



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-0148/1
MLJ:amn

2021 SENATE BILL 523

August 26, 2021 - Introduced by Senators JACQUE and L. TAYLOR, cosponsored by Representatives TUSLER, PENTERMAN, SINICKI and SPREITZER. Referred to Committee on Judiciary and Public Safety.

1 **AN ACT to renumber and amend** 977.08 (3) (b); **to amend** 977.02 (5) and 977.08
2 (3) (c); and **to create** 977.08 (3) (b) 2. of the statutes; **relating to:** Public
3 Defender Board regulation.

Analysis by the Legislative Reference Bureau

Under current law, the Public Defender Board may promulgate rules to assure that representation of indigent clients by the private bar is at the same level as the representation provided by the state public defender. Under this bill, the board's authority to promulgate rules is expanded to include setting standards for and imposing conditions upon private bar attorney certification, decertification, or recertification to represent clients. The bill also adds the following list of reasons as grounds for which the office of the state public defender may exclude a private bar attorney from a public defender list: 1) the attorney has failed to meet minimum attorney performance standards adopted by the state public defender; 2) the attorney has failed to comply with the supreme court rules of professional conduct for attorneys; 3) the attorney has engaged in conduct that is contrary to the interests of clients, the interests of justice, or the interests of the state public defender; or 4) the state public defender learns of any information that raises a concern about the attorney's character, performance, ability, or behavior.

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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:

1 **SECTION 1.** 977.02 (5) of the statutes is amended to read:

2 977.02 (5) Promulgate rules establishing procedures to assure that
3 representation of indigent clients by the private bar at the initial stages of cases
4 assigned under this chapter is at the same level as the representation provided by
5 the state public defender, including setting standards for and imposing conditions
6 upon private bar attorney certification, decertification, or recertification to represent
7 clients under this chapter.

8 **SECTION 2.** 977.08 (3) (b) of the statutes is renumbered 977.08 (3) (b) 1. and
9 amended to read:

10 977.08 (3) (b) 1. A final set of lists for each county shall be prepared, certified,
11 and annually updated by the state public defender. Persons may not be excluded
12 from ~~any a list unless~~ only if the state public defender states in writing the reasons
13 for such action in ~~the context of~~ accordance with subd. 2. and existing rules adopted
14 by the state public defender board. Any attorney thus excluded shall then have the
15 ~~opportunity to~~ may appeal the state public defender's decision to the board, which
16 shall issue a final decision in writing.

17 **SECTION 3.** 977.08 (3) (b) 2. of the statutes is created to read:

18 977.08 (3) (b) 2. An attorney may be excluded from a list under subd. 1. if any
19 of the following applies:

20 a. The attorney fails or has failed to meet minimum attorney performance
21 standards adopted by the state public defender.

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- 1 b. The attorney fails or has failed to comply with SCR chapter 20.
- 2 c. The attorney engages in conduct that is contrary to the interests of clients,
- 3 the interests of justice, or the interests of the state public defender.
- 4 d. The state public defender learns of any information that raises a concern
- 5 about the attorney's character, performance, ability, or behavior.

6 **SECTION 4.** 977.08 (3) (c) of the statutes is amended to read:

7 977.08 **(3)** (c) A person appointed from the set of lists prepared under par. (b)

8 1. shall be appointed in order from the top of each list; if any attorney thus appointed

9 states in writing that he or she cannot accept the appointment, he or she shall be

10 placed on the bottom of the list, and the attorney thus elevated to the top of the list

11 shall be appointed.

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(END)