



State of Wisconsin
2003 - 2004 LEGISLATURE

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**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2003 ASSEMBLY BILL 616**

January 23, 2004 - Offered by Representative McCORMICK.

1 **AN ACT to repeal** 51.45 (12) (b) 2., 977.07 (2) and 977.08 (2) (d); **to renumber and**
2 **amend** 967.06 and 977.02 (3); **to consolidate, renumber and amend** 51.45
3 (12) (b) (intro.), 1. and 3.; **to amend** 20.550 (1) (f), 20.550 (1) (fb), 51.15 (9), 51.20
4 (3), 51.20 (18) (c), 51.35 (1) (e) 1., 51.35 (1) (e) 2. c., 51.45 (12) (c) 2., 51.45 (13)
5 (b) 2., 51.45 (13) (d), 51.45 (13) (j), 51.45 (16) (c), 55.06 (11) (a), 303.065 (5) (dm),
6 809.30 (2) (d), 814.69 (1) (a), 880.33 (2) (a) 2., 973.06 (1) (e), 977.02 (2m), 977.05
7 (4) (gm), 977.05 (4) (h), 977.05 (4) (i) 4., 977.06 (1) (a), 977.06 (2) (a), 977.06 (2)
8 (am), 977.07 (1) (a), 977.07 (1) (c), 977.08 (1), 977.08 (2) (intro.) and 977.085 (3);
9 and **to create** 51.60, 55.06 (11) (bm), 967.06 (2) (b) and 977.02 (3) (a) to (d) of
10 the statutes; **relating to:** indigency determinations and provision of legal
11 services by the State Public Defender.

Analysis by the Legislative Reference Bureau

Under current law, the State Public Defender (SPD) provides counsel to represent people in various legal proceedings, including criminal proceedings that

may result in imprisonment, emergency detention or involuntary civil commitment proceedings, proceedings for the protective placement of an adult, paternity determinations, and juvenile delinquency proceedings. The SPD provides counsel to children regardless of the child's income or assets, but only provides counsel to adults whom the SPD determines are indigent under rules that the SPD adopts.

Current law provides that a person is indigent for purposes of SPD representation if the person's income and assets, after deduction for reasonable and necessary living expenses, are insufficient to cover the cost of effective legal representation. Current law equates reasonable and necessary living expenses with benefit amounts under the former Aid to Families with Dependent Children program. But in determining whether a person can afford counsel, courts are not limited by the SPD indigency criteria. If a person is the subject of a legal proceeding for which he or she has the right to appointed counsel if he or she cannot afford counsel, and the person offers proof that he or she cannot afford counsel, the court must independently review the person's circumstances. If the court finds that the person cannot afford counsel and does not meet the criteria for SPD appointment, the court must appoint private counsel and the county in which the court sits must pay the appointed counsel.

This substitute amendment changes the criteria for determining indigency for the purposes of SPD representation. Under the substitute amendment, the SPD must adopt rules regarding indigency determinations that require the SPD, when assessing a person's eligibility, to consider the anticipated costs of effective representation for the type of case in which the person is involved. The rules must also require that assets and income be treated as available to the person if they exceed the asset and income ceilings for eligibility for the Wisconsin Works (W-2) program, except that the asset exclusion for a person's home is limited to \$30,000. (To be eligible for the W-2 program, a person's household assets, after excluding up to \$10,000 for a vehicle and the value of the person's home, cannot exceed \$2,500, and his or her household income cannot exceed 115 percent of the federal poverty line.) Third, under the rules, the SPD must 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 that the person allegedly committed.

In addition, the substitute amendment requires the SPD to provide legal representation to any person, regardless of whether the person is indigent, who seeks SPD representation and is the subject of an involuntary commitment proceeding for mental health or alcoholism treatment, a protective placement proceeding, or a proceeding to appoint a guardian because the person is alleged to be not competent to refuse psychotropic medication. Finally, the substitute amendment provides the Public Defender Board with 44.25 new full-time equivalent general purpose revenue positions on May 1, 2005 (the day on which the substitute amendment's other changes become effective).

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

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

2 20.550 (1) (f) *Transcripts, discovery, and interpreters.* The amounts in the
3 schedule for the costs of interpreters and discovery materials and for the
4 compensation of court reporters or clerks of circuit court for preliminary
5 examination, trial, and appeal transcripts, and the payment of related costs under
6 s. 967.06 (3).

7 **SECTION 2.** 20.550 (1) (fb) of the statutes is amended to read:

8 20.550 (1) (fb) *Payments from clients; administrative costs.* The amounts in the
9 schedule for the costs of determining, collecting and processing the payments
10 received from persons as payment for legal representation under s. 977.07 (2),
11 977.075 or 977.076.

12 **SECTION 3.** 51.15 (9) of the statutes is amended to read:

13 51.15 (9) NOTICE OF RIGHTS. At the time of detention the individual shall be
14 informed by the director of the facility or such person's designee, both orally and in
15 writing, of his or her right to contact an attorney and a member of his or her
16 immediate family, the right to have an attorney provided at public expense, as
17 provided under s. 967.06 and ch. 977, if the individual is a child or is indigent, 51.60,
18 and the right to remain silent and that the individual's statements may be used as
19 a basis for commitment. The individual shall also be provided with a copy of the
20 statement of emergency detention.

21 **SECTION 4.** 51.20 (3) of the statutes is amended to read:

22 51.20 (3) LEGAL COUNSEL. At the time of the filing of the petition the court shall
23 assure that the subject individual is represented by adversary counsel. ~~If the~~
24 ~~individual claims or appears to be indigent, the court shall refer the person to the~~
25 ~~authority for indigency determinations specified under s. 977.07 (1). If the~~

1 individual is a child, the court shall refer that child by referring the individual to the
2 state public defender, who shall appoint counsel for the child individual without a
3 determination of indigency, as provided in s. ~~48.23 (4)~~ 51.60.

4 **SECTION 5.** 51.20 (18) (c) of the statutes is amended to read:

5 51.20 (18) (c) Expenses of the proceedings from the presentation of the
6 statement of emergency detention or petition for commitment to the conclusion of the
7 proceeding shall be allowed by the court and paid by the county from which the
8 subject individual is detained, committed, or released, in the manner that the
9 expenses of a criminal prosecution are paid, as provided in s. 59.64 (1). Payment of
10 attorney fees for appointed attorneys ~~in the case of children and indigents~~ appointed
11 under s. 51.60 shall be in accordance with ch. 977.

12 **SECTION 6.** 51.35 (1) (e) 1. of the statutes is amended to read:

13 51.35 (1) (e) 1. Whenever any transfer between different treatment facilities
14 results in a greater restriction of personal freedom for the patient and whenever the
15 patient is transferred from outpatient to inpatient status, the department or the
16 county department specified under par. (a) shall inform the patient both orally and
17 in writing of his or her right to contact an attorney and a member of his or her
18 immediate family, the right to have counsel provided at public expense, as provided
19 under s. ~~967.06~~ and ch. ~~977~~, if the patient is a child or is indigent 51.60, and the right
20 to petition a court in the county in which the patient is located or the committing
21 court for a review of the transfer.

22 **SECTION 7.** 51.35 (1) (e) 2. c. of the statutes is amended to read:

23 51.35 (1) (e) 2. c. The patient's right to have counsel provided at public expense,
24 as provided under s. ~~967.06~~ and ch. ~~977~~, if the patient is a child or is indigent 51.60.

1 **SECTION 8.** 51.45 (12) (b) (intro.), 1. and 3. of the statutes are consolidated,
2 renumbered 51.45 (12) (b) and amended to read:

3 51.45 **(12)** (b) The physician, spouse, guardian, or a relative of the person
4 sought to be committed, or any other responsible person, may petition a circuit court
5 commissioner or the circuit court of the county in which the person sought to be
6 committed resides or is present for commitment under this subsection. The petition
7 shall: ~~1. State state facts to support the need for emergency treatment;~~ ~~3. Be and~~
8 be supported by one or more affidavits ~~which that~~ aver with particularity the factual
9 basis for the allegations contained in the petition.

10 **SECTION 9.** 51.45 (12) (b) 2. of the statutes is repealed.

11 **SECTION 10.** 51.45 (12) (c) 2. of the statutes is amended to read:

12 51.45 **(12)** (c) 2. Assure that the person sought to be committed is represented
13 by counsel and, ~~if the person claims or appears to be indigent, refer the person to the~~
14 ~~authority for indigency determinations specified under s. 977.07 (1) or, if the person~~
15 ~~is a child, refer that child~~ by referring the person to the state public defender, who
16 shall appoint counsel for the ~~child~~ person without a determination of indigency, as
17 provided in s. ~~48.23 (4)~~ 51.60.

18 **SECTION 11.** 51.45 (13) (b) 2. of the statutes is amended to read:

19 51.45 **(13)** (b) 2. Assure that the person is represented by counsel and, ~~if the~~
20 ~~person claims or appears to be indigent, refer the person to the authority for~~
21 ~~indigency determinations specified under s. 977.07 (1) or, if the person is a child, refer~~
22 ~~that child~~ by referring the person to the state public defender, who shall appoint
23 counsel for the ~~child~~ person without a determination of indigency, as provided in s.
24 ~~48.23 (4)~~ 51.60. The person shall be represented by counsel at the preliminary

1 hearing under par. (d). The person may, with the approval of the court, waive his or
2 her right to representation by counsel at the full hearing under par. (f).

3 **SECTION 12.** 51.45 (13) (d) of the statutes is amended to read:

4 51.45 (13) (d) Whenever it is desired to involuntarily commit a person, a
5 preliminary hearing shall be held under this paragraph. The purpose of the
6 preliminary hearing shall be to determine if there is probable cause for believing that
7 the allegations of the petition under par. (a) are true. The court shall assure that the
8 person shall be is represented by counsel at the preliminary hearing and, if the
9 person is a child or is indigent, by appointing counsel shall timely be appointed at
10 public expense, as provided in s. 967.06 and ch. 977 for him or her under s. 51.60.
11 Counsel shall have access to all reports and records, psychiatric and otherwise,
12 which have been made prior to the preliminary hearing. The person shall be present
13 at the preliminary hearing and shall be afforded a meaningful opportunity to be
14 heard. Upon failure to make a finding of probable cause under this paragraph, the
15 court shall dismiss the petition and discharge the person from the custody of the
16 county department.

17 **SECTION 13.** 51.45 (13) (j) of the statutes is amended to read:

18 51.45 (13) (j) Upon the filing of a petition for recommitment under par. (h), the
19 court shall fix a date for a recommitment hearing within 10 days, and assure that the
20 person sought to be recommitted is represented by counsel and, if the person is
21 indigent, appoint by appointing counsel for him or her, unless waived under s. 51.60.
22 The provisions of par. (e) relating to notice and to access to records, names of
23 witnesses, and summaries of their testimony shall apply to recommitment hearings
24 under this paragraph. At the recommitment hearing, the court shall proceed as
25 provided under pars. (f) and (g).

1 **SECTION 14.** 51.45 (16) (c) of the statutes is amended to read:

2 51.45 (16) (c) Payment of attorney fees for ~~appointed attorneys in the case of~~
3 ~~children and indigents~~ counsel appointed under s. 51.60 shall be in accordance with
4 ch. 977.

5 **SECTION 15.** 51.60 of the statutes is created to read:

6 **51.60 Appointment of counsel. (1) ADULTS.** (a) In any situation under this
7 chapter in which an adult person has a right to be represented by counsel, the person
8 shall be referred as soon as practicable to the state public defender, who shall appoint
9 counsel for the person under s. 977.08 without a determination of indigency.

10 (b) Except as provided in s. 51.45 (13) (b) 2., par. (a) does not apply if the person
11 knowingly and voluntarily waives counsel.

12 **(2) CHILDREN.** In any situation under this chapter in which a child has a right
13 to be represented by counsel, counsel for the child shall be appointed as provided in
14 s. 48.23 (4).

15 **(3) RETAINED COUNSEL.** Notwithstanding subs. (1) and (2), a person subject to
16 proceedings under this chapter is entitled to retain counsel of his or her own choosing
17 at his or her own expense.

18 **SECTION 16.** 55.06 (11) (a) of the statutes is amended to read:

19 55.06 (11) (a) If from personal observation of a sheriff, police officer, fire fighter,
20 guardian, if any, or authorized representative of a board designated under s. 55.02
21 or an agency designated by it it appears probable that an individual will suffer
22 irreparable injury or death or will present a substantial risk of serious physical harm
23 to others as a result of developmental disabilities, infirmities of aging, chronic
24 mental illness, or other like incapacities if not immediately placed, the person
25 making the observation may take into custody and transport the individual to an

1 appropriate medical or protective placement facility. The person making placement
2 shall prepare a statement at the time of detention providing specific factual
3 information concerning the person's observations and the basis for emergency
4 placement. The statement shall be filed with the director of the facility and shall also
5 be filed with any petition under sub. (2). At the time of placement the individual shall
6 be informed by the director of the facility or the director's designee, both orally and
7 in writing, of his or her right to contact an attorney and a member of his or her
8 immediate family and the right to have an attorney provided at public expense, as
9 provided under ~~s. 967.06 and ch. 977, if the individual is a child or is indigent~~ par.
10 (bm). The director or designee shall also provide the individual with a copy of the
11 statement by the person making emergency placement.

12 **SECTION 17.** 55.06 (11) (bm) of the statutes is created to read:

13 55.06 (11) (bm) 1. Unless an adult individual subject to an emergency
14 placement under par. (a) knowingly and voluntarily waives counsel, the individual
15 shall be referred as soon as practicable to the state public defender, who shall appoint
16 counsel for the individual under s. 977.08 without a determination of indigency.

17 2. If a child is subject to an emergency placement under par. (a), counsel for the
18 child shall be appointed as provided in s. 48.23 (4).

19 3. Notwithstanding subs. 1. and 2., a person subject to an emergency
20 placement under par. (a) is entitled to retain counsel of his or her own choosing at
21 his or her own expense.

22 **SECTION 18.** 303.065 (5) (dm) of the statutes is amended to read:

23 303.065 (5) (dm) Payment for legal representation under s. 977.07 ~~(2)~~ (2m),
24 977.075 or 977.076;

1 **SECTION 19.** 809.30 (2) (d) of the statutes, as affected by Supreme Court Order
2 02-01, is amended to read:

3 809.30 **(2)** (d) *Indigency redetermination.* Except as provided in this
4 paragraph, whenever a person whose trial counsel is appointed by the state public
5 defender files a notice under par. (b) requesting public defender representation for
6 purposes of postconviction or postdisposition relief, the prosecutor may, within 5
7 days after the notice is served and filed, file in the circuit court and serve upon the
8 state public defender a request that the person's indigency be redetermined before
9 counsel is appointed or transcripts are requested. This paragraph does not apply to
10 a ~~child or juvenile~~ person who is entitled to be represented by counsel under s. 48.23,
11 51.60 (1), 55.06 (11) (a), 880.33 (2) (a) 2., or 938.23.

12 **SECTION 20.** 814.69 (1) (a) of the statutes is amended to read:

13 814.69 **(1)** (a) For a transcript under SCR 71.04, a fee at the rate of \$1.50 per
14 25-line page for the original and 50 cents per 25-line page for the duplicate. Except
15 as provided in s. 967.06 (3), the fee shall be paid by the county treasurer upon the
16 certificate of the clerk of court.

17 **SECTION 21.** 880.33 (2) (a) 2. of the statutes is amended to read:

18 880.33 **(2)** (a) 2. If the person requests but is unable to obtain legal counsel, the
19 court shall appoint legal counsel. If the petition contains the allegations under s.
20 880.07 (1m), the court shall refer the person to the state public defender, who shall
21 appoint counsel under s. 977.08 without a determination of indigency. If the person
22 is represented by counsel appointed under s. 977.08 in a proceeding for a protective
23 placement under s. 55.06 ~~or for the appointment of a guardian under s. 880.07 (1m),~~
24 the court shall order the counsel appointed under s. 977.08 to represent the person.

1 **SECTION 22.** 967.06 of the statutes is renumbered 967.06 (1) and amended to
2 read:

3 967.06 (1) As soon as practicable after a person has been detained or arrested
4 in connection with any offense ~~which~~ that is punishable by incarceration, or in
5 connection with any civil commitment proceeding, or in any other situation in which
6 a person is entitled to counsel regardless of ability to pay under the constitution or
7 laws of the United States or this state, the person shall be informed of his or her right
8 to counsel. ~~Persons~~

9 (2) (a) Except as provided in par. (b), a person entitled to counsel under sub.
10 (1) who indicate indicates at any time that ~~they wish~~ he or she wants to be
11 represented by a lawyer, and who ~~claim that they are~~ claims that he or she is not able
12 to pay in full for a lawyer's services, shall immediately be permitted to contact the
13 authority for indigency determinations specified under s. 977.07 (1). The authority
14 for indigency determination in each county shall have daily telephone access to the
15 county jail in order to identify all persons who are being held in the jail. The jail
16 personnel shall provide by phone information requested by the authority.

17 (3) In any case in which the state public defender provides representation to
18 an indigent person, the public defender may request that the applicable court
19 reporter or clerk of circuit court prepare and transmit any transcript or court record.
20 The request shall be complied with. The state public defender shall, from the
21 appropriation under s. 20.550 (1) (f), compensate the court reporter or clerk of circuit
22 court for the cost of preparing, handling, duplicating, and mailing the documents.

23 **SECTION 23.** 967.06 (2) (b) of the statutes is created to read:

24 967.06 (2) (b) If the person indicating that he or she wants to be represented
25 by a lawyer is detained under ch. 48, 51, 55, 880, or 938, the person shall be referred

1 for appointment of counsel as provided under s. 48.23 (4), 51.60, 55.06 (11) (bm),
2 880.33 (2) (a) 2., or 938.23 (4), whichever is applicable.

3 **SECTION 24.** 973.06 (1) (e) of the statutes is amended to read:

4 973.06 (1) (e) Attorney fees payable to the defense attorney by the county or
5 the state. If the court determines at the time of sentencing that the defendant's
6 financial circumstances are changed, the court may adjust the amount in accordance
7 with s. 977.07 (1) (a) and ~~(2)~~ rules promulgated under s. 977.02 (3).

8 **SECTION 25.** 977.02 (2m) of the statutes is amended to read:

9 977.02 (2m) Promulgate rules regarding eligibility for legal services under this
10 chapter, including legal services for ~~children~~ persons who are entitled to be
11 represented by counsel without a determination of indigency, as provided in s. 48.23
12 (4), 51.60, 55.06 (11) (a), 880.33 (2) (a) 2., or 938.23 (4).

13 **SECTION 26.** 977.02 (3) of the statutes is renumbered 977.02 (3) (intro.) and
14 amended to read:

15 977.02 (3) (intro.) Promulgate rules regarding the determination of indigency
16 of persons entitled to be represented by counsel, other than ~~children~~ persons who are
17 entitled to be represented by counsel under s. 48.23, 51.60, 55.06 (11) (a), 880.33 (2)
18 (a) 2., or 938.23, including the time period in which the determination must be made
19 and the criteria to be used to determine indigency and partial indigency. The rules
20 shall specify that, in determining indigency, the representative of the state public
21 defender shall do all of the following:

22 **SECTION 27.** 977.02 (3) (a) to (d) of the statutes are created to read:

23 977.02 (3) (a) Consider the anticipated costs of effective representation for the
24 type of case in which the person seeks representation.

1 (b) Subject to par. (d), consider assets in the manner described in s. 49.145 (3)
2 (a) and treat assets as available to the person if they exceed the resource limitation
3 in that paragraph, except that the representative of the state public defender shall
4 exclude only the first \$30,000 of the equity value of the home that serves as the
5 individual's homestead.

6 (c) Subject to par. (d), treat income as available to the person only if it exceeds
7 the income limitations in s. 49.145 (3) (b).

8 (d) Treat assets or income of the person's spouse as the person's assets or
9 income, unless the spouse was the victim of a crime that the person allegedly
10 committed.

11 **SECTION 28.** 977.05 (4) (gm) of the statutes is amended to read:

12 977.05 (4) (gm) In accordance with the standards under pars. (h) and (i), accept
13 referrals from judges and courts for the provision of legal services without a
14 determination of indigency of ~~children~~ persons who are entitled to be represented by
15 counsel under s. 48.23, 51.60, 55.06 (11) (a), 880.33 (2) (a) 2., or 938.23, appoint
16 counsel in accordance with contracts and policies of the board, and inform the
17 referring judge or court of the name and address of the specific attorney who has been
18 assigned to the case.

19 **SECTION 29.** 977.05 (4) (h) of the statutes is amended to read:

20 977.05 (4) (h) Accept requests for legal services from ~~children~~ persons who are
21 entitled to be represented by counsel under s. 48.23, 51.60, 55.06 (11) (a), 880.33 (2)
22 (a) 2., or 938.23 and from indigent persons who are entitled to be represented by
23 counsel under s. 967.06 or who are otherwise so entitled under the constitution or
24 laws of the United States or this state and provide such persons with legal services

1 when, in the discretion of the state public defender, such provision of legal services
2 is appropriate.

3 **SECTION 30.** 977.05 (4) (i) 4. of the statutes is amended to read:

4 977.05 (4) (i) 4. Cases involving persons subject to emergency detention or
5 involuntary civil commitment under ch. 51, emergency detention under s. 55.06 (11)
6 (a), or a guardianship petition containing the allegations under s. 880.07 (1m).

7 **SECTION 31.** 977.06 (1) (a) of the statutes, as affected by 2003 Wisconsin Act 33,
8 is amended to read:

9 977.06 (1) (a) Verify the information necessary to determine indigency under
10 s. 977.07 (2) rules promulgated under s. 977.02 (3). The information provided by a
11 person seeking assigned counsel that is subject to verification shall include any
12 social security numbers provided on an application under sub. (1m), income records,
13 value of assets, eligibility for public assistance, and claims of expenses.

14 **SECTION 32.** 977.06 (2) (a) of the statutes is amended to read:

15 977.06 (2) (a) A person seeking to have counsel assigned for him or her under
16 s. 977.08, other than a ~~child~~ person who is entitled to be represented by counsel under
17 s. 48.23, 51.60, 55.06 (11) (a), 880.33 (2) (a) 2., or 938.23, shall sign a statement
18 declaring that he or she has not disposed of any assets for the purpose of qualifying
19 for that assignment of counsel. If the representative or authority making the
20 indigency determination finds that any asset was disposed of for less than its fair
21 market value for the purpose of obtaining that assignment of counsel, the asset shall
22 be counted under s. 977.07 (2) rules promulgated under s. 977.02 (3) at its fair market
23 value at the time it was disposed of, minus the amount of compensation received for
24 the asset.

25 **SECTION 33.** 977.06 (2) (am) of the statutes is amended to read:

1 977.06 (2) (am) A person seeking to have counsel assigned for him or her under
2 s. 977.08, other than a child person who is entitled to be represented by counsel under
3 s. 48.23, 51.60, 55.06 (11) (a), 880.33 (2) (a) 2., or 938.23, shall sign a statement
4 declaring that the information that he or she has given to determine eligibility for
5 assignment of counsel he or she believes to be true and that he or she is informed that
6 he or she is subject to the penalty under par. (b).

7 **SECTION 34.** 977.07 (1) (a) of the statutes is amended to read:

8 977.07 (1) (a) Determination of indigency for persons entitled to counsel shall
9 be made as soon as possible and shall be in accordance with the rules promulgated
10 by the board under s. 977.02 (3) and the system established under s. 977.06. No
11 determination of indigency is required for a child person who is entitled to be
12 represented by counsel under s. 48.23, 51.60, 55.06 (11) (a), 880.33 (2) (a) 2., or
13 938.23.

14 **SECTION 35.** 977.07 (1) (c) of the statutes is amended to read:

15 977.07 (1) (c) For all referrals made under ss. 809.30, 974.06 (3) (b), and 974.07
16 (11), except a referral of a child person who is entitled to be represented by counsel
17 under s. 48.23, 51.60, 55.06 (11) (a), 880.33 (2) (a) 2., or 938.23, a representative of
18 the state public defender shall determine indigency. For referrals made under ss.
19 809.30 and 974.06 (3) (b), except a referral of a child person who is entitled to be
20 represented by counsel under s. 48.23, 51.60, 55.06 (11) (a), 880.33 (2) (a) 2., or
21 938.23, the representative of the state public defender may, unless a request for
22 redetermination has been filed under s. 809.30 (2) (d) or the defendant's request for
23 representation states that his or her financial circumstances have materially
24 improved, rely upon a determination of indigency made for purposes of trial
25 representation under this section.

1 **SECTION 36.** 977.07 (2) of the statutes is repealed.

2 **SECTION 37.** 977.08 (1) of the statutes is amended to read:

3 977.08 (1) If the representative or the authority for indigency determinations
4 specified under s. 977.07 (1) refers a case to or within the office of the state public
5 defender or if a case is referred under s. 48.23 (4), 51.60, 55.06 (11) (bm) 1., 880.33
6 (2) (a) 2., or 938.23 (4), the state public defender shall assign counsel according to
7 subs. (3) and (4). If a defendant makes a request for change of attorney assignment,
8 the change of attorney must be approved by the circuit court.

9 **SECTION 38.** 977.08 (2) (intro.) of the statutes is amended to read:

10 977.08 (2) (intro.) All attorneys in a county shall be notified in writing by the
11 state public defender that a set of lists is being prepared of attorneys willing to
12 represent children persons referred under s. 48.23 (4), 51.60, 55.06 (11) (bm) 1.,
13 880.33 (2) (a) 2., or 938.23 (4) and indigent clients in the following:

14 **SECTION 39.** 977.08 (2) (d) of the statutes is repealed.

15 **SECTION 40.** 977.085 (3) of the statutes is amended to read:

16 977.085 (3) The board shall provide quarterly reports to the joint committee
17 on finance on the status of reimbursement for or recoupment of payments under ss.
18 48.275, 757.66, 938.275, 977.06, ~~977.07 (2)~~, 977.075 and 977.076, including the
19 amount of revenue generated by reimbursement and recoupment. The quarterly
20 reports shall include any alternative means suggested by the board to improve
21 reimbursement and recoupment procedures and to increase the amount of revenue
22 generated. The department of justice, district attorneys, circuit courts and
23 applicable county agencies shall cooperate by providing any necessary information
24 to the state public defender.

25 **SECTION 41. Nonstatutory provisions.**

1 (1) POSITION INCREASE. The authorized FTE positions for the public defender
2 board are increased by 44.25 GPR positions on the effective date of this subsection,
3 to be funded from the appropriation under section 20.550 (1) (c) of the statutes, for
4 the purpose of providing legal representation to persons for whom the state public
5 defender assigns counsel.

6 **SECTION 42. Initial applicability.**

7 (1) INDIGENCY DETERMINATIONS. The treatment of sections 20.550 (1) (fb),
8 303.065 (5) (dm), 973.06 (1) (e), 977.06 (1) (a), 977.06 (2) (a), 977.07 (2), and 977.085
9 (3) of the statutes, the renumbering and amendment of section 977.02 (3) of the
10 statutes, and the creation of section 977.02 (3) (a) to (d) of the statutes first apply to
11 cases opened on the effective date of this subsection.

12 (2) REPRESENTATION IN CIVIL COMMITMENT, PROTECTIVE PLACEMENT, AND
13 GUARDIANSHIP CASES.

14 (a) *Emergency mental health detentions.* The treatment of sections 51.15 (9),
15 51.60, 809.30 (2) (d), 977.02 (3), 977.05 (4) (gm), (h), and (i) 4., 977.06 (2) (a) and (am),
16 977.07 (1) (a) and (c), and 977.08 (1) and (2) (intro.) and (d) of the statutes (with
17 respect to the appointment of counsel for persons subject to an emergency detention
18 under section 51.15 of the statutes) first applies to emergency detentions occurring
19 on the effective date of this paragraph.

20 (b) *Involuntary commitments for mental health treatment.* The treatment of
21 sections 51.20 (3) and (18) (c), 51.60, 809.30 (2) (d), 977.02 (3), 977.05 (4) (gm), (h),
22 and (i) 4., 977.06 (2) (a) and (am), 977.07 (1) (a) and (c), and 977.08 (1) and (2) (intro.)
23 and (d) of the statutes (with respect to the appointment of counsel for persons subject
24 to an involuntary commitment proceeding under section 51.20 of the statutes) first
25 applies to proceedings commenced on the effective date of this paragraph.

1 (c) *Transfers of patients.* The treatment of sections 51.35 (1) (e) 1. and 2. c.,
2 51.60, 809.30 (2) (d), 977.02 (3), 977.05 (4) (gm), (h), and (i) 4., 977.06 (2) (a) and (am),
3 977.07 (1) (a) and (c), and 977.08 (1) and (2) (intro.) and (d) of the statutes (with
4 respect to the appointment of counsel for persons subject to a transfer under section
5 51.35 of the statutes) first applies to transfers occurring on the effective date of this
6 paragraph.

7 (d) *Involuntary commitments for treatment of alcoholism.* The treatment of
8 sections 51.45 (12) (b) (intro.), 1., 2., and 3., and (c) 2., (13) (b) 2., (d), and (j), and (16)
9 (c), 51.60, 809.30 (2) (d), 977.02 (3), 977.05 (4) (gm), (h), and (i) 4., 977.06 (2) (a) and
10 (am), 977.07 (1) (a) and (c), and 977.08 (1) and (2) (intro.) and (d) of the statutes (with
11 respect to the appointment of counsel for persons subject to a commitment or
12 recommitment proceeding under section 51.45 of the statutes) first applies to
13 proceedings for commitment or recommitment commenced on the effective date of
14 this paragraph.

15 (e) *Protective placements proceedings.* The treatment of sections 51.60, 55.06
16 (11) (a) and (bm), 809.30 (2) (d), 977.02 (3), 977.05 (4) (gm), (h), and (i) 4., 977.06 (2)
17 (a) and (am), 977.07 (1) (a) and (c), and 977.08 (1) and (2) (intro.) and (d) of the
18 statutes (with respect to the appointment of counsel for persons subject to an
19 emergency detention under section 55.06 (11) of the statutes) first applies to
20 emergency detentions occurring on the effective date of this paragraph.

21 (f) *Guardianship proceedings.* The treatment of sections 51.60, 809.30 (2) (d),
22 880.33 (2) (a) 2., 977.02 (3), 977.05 (4) (gm), (h), and (i) 4., 977.06 (2) (a) and (am),
23 977.07 (1) (a) and (c), and 977.08 (1) and (2) (intro.) and (d) of the statutes (with
24 respect to the appointment of counsel for persons subject to a guardianship

1 proceeding under chapter 880 of the statutes) first applies to guardianship
2 proceedings commenced on the effective date of this paragraph.

3 **SECTION 43. Effective date.**

4 (1) This act takes effect on May 1, 2005.

5 (END)