

## PUBLIC DEFENDER ELIGIBILITY

### Wisconsin State Public Defender's Office Information

#### BACKGROUND

The State Public Defender's Office (SPD) provides constitutionally-mandated legal representation to the indigent who meet financial eligibility standards. These standards, set by statute, have not been updated since 1987, leaving many of our poor without access to SPD representation. Current legislation (2009 SB 263 & AB 395) will update the financial eligibility standards to match those of Wisconsin Works (W2).

#### BENEFITS OF 2009 SB 263 & AB 395

- Saves taxpayer money – compare the amount spent by counties to the amount of the legislation.
- Ensures a consistent eligibility standard is used throughout Wisconsin – all SPD appointments would consistently use the same eligibility criteria.
- Ensures that Wisconsin provides equal protection under the law.

#### PROBLEMS WITH 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. Sixty-nine (of the 72) counties reported spending nearly \$6 million in 2008 to appoint counsel for these indigent individuals.
- A person may be provided a county-appointed attorney in one court, yet be denied an appointed attorney under similar circumstances in an adjoining courtroom or in another county; consistency is not assured throughout all 72 counties.
- Courts and counties have to divert resources from other important services to create appointment-of-counsel structures that already exists within the SPD.
- The reimbursement rate for county-appointed attorneys is, in some cases, almost twice the rate paid by the SPD (\$40/hour) to its appointed private attorneys.
- As recommended in the 2008 final report of the Governor's Commission on Reducing Racial Disparities in the Wisconsin Justice System, "Eligibility standards for qualification for Public Defender services should be revised. Resources available to the defense for investigation and social work should reflect the need to make adequate sentencing information available to the court."

#### EXAMPLES OF POOR PEOPLE WHO DO NOT QUALIFY FOR SPD REPRESENTATION

Charge	Dependents	Wages	% of 2009 Fed. Poverty Level (FPL)	Assets	Eligible for SPD?
Misdemeanor	None	Gross \$62.50 per week	30% of FPL	\$300 cash \$2,000 car	No
Misdemeanor or felony	2 children	Minimum wage of \$7.25/hr (40 hrs per week) Gross \$290 per week	82% of FPL	\$300 cash \$2,000 car	No

## **WISCONSIN'S ELIGIBILITY GUIDELINES VS. OTHER STATES**

The SPD's 2007 research of the eligibility guidelines of other Public Defender offices around the country revealed, in summary, that Wisconsin is one of two states with the lowest eligibility guidelines in the country. (The other being Missouri.) The detailed research is as follows:

The following states had more up-to-date eligibility guidelines than Wisconsin (qualifying those who do not qualify in Wisconsin): Arizona; Arkansas; California; Colorado; Connecticut; Florida; Georgia; Indiana; Iowa; Kentucky; Louisiana; Maryland; Massachusetts; Michigan; Minnesota; Montana; New Mexico; New York; Ohio; Oregon; Rhode Island; South Carolina; Tennessee; Texas; Utah; Virginia; Washington; Washington D.C.; and West Virginia.

The following states either determined eligibility based on a judge's discretion of substantial hardship (again, qualifying those who do not qualify in Wisconsin) or their eligibility guidelines were not able to be determined: Alabama; Alaska; Delaware; Hawaii; Idaho; Illinois; Kansas; Maine; Mississippi; Nebraska; Nevada; New Hampshire; New Jersey; North Carolina; North Dakota; Oklahoma; Pennsylvania; South Dakota; Vermont; and Wyoming.

## **LEGISLATIVE HISTORY**

SB 263 & AB 395 have been introduced in the 2009 legislative sessions to update and simplify the SPD's financial eligibility criteria. A similar Joint Finance Committee amendment to the 2009-11 biennial budget bill would also have updated the financial criteria. Similar legislation was introduced in the 2007 (SB 321, AB 576), 2005 (AB 1219), and 2003 (AB 616) sessions. The bills had broad, bipartisan support. One provision of such bills relating to involuntary commitment proceedings was implemented as part of 2007 Wisconsin Act 20, the biennial budget bill.

## **SUMMARY OF 2009 SB 263 & AB 395**

- The SPD's financial eligibility criteria would be the same as W2 program eligibility criteria (except the SPD criteria limits the asset exclusion for a home to \$30,000, and takes the cost to hire an attorney into account).
- The new criteria would dramatically reduce county liability for providing counsel to indigent persons who do not qualify for SPD representation.
- The SPD would provide legal representation in about 12,800 additional cases per year.
- The legislation would authorize 29.7 FTE new attorneys and 15.7 FTE new support staff positions to handle approximately 75% of these cases, with the remaining 25% appointed to private attorneys.
- With an effective date of June 19, 2011, no state costs would be incurred during the 2009-2011 biennium. The annual cost in FY 2012 is projected to be \$3.8 million. The ongoing annual cost, beginning in FY 2013, is projected to be \$ 4.1 million. These costs would be more than offset by savings in county budgets due to fewer court appointments.