swift passage, for the sake of Wisconsin's justice system.

Randy Kraft
Public Information Officer
Wisconsin State Public Defender's Office
phone 608-267-3587
email krafr@opd.wi.gov





December 4, 2007

TO: Wisconsin Legislature

FROM: Scott Spector, Government Relations Representative

RE: AB 576/SB 321

The American Federation of Teachers-Wisconsin supports AB 576/ SB 321. This piece of legislation modernizes the income eligibility standards used to determine if a person is eligible for a state public defender. The current criteria are outdated and serve as an injustice to those needing representation in our legal system. This bipartisan legislation would also save taxpayer dollars. AFT-Wisconsin urges the legislature to pass AB 576/ SB 321.

Current Standards Obsolete Eligibility standards currently in place are based upon the Aid to Families with Dependent Children program and have not been updated for 20 years. Because of this, some individuals who may be working for the minimum wage, are not eligible for a state public defender. The current proposal seeks to align state public defender eligibility standards with those for W-2. The eligibility standards take into account an individual's assets and income. To qualify for a public defender, a single person could make no more than \$978 a month and a family of three could have an income of no more than \$2,647 per month.

Proposal Reduces Financial Burden on Counties Because the standard is so high to receive a state public defender, many counties are forced to pick up the tab for legal fees for those who can not otherwise afford legal counsel. In 2006, 70 counties reported spending \$4.7 million to appoint attorneys for those who could not pay for their own. The current system amounts to an unfounded mandate, where counties are forced to use dwindling budget dollars on a cost that is intended to be borne by the state. Updated standards would enable more low-income people to qualify for a public defender and a result, would decrease the amount of funds counties have to spend in order to provide court-appointed attorneys.





Supreme Court of Wisconsin

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Chief Justice

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A. John Voelker
Director of State Courts

Testimony
of

A. John Voelker

Assembly Bill 576

Criteria for Determining Indigency by the State Public Defender

Assembly Committee on Corrections and Courts

Representative Garey Bies, Chair

December 4, 2007

Chairman Bies and members of the Committee, my name is John Voelker, the Director of State Courts. I appear today on behalf of the Legislative Committee of the Judicial Conference in support of Assembly Bill 576 that would update the eligibility standards used by the State Public Defender (SPD). This bill addresses a longstanding problem. I appeared before your committee nearly four years ago to address the same issue. The problem has not changed during the intervening years. In fact, it has worsened. Today I would like to address both the policy reasons and the financial implications that are behind this bill.

There is no doubt the current indigency standards, relying as they do on the 1987 Aid to Families with Dependent Children financial standards, are outdated. Basing the indigency standards on the Wisconsin Works (W-2) program makes far greater sense.

The judiciary has been aware for several years that the current indigency standards are inadequate. More and more defendants are clearly financially unable to afford their own attorneys. Nevertheless, they do not meet the requirements for representation by the (SPD). Circuit court judges are bound by constitutional principles to appoint counsel for indigent defendants, but under these circumstances the responsibility for paying appointed counsel falls to the counties. I would like to elaborate on the dilemma judges face.

The right of indigent defendants to counsel has been recognized in Wisconsin for nearly 145 years. In *Carpenter v. Dane County*, 9 Wis. 249 (1858), Wisconsin's supreme court reasoned that the right enumerated in article 1, section 7 of the Wisconsin Constitution – to be heard by counsel, to demand the nature and cause of the accusation, to meet witnesses face to face – would be meaningless without the right to legal counsel.

In *State v. Dean*, 163 Wis. 2d 503 (Ct. App. 1991), the Court of Appeals provided guidance to judges faced with the situation in which a defendant does not qualify for representation by the SPD but who claims not to be able to afford counsel. The court said judges must consider all relevant evidence presented by the defendant that is material to the defendant's

present ability to retain counsel and cannot be restricted to the statutory criteria for SPD representation. If a criminal defendant does not meet the public defender criteria, the trial court must nevertheless determine whether the defendant is indigent, and if he or she is, the trial court should appoint counsel from the private bar.

It is also clear the outdated indigency standards are presenting an increasing financial burden on the counties. As the standards have become more outdated, counties have picked up greater costs. I have attached to my testimony a table showing the indigent counsel costs that counties have reported to us for the calendar years 2004 and 2005.

Counties report this unaudited information to the Director of State Courts Office each May as required under s. 759.19 (5)(e), Wis. Stats. For calendar year 2004, counties reported, in total, spending \$4.9 million on indigent counsel, and for calendar year 2005, \$5.9 million. This information is unaudited, but we believe it is an accurate reflection of what is happening in the counties.

When you combine the judge's duty to appoint with his or her concern about the increasing cost to the county, individual judges are in a difficult situation.

As Chief Justice Shirley Abrahamson noted, when she addressed the Joint Committee on Finance on March 14, 2007:

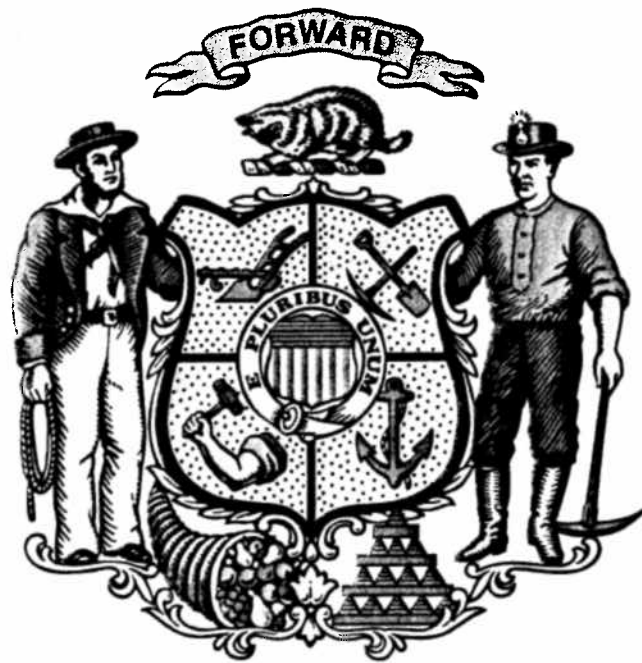
The efficient delivery of the constitutional right to representation for those who cannot afford to pay for an attorney impacts the fairness and efficiency of the entire system. I therefore urge you to update the State Public Defender indigency standards so that it can once again fully perform its mandated function.

The Legislative Committee strongly favors the change in the indigency standards that is contained in AB 576. I would be happy to answer any questions. Thank you.

**CY 2004 and CY 2005 Indigent Counsel Costs for Counties
as reported on Annual Report of Actual Court Costs**

County	CY 2004	CY 2005
Adams	\$15,052	\$19,692
Ashland	33,927	35,813
Barron	75,025	105,515
Bayfield	15,762	19,032
Brown	279,847	371,614
Buffalo	6,747	2,829
Burnett	18,133	14,789
Calumet	28,567	31,873
Chippewa	30,814	34,564
Clark	29,011	31,979
Columbia	34,289	45,700
Crawford	15,675	24,642
Dane	310,503	378,786
Dodge	69,368	98,948
Door	51,446	77,707
Douglas	21,118	22,657
Dunn	13,918	21,420
Eau Claire	152,189	121,202
Florence	500	-
Fond du Lac	145,152	129,918
Forest	1,865	6,502
Grant	32,100	44,342
Green	44,111	28,657
Green Lake	10,592	3,244
Iowa	44,090	40,876
Iron	-	-
Jackson	36,944	33,245
Jefferson	1,996	180,474
Juneau	26,250	39,026
Kenosha	-	-
Kewaunee	23,091	-
La Crosse	256,506	253,331
Lafayette	15,603	15,174
Langlade	2,640	11,056
Lincoln	55,852	45,804
Manitowoc	7,461	9,416
Marathon	224,966	261,281
Marinette	25,784	55,955
Marquette	39,112	57,044
Menominee	-	-
Milwaukee	1,159,005	1,328,606
Monroe	53,967	73,079
Oconto	51,278	65,186
Oneida	-	-
Outagamie	111,754	141,343
Ozaukee	32,498	48,114
Pepin	5,280	9,217

Pierce	10,286	26,760
Polk	8,053	6,135
Portage	69,947	94,547
Price	533	3,947
Racine	175,396	236,741
Richland	14,795	5,421
Rock	127,884	185,154
Rusk	11,739	-
Sauk	94,441	129,312
Sawyer	3,423	8,978
Shawano	1,503	10,866
Sheboygan	68,296	85,729
St. Croix	67,220	73,143
Taylor	41,647	33,973
Trempealeau	31,896	52,968
Vernon	21,672	27,850
Vilas	8,500	15,551
Walworth	100,636	96,255
Washburn	-	-
Washington	140,043	130,802
Waukesha	234,738	290,494
Waupaca	-	-
Waushara	45,807	43,250
Winnebago	-	-
Wood	30,030	31,910
	<u>\$4,918,272</u>	<u>\$5,929,438</u>



Assembly Bill 576

Testimony by: Wisconsin State Public Defender Nicholas L. Chiarkas

December 4, 2007

Good morning, Members of the Assembly Corrections and Courts Committee. I am honored to appear here today in support of Assembly Bill 576, and to thank you for your consideration of this important legislation.

Justice, in the criminal sphere, is the law-breaker receiving what is due him or her, both in process and punishment. And it is the process, not the punishment, which distinguishes just governments. In the United States, we have agreed that before the government can take away our liberty, it must first provide us with a fair process. This process is not a gift—rather, it is owed to us...it is due us. That is the simple meaning of Due Process. What this process includes is what makes it complex. So complex, that whenever the government seeks to remove a citizen's liberty, the government is represented by an attorney (a prosecutor). Justice therefore dictates that throughout this complex process, the citizen facing the loss of liberty should also be represented by an attorney. Our pledge of allegiance promises in its last three words: "...justice for ALL." Consequently, citizens too poor to afford an attorney must be provided an attorney by the government.

AB 576 keeps the promise of our pledge of allegiance...it is the ideal that is Wisconsin and the Idea that is America.

More specifically, and as you know, the Wisconsin State Public Defender's Office (SPD) provides constitutionally-mandated legal representation to indigents who

meet financial eligibility standards. The standards, set by statute, have not been updated since 1987—leaving many of our poor without access to SPD representation.

I would like to point out some problems with the current law. Many individuals who do not qualify for SPD representation are still too poor to afford a lawyer. In these cases, the courts (must) appoint a lawyer at county taxpayer expense. Consequently there is inconsistent application from court to court, and county to county. For example, a person may be provided a county-appointed attorney in one court, yet be denied an appointed attorney under the same circumstances in an adjoining courtroom or in another county. Passage of this legislation would ensure consistency and equal access throughout all 72 Wisconsin counties.

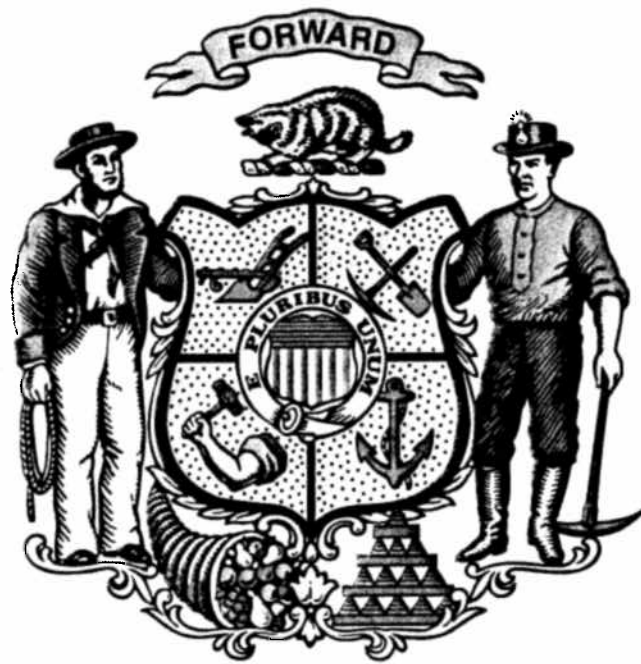
In addition, courts and counties have to divert resources from other important services to create an appointment-of-counsel structure that already exists within the SPD. The reimbursement rate for county-appointed attorneys is, in many cases, almost twice the rate paid by the SPD (\$40/hour) to its appointed private attorneys. Seventy of the 72 counties reported spending approximately \$4.7 million (total for all reporting counties in 2006 to appoint counsel for these indigent individuals). In 2004, fifty-eight of the 72 counties reported that they spent \$3.3 million. The actual amounts change from year to year and may actually be higher as there is not a standard reporting system required for use by the county court systems. Unlike the SPD, which implemented a statewide client collections program with consistent standards more than 10 years ago, individual judges have discretion to order defendants with court-appointed counsel to pay attorney fees; thus the offsetting revenue varies from court to court and from county to county.

If enacted, this legislation will not only save taxpayer money but will ensure consistent eligibility standards and equal protection throughout Wisconsin.

With your help, we are hopeful this significant problem will be resolved. AB 576 would make SPD's financial eligibility criteria consistent with the W2 program eligibility criteria (except the SPD criterion takes the cost to hire an attorney into account). The new criteria will dramatically reduce county liability for providing counsel to indigent persons who do not qualify for SPD representation. The SPD will provide legal representation in about 15,400 additional cases per year. The legislation authorizes 33.6 new attorney and 17.7 new support staff positions to handle approximately 75% of these cases, with the remaining 25% appointed to private attorneys.

With an effective date of July 1, 2009, no state costs will be incurred during the current 2007-2009 biennium. The annual cost in FY 2010 is projected to be \$4.3 million. The ongoing annual cost, beginning in FY 2011 is projected to be \$ 4.6 million. These costs would largely be offset by savings in county budgets due to fewer court appointments.

I am happy to answer any questions. Thank you very much for your consideration, leadership and support of this important legislation.





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MEMORANDUM

TO: Honorable Members of the Assembly Committee on Corrections and the Courts

FROM: Sarah Diedrick-Kasdorf, Senior Legislative Associate *SK*

DATE: December 4, 2007

SUBJECT: Support for Assembly Bill 576

The Wisconsin Counties Association supports Assembly Bill 576, which changes the criteria for determining indigency for the purposes of State Public Defender representation.

Wisconsin's eligibility standards have not been updated since 1987. Each year, one of two scenarios occurs - county responsibility for funding legal representation for indigent defendants increases or an increased number of defendants attend court without legal counsel. Neither of these scenarios is acceptable.

In 1977, the state of Wisconsin created the Office of the State Public Defender (SPD) to provide legal representation for individuals who were unable to afford private counsel. There are numerous benefits to having a centralized system, including consistent eligibility guidelines, providing attorneys to indigent clients with expertise in the field of criminal defense, administrative and financial efficiencies.

Uniformly, counties across the state are frustrated with the current SPD eligibility standards, which are clearly outdated. Counties are required to pay for defense services for individuals who are truly indigent, but fail to qualify for SPD services due to standards that are increasingly difficult to meet. The burden of funding indigent defense services on the backs of county property taxpayers continues to grow every year. These costs vary year to year by county, making budgeting for defense costs extremely difficult. While counties do not question the need for adequate legal representation for individuals subject to legal proceedings in the criminal justice system, WCA strongly objects to county government bearing the cost for this service when the State Public Defender's office was created for that very purpose. Unless the SPD eligibility standards are changed to allow the SPD to represent individuals who are indigent by "real world" standards, counties will continue to fund increased indigent defense services at a cost to the taxpayer equivalent to twice the cost of representation by the State Public Defender's office.

Page 2
WCA Memorandum
December 4, 2007

The changes in the eligibility standards contained in Assembly Bill 576 ensure that Wisconsin citizens' constitutional rights are protected at a cost most economical/affordable to the taxpayers of this state.

WCA respectfully requests your support for Assembly Bill 576.





**WISCONSIN
LAWYERS**

STATE BAR of
WISCONSIN* EXPERT ADVISERS.
SERVING YOU.

MEMORANDUM

To: Assembly Committee on Corrections and the Courts
From: Atty. Thomas Basting, President
State Bar of Wisconsin
Date: December 4, 2007
Re: State Bar of Wisconsin support for AB 576 (Indigence/State Public Defender)

The State Bar of Wisconsin supports Assembly Bill 576, which would increase the eligibility limits for a public defender from the antiquated 1987 AFDC limits to current W-2 limits, which generally are 115% percent of the federal poverty level. The State Bar has a long-standing position in favor of using federal poverty guidelines as minimum financial criteria for determining indigence and eligibility for constitutionally mandated appointment of counsel.

Outdated eligibility limits for a public defender are part of a mosaic of issues, all related to chronic under-funding of our justice system and lack of access to justice for those of limited means. While the need for this legislation is great, it is only one solution to one discreet part of a much broader problem. State Public Defender reimbursement rates for private bar appointments, which have been frozen at \$40 per hour since 1995, also need to be increased. Forty dollars per hour is not sufficient to cover the overhead of the average law practice, and that fact makes it difficult to secure qualified attorneys to take these cases at such a low reimbursement rate. The State Bar of Wisconsin looks forward to working with the State Public Defender on a future effort to increase the \$40 per hour reimbursement rate to a more reasonable level.

The State Bar supports the increased eligibility levels in AB 576 because it is the right thing to do. A free society cannot deny justice to the poor and remain free. However, I would be remiss not to acknowledge that this legislation carries an economic cost to our members. This bill would limit, if not eliminate, the number of *Dean* appointments made at county expense, generally at reimbursement rates much higher than the \$40 per hour currently paid by the State Public Defender. The effect of this bill, then, would be to shift many of what are currently *Dean* appointments to private bar appointments at a much lower reimbursement rate.

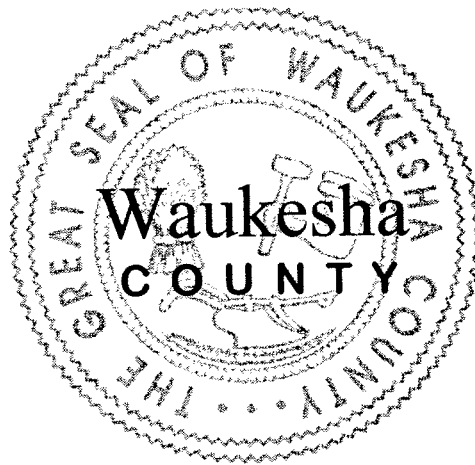
That being said, the State Bar's support for AB 576 is not contingent upon a future increase in State Public Defender reimbursement rates, but reimbursement rates are a problem that the Governor and the Legislature need to address soon. The members of the State Bar of Wisconsin have a long history of providing *pro bono* legal services to people of limited means, both in the form of free legal services and reduced-cost legal services, such as private bar SPD appointments. According to at 2005 survey, attorneys in Wisconsin annually contribute approximately 220,000 hours of free or reduced-cost legal services to the poor.

It is time for the State of Wisconsin to meet its obligation to make justice accessible to the poor by updating both SPD eligibility limits and private bar reimbursement rates.

State Bar of Wisconsin

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December 4, 2007

TO: Representative Garey Bies, Chair
Members of the Assembly Corrections & Courts Committee

FR: Dave Krahn, Legislative Policy Advisor

RE: **AB 576 – State Public Defender Criteria for Determining Indigency**

On behalf of Waukesha County, I ask you to please support AB 576.

This legislation will overhaul the state public defender's indigency determination process which has not been updated since 1987.

Because these standards are so outdated, there are individuals who fall through the cracks and end up on the county dime, which is to say their legal representation is paid for by the county property taxpayer. That is not where the bill should be sent.

In Waukesha County in 2006, our expenditure for court appointed attorneys for indigent individuals was \$134,528; for 2007, it is estimated to be approximately \$180,000.

AB 576 would ensure that there is more cost-efficiency and program effectiveness if SPD provides representation, because that is what they do; it just makes sense to ensure that they have the where-with-all to do the job.

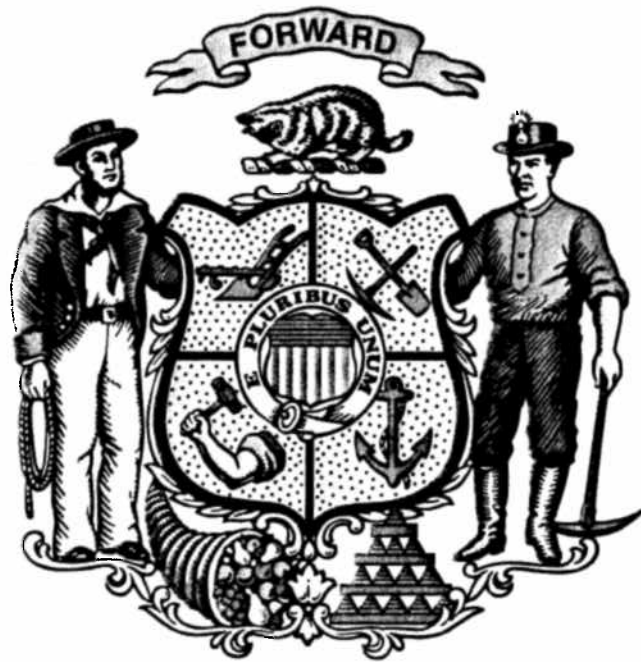
And, with passage of AB 576, there would be assurance that some progress had been made in the effort to have the state incrementally pick-up the cost of the state court system.

To summarize, AB 576 would:

- Ensure a consistent eligibility standard is used throughout the entire state.
- Provide equal protection under the law for Wisconsin citizens.
- Avoid the potentiality of a lawsuit that the state would more than likely lose.
- Be more cost-effective

This initiative is long overdue. Please support passage of Assembly Bill 576.

Thank you!



Lawrence, Minette

From: Peter Grimm [Peter.Grimm@wicourts.gov]
Sent: Monday, January 14, 2008 10:33 AM
To: Rep.Townsend; Roessler, Carol; Rottier, Nancy M - COURTS
Subject: Amendment to ~~2007 AB 576~~ & SB 321
Attachments: AB-576.pdf

Greetings. I write to request an amendment to 07 SB 321, and 2007 AB 576, copy attached. I apologize for the short notice, but I just learned of this and I understand there is public hearing this week in the Assembly. I have for years written about issues with the SPD eligibility standards, and this particular issue I write about is one my major pet peeves. I have been a Judge for 16 years, a District Attorney for 2 years, and an Assistant State Public Defender for three years, and this is one area where the legislature is better served to allow some flexibility in the mission of the SPD and the Courts when counting certain assets. An eligibility rule set in stone can cause absurd results.

The problem I have with the existing statute, as continued in the proposed bill, is that there is no flexibility when counting the assets of a missing spouse or a spouse whose assets are functionally unavailable. Over the years I have seen several cases where the SPD has denied counsel because the applicant was still married, but the spouse lived in another state, or the applicant didn't know where she lived, or they hadn't seen each other for 5 years, or were midway through a divorce case, etc....

Thus, as a judge, then I am required to appoint counsel at county expense for the indigent applicant because I am not bound by an inflexible asset rule to count spouse's income without consideration of real life circumstances or exceptions. My other option is to adjourn the case so a divorce can be filed and completed so the applicant can qualify for a SPD attorney.

My proposal is to amend AB 576, at section 5, (d), on page 4, line 3, adding this extra language as follows: "A judge may at an indigency review hearing review the availability of the spouse's income or assets and if the court finds that the spouse's income or assets are functionally unavailable to the applicant, then the SPD shall re-compute the applicant's indigency without counting the spouse's income or assets."

Thank you for any assistance you can provide on my request. My schedule does not allow to attend a public hearing this week. Please feel free to pass my email along to other interested individuals or agencies.





No
Date

**Written Testimony of Representative Garey Bies
Assembly Committee on Corrections and the Courts
Assembly Bill 576 – Eligibility for Public Defender Representation**

Good morning committee members, I appreciate the opportunity to submit my testimony in support of Assembly Bill 576, relating to determining indigency for purposes of representation by the State Public Defender.

One of the foundations of our society is our justice system and the right to a fair trial. In order for justice to be served, the participants in a legal proceeding must have proper representation. It is a basic tenet of our judicial system that a person who is charged with an offense is entitled to a fair trial and legal representation and if they are unable to provide for their own representation, the judicial system shall provide it.

The problem and what AB 576 aims to address, is that the criteria by which the courts determine whether an individual is financially capable of providing for their own legal defense, is outdated and inadequate. In fact, the eligibility standards for legal representation have not been updated since 1987. In the event a person fails to meet eligibility for representation by the State Public Defender yet still lacks the financial resources to provide their own lawyer, the court must appoint a lawyer at county expense. This court-ordered representation costs Wisconsin counties millions of dollars each year. Dollars that must be diverted from elsewhere in the counties' budgets.

AB 576 updates the financial eligibility requirements for representation by the State Public Defender to mirror the eligibility requirements for the W2 program which is 115% of the federal poverty level. The increase in eligibility standards proposed in AB 576 would result in approximately 15,400 additional cases qualifying for representation by a Public Defender. This increase would result in increased state costs of approximately \$4.3 million beginning in 2010, which is the first year in which the changes proposed in AB 576 would take effect. The annualized costs in 2011 and each year thereafter would be approximately \$4.6 million. Of course, counties would see a reduction in costs of approximately the same amount.

In addition, AB 576 will establish one, consistent standard for eligibility across the state. If a person qualifies for representation by the State Public Defender in one county, they will qualify in any county. According to the office of the State Public Defender, under current law, consistency in eligibility standards is lacking.

The people of Wisconsin deserve proper representation in their legal proceedings. AB 576 will allow for the office of the State Public Defender to provide more representation to more people. There are clearly costs that will increase at the state level, but these are offset by the reduction of

First for Wisconsin!

costs at the county level and I believe that it should be the responsibility of the state to provide legal representation to the most needy.

To conclude, I respectfully request your support of AB 576 and I would be happy to answer any questions that you may have.

Thank you.





No
Date

Statement of ACLU of Wisconsin on 2007 SB 321 & 2007 AB 576

The American Civil Liberties Union of Wisconsin urges the Wisconsin Legislature to pass 2007 Senate Bill 321 and 2007 Assembly Bill 576. These bills make long-overdue corrections to financial eligibility limits that have denied many indigent criminal defendants state public defender services, has left them at the mercy of a county-by-county appointment process that violates minimum standards recommended by the organized bar, and undermines fundamental rights guaranteed by the U.S. and Wisconsin constitutions.

The Sixth Amendment right to counsel helps level the playing field when a lone criminal defendant faces the overwhelming power of the state in a criminal proceeding. As the Supreme Court recognized in *Gideon v. Wainwright*, making that right to counsel contingent on the ability to pay for a private lawyer mocks the principle of equal justice under law.

Wisconsin's State Public Defender Office has provided exemplary representation (either directly or through assigned private counsel) to criminal defendants throughout the state. Unfortunately, under current law too many people who are "indigent" by any definition of that term do not qualify for SPD representation because they have incomes that exceed \$248 per month, which comes to less than \$3000 per year. Effectively, the only people eligible for SPD services are those in jail and not receiving any public benefits.

For those making too much to qualify for SPD representation, judges from county to county must, under the rule established in *State v. Dean*, 163 Wis.2d 503 (Ct. App. 1991), make an individualized determination about whether a particular defendant is unable to afford private counsel and is thus entitled to be appointed a private lawyer at county expense. In addition to the inherent subjectivity of such a determination, judges face strong disincentives to appointing counsel for those who do not qualify for state-funded SPD representation. If a judge appoints private counsel, the attorney is paid not by the state, but by the county, which also provides the court with its staff and other resources. Every dollar spent on indigent defense is a dollar that could otherwise be spent on court security, courtroom clerks and other crucial judicial resources.

(over)

The reliance on so-called *Dean* appointments to fill the gap caused by the SPD income eligibility limit violates at least two of the American Bar Association's *Ten Principles of a Public Defense Delivery System* (2002). The first ABA principle demands that defense counsel be independent of the judiciary. This is impossible in a *Dean* appointment, because the judge determines the attorney's pay and access to resources for experts and investigations. The second principle demands that, since the responsibility to provide defense services rests with the state, there should be state funding to ensure uniform access and quality of services statewide. Again, the county-by-county *Dean* process makes such uniformity impossible.

Continued reliance on *Dean* appointments also threatens to render the entire indigent defense system in Wisconsin unconstitutional. The wide variations in appointment practices from county to county and even from judge to judge result in arbitrary differences in which defendants get representation and which don't. This process almost certainly results in significant numbers of indigent individuals being denied their Sixth Amendment right to counsel.

As news reports over the years make abundantly clear, the income eligibility limits have caused real harm to real people – including innocent people – facing criminal charges without a lawyer. *See, e.g.,* Mary Zahn & Jessica McBride, "Poor Often Left Defenseless in Courtroom: \$250 a Month Too Much to Qualify for Public Defender," *Milwaukee Journal-Sentinel* (Dec. 7, 2002). These bills represent a meaningful step toward providing adequate representation to every indigent criminal defendant in Wisconsin and should be adopted expeditiously.



AB 5761

no date

currently 30% of federal priority level

How does the 115% affect percentages of those that qualify in different parts of the state.

Indigency hearing set by judge for individuals that do not qualify for SPD but clearly cannot afford their own lawyer.

Adds burden to the court system. Cargestion.

Can we afford this?

Less exp at state level vs. county level.

Costs will go up.

County appointed ^{since 1995} \$40-\$50 an hour.

Gain efficiencies with SPD

Less expensive some counties pay twice what the cost would be to the SPD

Consistency? No, currently is judge-based

Just b/c you pass the bill, problem not yet solved until funded
