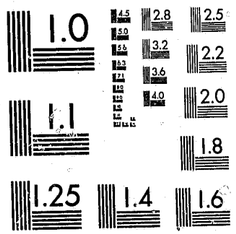

STUDY OF RECOUPMENT FROM PARENTS FOR COSTS OF LEGAL REPRESENTATION FOR THEIR CHILDREN

Submitted To: Joint Committee on Finance
Wisconsin Legislature

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INTRODUCTION

The Office of the State Public Defender is the statutorily designated authority for providing counsel to persons who are entitled to counsel and are unable, pursuant to a proper determination of indigency, to pay for counsel (Chapter 977, Laws of Wisconsin). Among those persons entitled to counsel are children subject to proceedings under Chapter 48, the Children's Code. To date, no provision has been made, either in statutes or administrative rules, to assess parents who are financially able for the costs of providing counsel to their minor children.

The issue of parental responsibility for payment of attorney fees for their children was raised in the last legislative session. Chapter 356, Laws of 1979, providing appropriations for the operation of the public defender program and making certain other revisions in the program, included a requirement that this issue be studied:

> Section 33. Study of recoupment. The public defender shall conduct a study and by January 15, 1981, report to the joint finance committee on the possibility of establishing recoupment against parents for attorneys fees for legal representation of their minor children.

This report has been prepared in response to that requirement.

METHODOLOGY

After the passage and signing into law of Chapter 356, Laws of 1979, the State Public Defender designated a staff member of the agency familiar with juvenile law and agency procedures to coordinate the conduct of the study. The study coordinator, the Client Services Director for the Office of the State Public Defender, assembled a

committee of persons from inside and outside the agency to oversee the conduct of the study. The members of the committee are:

Jill Miller, Client Services Director, State Public Defender, Chairperson;

Arlene Banoul, Deputy Administrative Officer, State Public Defender;

Barbara Maier, Chief Attorney, Juvenile Division, Milwaukee trial office, State Public Defender;

Daryl Jensen, Asst. State Public Defender, Janesville trial office, State Public Defender;

Eileen Hirsch, Staff Attorney, Youth Policy and Law Center;

Donald Garber, Asst. District Attorney, Dane County;

Robert O. Burr, private attorney, representative of the State Bar of Wisconsin;

Michele Trepanier, student assistant.

The committee began meeting in September, 1980. Its first task was to determine the manner in which the study should be conducted. Through discussion, members of the committee raised several areas of concern related to the issue of requiring parents to contribute to the costs of counsel for their children and identified the steps to be taken and data to be collected to thoroughly analyze this question. Research was conducted in the following areas:

(1) National and state standards and guidelines for the operation of defender programs, the provision of counsel to juveniles, eligibility for public defender services, and reimbursement for or recoupment of the costs of representation;

(2) Constitutionality of recoupment of attorney fees from parents;

(3) Statutes in Wisconsin and other states and case law regarding recoupment from parents for the costs of legal representation of their children;

(4) Ethical questions relating to the possible impact of recoupment provisions on the attorney's conduct of the case and the attorney-client relationship;

(5) Policies and practices of other public defender systems in the areas of recoupment and consideration of parental income in the determination of eligibility for services;

(6) The experience in Wisconsin of adult recoupment efforts and other types of services in which parental contributions are required; and

(7) The financial ability of parents to contribute to the costs of counsel and their attitude regarding contribution as determined by a survey of a sample of parents of current juvenile clients of the public defender program.

Tasks were assigned to various members of the committee, the survey instrument was designed, and data collection continued through December, into early January. As the committee learned more about the subject, additional issues began to surface; for example, parents' right to notice of the possible requirement to pay, liability of step-parents and non-custodial parents, whether recoupment decisions should be made before or after adjudication, and the relationship between recoupment requirements and waivers of counsel or admissions to the petition. The committee chose not to make any specific recommendations regarding recoupment, but rather to present the information gathered and discuss the issues raised, so that the Legislature might be as informed as possible when determining the manner in which to proceed.

THE CHILD'S RIGHT TO COUNSEL AND ELIGIBILITY FOR PUBLIC DEFENDER SERVICES

Chapter 48 of the Wisconsin Statutes, the Children's Code, provides for the right of children to legal representation in proceedings under the chapter (see Attachment A). Specifically, any child alleged to be delinquent, under s. 48.12, "shall be represented by counsel at all stages of the proceedings" (p. 1072, Wisconsin Statutes, 1977). The child may

waive counsel, provided the court is satisfied that the waiver is made knowingly and voluntarily. However, if the waiver is accepted, the court may not order the child confined to a correctional facility. If a child is alleged to be in need of protection or services (CHIPS), the child may be represented by counsel at the discretion of the court, except that the child may not be placed outside his or her home unless s/he is represented by counsel. A child who is the subject of proceedings seeking wavier of jurisdiction to the adult court is required to have counsel and no waiver of counsel may be accepted by the court. A child who is the subject of adoption proceedings or the involuntary termination of parental rights is entitled to either legal counsel or a guardian ad litem.

The code also makes provision for the right of parents to legal counsel in certain proceedings. Most relevant to this study is the requirement that no child alleged to be in need of protection or services may be placed outside his or her home unless counsel has been appointed for a non-petitioning parent. A distinction is made in those cases where a third party, generally the county or the state, is the petitioner and seeks to remove the child from the parents' home against the wishes of the parents. In some CHIPS cases, there may be a conflict of interest between parents and child and, the parents and child may be entitled to separate legal counsel.

The Children's Code defines the role of the State Public Defender in providing representation to children. In s. 48.23(4), the Code states:

> In any situation under this section in which a child has a right to be represented by counsel or is provided counsel at the discretion of the court ... and it appears that the child is unable to afford counsel in full, or the child so indicates; the court shall refer the child to the authority for indigency determinations specified under s. 977.07(1).
>
> (Emphasis added).

The section goes on to state that in situations where the parent is entitled to representation by counsel and is unable to afford it, s/he shall be referred to the authority for indigency determinations. Regardless of any provision, any party is entitled to retain counsel of his or her choosing at his or her expense.

The statutes clearly state that it is the child who has the right to counsel and the child who is referred for indigency determination. There is no statement regarding the parents' responsibility to retain counsel or the public defender's responsibility to consider parental income in determining indigency of the child. One might argue that if the statutes do not specifically provide for parental income to be considered that, indeed, it cannot be considered. The Wisconsin Supreme Court, in the case of State ex rel. Harris v. Larson, 64 Wis.2d 521 (1973), dealing with an issue regarding the statutory authority of children's court describes the Children's Code as "a comprehensive legislative plan for dealing with children ... a chapter of carefully spelled out definitions and enumerated powers" in which "legislative guidelines are carefully drawn to circumscribe judicial and administrative action ... if the legislature did not specifically confer a power, it is evidence of legislative intent not to permit the exercise of the power" (Id. at 527).

Chapter 977 of the Wisconsin Statutes describes the organization and duties of the Office of the State Public Defender, including the manner for determining indigency of persons referred to the program. These provisions are further refined and clarified in the Administrative Rules for the State Public Defender, Chapter 3—Indigency Criteria. Among the statutorily defined duties of the State Public Defender is the responsibility to accept requests for legal services from indigent persons entitled to counsel and to provide them with legal services when it is appropriate.

The general rule for indigency determination in the Administrative Rules, Chapter SPD 3, states that, "A person shall be eligible for the assignment of publicly compensated counsel if the anticipated cost of retaining counsel exceeds the person's available assets." (In juvenile matters, the anticipated cost of retained counsel is $400.) It is assumed that the person is the client and that it is the person/client's available assets that are considered in determining indigency. The standard practice of the State Public Defender is

to either administer the standard indigency determination to the child (see Attachment B), or, more often, if it appears the child has no available assets, to use a shorter affidavit of indigency (see Attachment C). In any case in which the parents are willing and able to retain counsel and the client desires them to do so, the State Public Defender would not provide representation.

While there are currently no provisions for either considering parents' income for eligibility for services or recovery of legal fees from parents for their children, there are some statutory provisions regarding recoupment of attorneys' fees from adult clients that may be relevant to this issue. First, it is necessary to discuss the term "recoupment" as it is used in the statutes and as it has been defined for purposes of this study.

The term "recoupment" has its origin in civil law. Its use in the context of this study has little relationship to its actual definition. To "recoup" means to "withhold rightfully part of a sum legally claimed" (Webster's New Collegiate Dictionary, p. 958). In the practice of law, the term "recoupment" generally refers to a civil action involving counter-claims between two private parties in which one claim can offset the other,the balance to be recovered by a party. Its first use in relation to recovery of attorneys fees from indigent defendants in this state was in the Wisconsin Statutes, 1971, in Chapter 256 (later revised and renumbered in Chapter 757). Section 256.66 provided the counties, which at that time paid the costs of legal representation for indigents, with the authority to file a claim for those costs, which could be recovered from the indigent defendant or his or her estate at any time within ten years of the filing. That section has since been renumbered s. 757.66, and revised to allow either the county or the state, which now finances most indigent defense services, to recover. The term "recoupment" is no longer used in that section; it has been replaced with the term "recovery." However, in Chapter 977, the term "recoupment" is used in s. 977.07 in reference to the recovery provisions in s. 757.66. That section states, "If found to be indigent in full or in part, the person shall

be promptly informed of the state's right to recoupment under s. 757.66, and the possibility that such payment of attorney fees may be made a condition of probation, should the person be placed on probation."

The second part of that statement refers to another method for collecting from indigent defendants for the costs of legal representation, separate from recoupment or recovery provisions. That is, the statutes authorize courts, as part of the sentencing decision, to assess defendants for certain costs including fees for law enforcement and witnesses, and attorney fees payable to the defense attorney by the county or the state [s. 973.06(1)(e)]. When courts assess defendants for attorney fees, it is generally done as a condition of probation, though it is not restricted to this use. While the statutes do not address the issue of the defendant's ability to pay, the Wisconsin Supreme Court, in a related case, does provide some guidance. In the case of Will v. State, 84 Wis.2d 397 (1978), dealing with the incarceration of the defendant for non-payment of a fine (s. 973.07, Failure to pay fine or costs—penalty provided), the Court stated that in cases where the defendant claims he is unable to pay a fine, trial courts are encouraged to follow the practice of ascertaining the defendant's ability to pay the fine at the time of sentencing and should determine the amount and payment schedule in keeping with the defendant's means. Payments from defendants for court costs, fines, restitution, and attorney fees are collected and disbursed by the Division of Corrections.

The legislation requiring this study to be conducted uses the term "recoupment." Specifically, it calls for a study on the possibility of establishing recoupment against parents for attorney fees for their minor children. The committee construed the term "recoupment" to mean recovery and assumed it to include either or both types of recovery currently possible in adult cases; that is, recovery under s. 757.66 or recovery pursuant to an order of the court, such as that provided for in s. 973.06.

CONSTITUTIONALITY OF RECOUPMENT FROM PARENT*

One of the first questions raised by members of the committee in its discussion regarded the constitutionality of a recoupment provision applying to parents. The committee decided to research the possible unconstitutionality of a statute requiring non-indigent parents to pay counsel fees to an attorney who represents their child. A constitutional argument could be made that such a scheme violates the child's right to counsel, applicable to the states through the due process clause of the fourteenth amendment, in that possible parental liability would discourage a child from exercising his/her right to counsel, and that counsel hired by parents may be more likely to represent the parents, rather than the child.

There appears to be only one case in which a court has ruled on the issue of constitutionality. In In re H., 468 P.2d 204 (1970), the California Supreme Court held that a state law making parents liable for their child's attorney fees is not unconstitutional. In that case, the court held that the law did not violate equal protection in that it is reasonably necessary to accomplish the valid legislative purposes of assisting counties in meeting the costs of representation and encouraging parents to cooperate in preventing future acts of delinquency.

Additionally, in In re H. the court held that the law did not violate the juvenile's constitutional right to counsel because the chilling effect of the law on the exercise of that right was not "unnecessary and excessive." Just as a non-indigent adult has no constitutional right to appointed counsel in criminal cases, children do not have a right to appointed counsel without reference to their parents' financial status, the court held. In support of that conclusion, the court cited In re Gault, 387 U.S. 1, where the court held

*Material for this section researched and provided by Eileen Hirsch, Staff Attorney, Youth Policy and Law Center.

that the "child and his parents must be notified of the child's right to be represented by counsel retained by them, or if they are unable to afford counsel, that counsel will be appointed to represent the child. 387 U.S. at 41 (Emphasis added).

The court did recognize that the reimbursement provision could cast an "undesirable chill" on the child's right to counsel, but held that the way to remedy that problem is for juvenile courts not to permit waiver of the right to counsel if the child's decision to waive is influenced by his/her desire to avoid parental pressure or displeasure. Interestingly, the child in In re H. had expressly waived his right to counsel because of the cost to his father. For the reasons stated above, the court invalidated that waiver and granted his petition for habeas corpus.

The constitutional issue raised in In re H. has been compared to the constitutionality of requiring indigent adult defendants to reimburse the county for counsel fees as a condition of their probation. The general rule is that such a requirement is constitutional if it is based on ability to pay rather than an across-the-board requirement imposed regardless of the probationer's financial resources. Fuller v. Oregon, 417 U.S. 40 (1974); State v. Gerard, 57 Wis.2d 611 (1972).

A number of courts have a recognized parental responsibility to pay for a child's attorney's fees without considering the constitutional issues. In Serabian v. Alpern, 399 A.2d 267 (Md. 1979), for example, state law and judicial rules required parental reimbursement if certain requirements were met. The court held that a mother was not liable for her son's attorney's fees in the case before them because the court had not advised the mother of her responsibility to reimburse, it had not inquired into her willingness to provide legal services for her son or her own eligibility for public defender services, and there was no record about a conflict of interest between mother and son—all considerations mandated by the applicable statute and judicial rules.

The Nebraska Supreme Court relied on the Serabian decision when, in County of York v. Johnson, 206 Neb. 200, 292 N.W.2d 31 (1980), it held that a mother was not liable to reimburse her son's attorney's fees because there was no allegation that the mother had refused to provide legal services to the boy. In neither case was a constitutional issue raised or considered by the court.

Independently of state laws, a number of courts have held that parents are liable at common law to pay attorney's fees for their children, since legal services are "necessities," like food, clothing, and medical care. Russo v. Hafner, 420 N.Y.S. 64 (Fam. Ct. 1964); Price v. Perkins, 219 A.2d 557 (Md.); Schwartz v. Jacob, 394 S.W.2d 15 (Tex. Civ. App.); Griston v. Sousland, 60 N.Y.S.2d 118; 67 C.J.S. Parent and Child §16b(4); and Annot. 13 A.L.R.3d 1251 §3, 4(b). Again, however, there seems to have been no consideration of constitutional issues.

In summary, only one court has considered the constitutionality of requiring parents to reimburse the state or county for the cost of their children's attorney's fees, and the decision was that such a requirement is not unconstitutional as long as the trial court determines that any waiver of attorney should be not influenced by parental pressure or fear of parental displeasure.

PROFESSIONAL ETHICS PARAMETERS*

Aside from the constitutional questions posed by a plan for establishing recoupment against parents for attorney fees for legal representation of their minor children through the Office of the State Public Defender, the proposal raises professional ethics issues which require examination and discussion.

*Material and research for this section provided by Daryl Jensen, Assistant State Public Defender, Janesville trial office.

The rules of professional ethics governing the conduct of attorneys practicing in Wisconsin are set forth in the American Bar Association's Code of Professional Responsibility, as amended and adopted by the Wisconsin Supreme Court. The canons, disciplinary rules, and ethical considerations in the Code provide the framework for analyzing professional ethics issues. They are no less applicable to the practice of juvenile law than to any other endeavor.

Canons 4, 5, 6, and 9 of the Code state in general terms the ethical obligations of an attorney to his or her client. A lawyer must represent clients "zealously, within the bounds of the law," preserving the "confidences and secrets" of clients, avoiding the "appearance of professional impropriety," and maintaining and exercising "independent professional judgment" on behalf of the client. A proposal to require parents in juvenile cases to reimburse the state for the cost of the child's representation through the public defender would touch upon each of these ethical parameters.

EC5-1 of the Code of Professional Responsibility provides:

> The professional judgment of a lawyer should be exercised, within the bounds of the law, solely for the benefit of his client and free of compromising influences and loyalties. Neither his personal interests, the interests of other clients, nor the desires of third persons should be permitted to dilute his loyalty to his client.

Any plan for providing counsel to private parties in juvenile court proceedings "must be designed to guarantee the professional independence of counsel and the integrity of the lawyer-client relationship." Section 2.1(d), Institute of Judicial Administration—American Bar Association Juvenile Justice Standards, Counsel for Private Parties.

Citing Isaacs, "The Role of Counsel in Representing Minors in the New Family Court," 12 Buff. L. Rev. 518-519 (1963), and R. Boches and J. Goldfarb, California Juvenile Court Practice, 169-70 (1968), the commentary accompanying the IJA-ABA Standards recognizes that in juvenile cases where the child is alleged to be in need of protection or

services, formerly called neglect and dependency cases, "there is surely more than a speculative possibility of adversity between the interests of the parent and those claimed by or to be asserted on behalf of the child, ... particularly where 'incorrigibility' or 'runaway' is charged." The commentary recognizes the possibility of conflicting interests between parent and child even in delinquency matters, stating:

> the possibility of adversity of interests is less obvious but not of less significance. The parent may want the child to admit charges that the latter wishes, for whatever reason, to contest. Other parents may believe that, legal issues aside, court intervention is generally desirable in view of the child's attitude or behavior. There are also parents who desire to be relieved of further responsibility for realizing that goal, at least temporarily. See Lefstein, Stapleton and Teitelbaum. supra, at 548-49; comment, "the attorney-parent relationship in the juvenile court," 12 St. Louis ULJ 603, 620 (1968). The study cited above indicated a startlingly high incidence of patent conflict of this sort between parents and children even where the parent did not, in effect, initiate the proceeding. Moreover, observed hostility represents only the tip of the iceberg, as the authors note:
>
> > In addition, there are many instances in which the parent may be largely disinterested or apathetic toward the proceedings, or where he feels embarrassed or inconvenienced by the necessity of appearing at court. If the parent is so affected, he may wish to get the ordeal over with as quickly as possible in order to get home to other children, or back to work, or to avoid further expenses which he can ill afford, or to avoid further embarrassment.
>
> Lefstein, Stapleton and Teitelbaum, supra at 548-49. These concerns—which are understandable from the parents' point of view—may subtly or overtly interfere with counsel's determination of a course of representation for the child." Commentary, IJS-ABA Standards with commentary, pages 85 and 86.

DR5-107 of the Code, Avoiding Influence by Others Than the Client, provides:

> except with the consent of his client after full disclosure, a lawyer shall not ... accept compensation for his legal services from one other than his client ... [and] shall not permit a person who recommends, employs, or pays him to render legal services for another to direct or regulate his professional judgment .

Elaborating upon this disciplinary rule, ethical considerations 5-21 and 5-22 provide:

> The obligation of a lawyer to exercise professional judgment solely on behalf of his client requires that he disregard the desires of others that might impair his free judgment. The desires of a third person will seldom adversely affect a lawyer unless that person is in a position to exert strong economic, political, or social pressures upon the lawyer. These influences are often subtle, and a lawyer must be alert to their existence. A lawyer subjected to outside pressure should make full disclosure of them to his client; and if he or his client believes that the effectiveness of his representation has been or will be impaired thereby, the lawyer should take proper steps to withdraw from representation of his client.
>
> Economic, political, or social pressures by third persons are less likely to impinge upon the independent judgment of a lawyer in a matter in which he is compensated directly by his client and his professional work is exclusively with his client. On the other hand, if a lawyer is compensated from a source other than his client, he may feel a sense of responsibility to someone other than his client.

These concerns are echoed in the commentary accompanying section 2.1(b) of the IJA-ABA Standards:

> In juvenile court matters, counsel may take into account the willingness and ability of a child's parents to pay for legal services. Indeed, counsel must ordinarily do so if any fee is to be charged. At the same time, compensation from a source other than the client cannot be accepted or considered in setting a fee if the consequence may be divided loyalty or dilution of professional independence ... the attorney should, therefore, early make clear to the parents or others who offer to pay for a child's representation that counsel's loyalty runs to the client and not to the source of payment, and that those who pay, if other than the client, have no control over the case. It is, moreover, incumbent on the attorney to satisfy himself or herself before accepting payment that the interests of parent and child are not then or likely to become adverse with respect to the proceedings. If, for example, it appears that what began as a delinquency petition may ultimately be treated as a neglect matter, particularly if counsel may be in the position of urging that result, full disclosure of that possibility must be made to the parent. When opposition to that course is apparent, the lawyer may be required to disregard the parent's resources even if continued willingness to pay is expressed ... similarly, if the parents insist on controlling representation of their child during the course of that matter, it may be necessary for counsel to terminate his or her relationship with them and consequently to adjust all or part of his fee in light of the client's individual resources, if any.
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> Commentary, IJA-ABA Standards, pages 53 and 54.

Although the above considerations are directed toward cases where parents pay the attorney directly, they would apply with equal force to juvenile matters where the parents pay the State for the cost of counsel provided through the Office of the State Public Defender. Where parents are ultimately responsible for the cost of their child's representation in juvenile court, the parents may be more likely to inject themselves into the attorney-client relationship, concerned about cost. Moreover, they may assume a more active posture as a party to the proceedings, and may look to their child's lawyer for advice and representation on legal issues in the case affecting themselves and the entire family. Under a reimbursement scheme there would be no possibility that parents could influence the exercise of the attorney's judgment by withholding or threatening to withhold fees beyond the initial retainer, but counsel in a private case could not withdraw or allow his or her judgment to be so affected at any rate.

The increased likelihood that parents ultimately paying for the cost of counsel would inject themselves into their child's relationship with counsel creates potential ethics problems in the areas of preservation of client confidences, and presentation of zealous client advocacy. Desiring to limit the costs of the representation, parents may, directly or indirectly, attempt to persuade the attorney and their child not to present time-consuming motions or defenses. Such influences, overt or subtle, could work to dilute the zeal with which the attorney carries out the representation. Eager to see their own interests protected in court, but reluctant to pay for a second attorney for themselves, parents could attempt to refocus the aim of their child's case in court. Toward that end, they may attempt to acquire confidential information from counsel, to enhance their input on key decisions in the case. To the extent parents required to reimburse the State for the cost of counsel become motivated and attempt to influence the independent professional judgment of their child's attorney, diminish the zeal with which the representation is carried out, and acquire information that the child desires be held in

confidence, the recoupment scheme may help to create an appearance of professional impropriety.

A plan to establish recoupment against parents for attorney fees for legal representation of their minor children through the State Public Defender's Office in juvenile court proceedings would not be prohibited by the rules of professional ethics governing the conduct of attorneys practicing in Wisconsin. However, the proposal may stimulate potential or actual conflicts of interest, and could generate pressures increasing the risk of disclosure of confidential information, dilution of zealous representation, and creation of the appearance of professional impropriety. If such a scheme is adopted, at the very least attorneys representing juveniles through the Office of the State Public Defender will be required to explain to the parents that the lawyer's entire loyalty is to the child, and that the parent may exercise no control over the case. In addition, the attorney must fully advise the child of the potential for adverse influences on the exercise of the attorney's independent professional judgment, and must seek the child's consent to the representation, paid for by the parents through the recoupment fee arrangement.

NATIONAL AND STATE STANDARDS AND GUIDELINES

The issues of eligibility for public defender services, recoupment for the costs of attorney fees, the child's right to counsel, the role of counsel vis a vis the child and his/her parents, and the responsibility of parents to either provide counsel or contribute to the costs of counsel have been addressed by several organizations and special committees studying the juvenile justice system and defender services. All standards and guidelines recognize the importance of legal representation for the child in juvenile proceedings and require that attorneys in juvenile court assume those responsibilities for advocacy and counseling which obtain in other areas of legal representation.

The American Bar Association Standards Relating to the Administration of Criminal Justice includes standards relating to the provision of defense services (Providing Defense Services–1979). In the section on eligibility for assistance, the ABA states a general rule for eligibility:

> Counsel should be provided to persons who are financially unable to obtain adequate representation without substantial hardship to themselves or their families. Counsel should not be denied merely because friends or relatives have resources adequate to retain counsel....
>
> (ABA, p. 29).

While the standards do not specifically address the issues of provision of services to juveniles and parental responsibility to pay for those services, they do include discussion of provisions for reimbursement by defendants for costs of counsel. Standard 5-6.2, on ability to pay partial costs provides that:

> The ability to pay part of the cost of adequate representation should not preclude eligibility. Reimbursement of counsel or the organization providing counsel should not be required, except on the ground of fraud in obtaining the determination of eligibility.
>
> Id. at 29.

In the commentary on the question of reimbursement, the ABA standards state that there are compelling policy reasons for not requiring reimbursement for the costs of legal representation. Most significant is the possibility that reimbursement requirements may serve to discourage defendants from exercising their right to counsel. The ABA has revised its thinking on reimbursement, for the most part because experience with contribution programs has demonstrated they are costly to administer and generally result in the collection of very minimal sums (this point will be discussed more fully later in this report).

The ABA has recently produced a multi-volume set of Juvenile Justice Standards (1980). The volume titled Counsel for Private Parties defines the role of counsel for

children and makes recommendations regarding the provision of representation. While it does not specifically address the issue of eligibility for public paid counsel, its provisions on lawyers' fees and adversity of interests are relevant to the question at hand. According to Standard 2.1(b)(ii):

> Lawyers should take into account in determining fees the capacity of the client to pay the fee. The resources of parents who agree to pay for representation of their children in juvenile court proceedings may be considered if there is no adversity of interest ... and if the parents understand that a lawyer's entire loyalty is to the child and that the parents have no control over the case.. Where adversity of interests or desires between parent and child become apparent during the course of representation, a lawyer should be ready to reconsider the fee taking into account the child's resources alone.
>
> Id. at 52-3.

The standards define adversity of interests to include those instances when a lawyer or lawyers associated in practice formally represent more than one client in a proceeding or formally represent one client but are required by a third person to accommodate their representation of that client to factors unrelated to the client's interests (p. 84). The principle risks associated with representation of adverse interests include breaches of confidentiality and lack of entire loyalty to either client. Conflict between parents and children is present in many juvenile court proceedings, most notably where the parent is responsible for initiating the action.

In Standards for the Administration of Juvenile Justice: Report of the National Advisory Committee for Juvenile Justice and Delinquency Prevention (1980), the following standard for representation by counsel for juveniles is included:

> In any proceeding in which a juvenile is entitled to be represented by counsel, an attorney should be appointed whenever counsel is not retained for the juvenile; whenever it appears that counsel will not be retained; whenever there is an adverse interest between the juvenile and the juvenile's parents, guardian or primary caretaker; or whenever appointment of independent counsel is otherwise required in the interests of justice.
>
> Id. at 273.

The commentary to the standard indicates that many state provisions authorizing appointment of counsel cite one or a combination of the following considerations: indigence of the family, the interests of justice, or a conflict of interest between juveniles and their families. The most salient point here is the emphasis placed on conflicts of interest between parent and child. Any proposal for reimbursement should carefully consider an exemption for cases involving such conflicts.

Recommendations for improvements in Wisconsin's juvenile justice system are contained in Juvenile Justice Standards and Goals: Report of the Special Study Committee on Criminal Justice Standards and Goals, Wisconsin Council on Criminal Justice, 1975. Included in that report are recommendations on legal representation of juveniles. Specifically, Goal 12, Sub-goal 12.1 provides:

> Juveniles who are indigent shall be entitled to court-appointed counsel. Waiver of counsel may be permitted in certain cases but only if the juvenile court is assured that the waiver is made intelligently, knowingly and with a clear understanding of its implications.
>
> Id. at 77.

The commentary includes the statement that "the status of indigency for juveniles should not be determined by the wealth of the juvenile's parents since the interests of the parents may differ from the child's and requiring parents to provide counsel may create tensions within the family"(p. 78).

The special study committee felt that waiver of counsel by the juvenile should be carefully considered and that courts should be assured that waiver is not the result of inadvertance, ignorance, or coercion. Of particular concern here is the possibility that parents, being informed of the potential of having to pay for the costs of their child's attorney, would pressure their child to waive his/her right to counsel. The report recommends that"if counsel is waived and the waiver is accepted, the juvenile's reasons

for waiving counsel and the judge's inquiry into the voluntariness and informed nature of the decision should appear on the record" (p. 79).

The National Legal Aid and Defender Association's Guidelines for Legal Defense Systems in the United States (1976), contains the most extensive discussion of financial eligibility for representation and recoupment for the costs of representation, including recoupment from parents. The general rule of eligibility recommended is:

> Effective representation should be provided to anyone who is unable, without substantial financial hardship, to obtain such representation. The resources of a spouse, parent or other person should not be considered in determining eligibility.
>
> Id. at 97.

The commentary to this standard also expresses the concern that certain financial criteria may compel the waiver of constitutional rights, including the right to counsel.

The report states that a review of court cases on recoupment shows that a statute or practice "which smacks of denial of equal protection, fails to incorporate a requirement that the recoupment would not result in substantial hardship, imposes recoupment on innocent persons, or is phrased in vague or abstract terms" would be invalidated (p. 104). The report indicates that recoupment statutes in a number of states provide that parents or guardians shall be responsible for repayment of a juvenile's legal costs. Discussion of parental responsibility cites the following provisions from the Guidelines to the Federal Criminal Justice Act:

> The initial determination of eligibility should be made without regard to the financial ability of the person's family unless his family indicates willingness and financial ability to retain counsel promptly.... The court should disregard the juvenile's parents and look to the juvenile's own income and resources for purposes of initial eligibility.
>
> Id. at 114-5.

The guidelines differentiate between considering parental income for eligibility for counsel and seeking reimbursement from parents. The following commentary is particularly relevant:

> Unlike the original determination, the court's decision about whether or not to seek reimbursement at the conclusion of the case is a final adjustment of rights ... it may be appropriate to encourage or to compel persons legally responsible for the defendant's support to make some contribution to the costs of [his/her] defense. The court's discretion should be guided by whether the parties are present in the [jurisdiction], whether there are conditions of family estrangement and by the amount of available income or resources in excess of the needs of the parties ... there are considerations which militate against recoupment from parents ... to do so might result in parents of juveniles retaining their own lawyer where an adversary situation exists between parent and child. In such a case, there is the danger that the retained lawyer might have a split loyalty.
>
> Id. at 115.

The principle concerns raised by the standards and guidelines include financial ability of the parents, conflicts of interest between parents and child, pressure on the child to waive the right to counsel, and affects on the attorney-client relationship.

REIMBURSEMENT PRACTICES IN OTHER PUBLIC DEFENDER SYSTEMS

To further assist the committee in its task, a survey of public defender systems around the country was conducted to determine the practices of their programs and their courts in determining eligibility of juveniles for legal representation and recovering the costs of that representation from parents. Information was obtained from twenty-six different defender offices. Most of the data was provided through services of the National Center for Youth Law in St. Louis, Missouri.

The state statutes in California, Minnesota, and Ohio have provisions allowing the court to assess parents for the costs of legal representation of their children. Both the California and Minnesota statutes require court orders for reimbursement to be based on the parents' ability to pay, and afford the parents an opportunity for a hearing on the issue of financial ability. The Ohio statute provides for separate counsel for parent and child if the interests of the two parties conflict and provides for appointment for the child in those cases where the parents refuse to pay for private counsel for their child. None of the statutes appear to contain a requirement that parents be given notice in advance of the proceedings that they may be required to reimburse the county for attorney fees.

Defender systems surveyed by the Youth Law Center in St. Louis were asked several questions pertaining to parental contributions toward the cost of counsel for minor children including: whether parental income is considered in determining eligibility for services; whether there is a recoupment statute or provision for courts to order reimbursement; at what point in the process recoupment decisions are made; the manner in which waivers of counsel and admissions of guilt are handled by the court; and whether exceptions are made for cases in which the parent is the complaining party. Of the twenty-six programs surveyed, nineteen considered parental income in determining eligibility of juveniles for public defender systems. The program in Louisville, Kentucky, considered it only in delinquency cases and provided counsel automatically in status offense cases. In Cleveland, Ohio, they considered parental income but provided representation anyway if parents refused to retain counsel. In St. Paul, Minnesota, the policy is rarely followed and most juveniles are provided counsel. Seven programs did not consider parental income at all. In Birmingham, Alabama, they consider all juveniles indigent, and automatically provide representation. In the Birmingham and the Jackson, Mississippi programs there is neither a requirement that parental income be considered for eligibility nor a recoupment statute.

In fifteen of the areas surveyed, screening for eligibility for public defender services is done by the court or court intake. The public defender program does its own screening in seven cities, and in one area, Houston, Texas, it is done by the probation office. Eleven jurisdictions use standard, uniform financial guidelines, either established in the statutes or developed by the court, and eleven have no guidelines. In those areas, indigency is determined on an adhoc basis by the court or the public defender office.

Recoupment statutes exist in fourteen of the jurisdictions provided and are not provided in seven jurisdictions. Recoupment statutes may be separate from provisions allowing the court to order parents to contribute toward attorney fees. In nineteen of the jurisdictions surveyed, the court has the authority to order parents to contribute; in four jurisdictions there is no such provision.

One factor that may have a bearing on the kinds of pressures parents who are required to pay might place on their children and the attorneys representing them is the point in the proceedings at which the court makes the recoupment decision. Of the fifteen jurisdictions for which this information was provided, the recoupment decision is made after adjudication in eleven and before adjudication in four. The court makes the recoupment decision in seventeen of the cities surveyed, and the public defender makes it in two programs. The collection authority is the court in eleven instances, the public defender in four, and the county collections office in one area.

Concerns have been raised regarding the affect of recoupment requirements on the conduct of the proceedings and the provision of counsel where conflicts exist. The survey included questions covering these concerns. In fourteen of the jurisdictions surveyed, exemptions from the reimbursement provisions were made for cases in which the parent is the complaining or petitioning party. Three areas made no provision for exemptions in these cases. Five jurisdictions permitted no waivers of counsel by the juvenile, thereby avoiding waivers that might result from parental pressures. In eight areas, respondents

felt that the court was careful to assure that waivers of counsel were truly voluntary on the part of the juvenile. In four areas they felt that the court did not do an adequate job of ascertaining whether waivers were voluntarily and intelligently made. Similarly, eleven respondents felt that the courts did an adequate job of ascertaining whether guilty pleas were voluntary and five respondents felt the courts in their jursidiction did an inadequate job in this area.

In general, most jurisdictions have some mechanism for recovering all or part of the costs of counsel for children from parents. However, several respondents indicated that often these provisions were not followed and that either parents were not, in most cases, required to contribute or that very little money was actually collected.

STATE REIMBURSEMENT MECHANISMS

Currently in Wisconsin there are two methods for recovering the costs of attorney fees from adults and there are provisions requiring parents to contribute to the support of and the costs for services to their children. We will deal first with provisions in Chapter 48 of the Statutes requiring parental contributions. Section 48.275 makes the following requirement regarding court ordered services for children:

> If the court finds a child to be delinquent under s. 48.12, in violation of a civil law or ordinance under s. 48.125 or in need of protection or services under s. 48.13, the court shall order the parents of the child to contribute toward the expense of post-adjudication services to the child the proportion of the total amount which the court finds the parents are able to pay.
>
> Wisconsin Statutes, 1977, p. 1077.

This section was added in 1977. Prior to that time there existed only a provision delineating the duty of the parent or guardian to provide support for the child whose legal custody had been transferred from them (s. 48.36).

Court orders for parental contributions toward support and services are subject to provisions in s. 46.03(18), The Uniform Fee Schedule, Liability and Collections. Under this section the Department of Health and Social Services is required to establish a uniform system of fees for services provided or purchased by the department or the county departments of social services. The Uniform Fee System provides a standardized, statewide system for the determination of liability and ability to pay for state or county provided services (see Attachment D, describing Division of Corrections payment program). Under this system, contributions can be collected with or without a specific court order. There are extensive rules governing the operation of the system, but, basically, the fees are determined on an ability to pay basis and a maximum daily and monthly liability is set (see Attachment E, maximum monthly payment schedule).

Ability to pay is determined by taking the family's gross annual income and computing a monthly average income. Other court ordered payments are deducted from this amount as are amounts for estimated taxes and social security contributions. The "monthly available income" is arrived at by substracting the amount needed for maintenance costs, based on family size. The family can then be billed for 50% of the monthly available income up to a maximum rate of $5 per day or $152 per month.

The Department of Health and Social Services, Bureau of Collections, reports that at any one point in time they are collecting from roughly 600 families of juvenile correctional clients. They have no data on the per cent of all families of correctional clients who are able to pay. A significant portion of accounts are for payment of arrearages. In fiscal year 1979-80, there were 305 new corrections accounts for juveniles. The most recent data on new admissions to correctional institutions is for the year 1978, in which there were approximately 800 new admissions or commitments. It is safe to assume that well under one-half of the families are able to make contributions. While the maximum

monthly liability is $152, the average monthly payment is currently about $56 (data from October, 1980). In Fiscal Year 1979-80, the Division of Corrections collected $329,243.12 on about 600 accounts, making the average monthly payment $45. Corrections officials estimate that it costs roughly $1 to collect $7; that is, collections costs run about 14% of the total amount collected.

The two methods for collecting for attorneys fees from adult defendants are ordering repayment as a condition of probation (s. 973.09(1g))or recoupment under s. 757.66, both described earlier in this report. Statutory language changes made in June, 1980, gave the Department of Justice the authority to recover attorney fees on behalf of the state pursuant to s. 757.66. Prior to that time, only counties had the ability to recover. There is no information available either as to whether or not counties were exercising their authority under the statute, or what amounts, if any, were being recovered. Conversations with officials of the Department of Justice indicate that it has not exercised the recoupment authority to date; ergo, no amount has been collected.

Until July, 1980, the Division of Corrections, through its agents, collected from defendants for court orders requiring contributions. Their most recent available data is from calendar year 1979. In that year, the Division of Corrections collected a total of $2,780,887.50, which includes funds for costs, fines, attorney fees, restitution, support, work release, huber law, special benefits, and savings. Using earlier data, it is estimated that approximately 10% of the money collected is for attorney fees; for 1979, that would be about $278,000. Money collected for attorney fees is placed in the state's general fund.

There is some data available on recovery of the costs of legal fees in other jurisdictions. The ABA Standards on defense services states that:

> One very practical consideration militates against the use of either reimbursement or contribution: the amounts which can be collected under such programs are negligible. If the administrative costs of collection are taken into account, there is substantial doubt that contribution or reimbursement systems are cost effective.

They cite the experience of the federal government under the Criminal Justice Act, which provides for contributions. During the period of 1966 to 1971, the amounts contributed annually by defendants nationwide averaged approximately $9,000. During that same period, the annual expenditures for defense services in the federal courts averaged $2,600,000.

The National Legal Aid and Defender Association conducted a study on recoupment in 1972-73 and received responses from 172 counties. For those counties indicating that they recovered for the costs of counsel, the percentage of the costs recovered ranged from .1% to 38% of expenditures, with the median being 3.5%. Only nine counties reported recouping more than 5%. With respect to state systems, the study noted that in the first two years of the operation of New Jersey's recoupment provisions, revenue from reimbursements was less than 1% of the budget.

SURVEY OF PARENTS

The members of the committee felt it would be useful to have some information regarding the current clients of the program; in particular, what per cent of the families of the juveniles are indigent under public defender standards, and what is the attitude of parents toward the idea of contributing toward the costs of counsel for their children. A survey instrument was developed which would provide this information (see Attachment F). It was administered to 125 parents in four counties—Milwaukee, Dane, LaCrosse, and Rock. The original goal was to collect this information from 200 parents of juvenile clients; however, it proved very difficult to do so. In many cases, parents were either not accessible, or they refused to answer the questions. While the size of the sample is not large enough to meet a test of significance, it does give some indications of the financial status of parents and their feelings about paying for attorney fees for their children.

A little over one-half (65) of the responses to the questionnaire were from Milwaukee County, which accounts for just over 30% of the 14,428 juvenile cases the State Public Defender will handle in fiscal year 1980-81. About 20% of the responses were from Dane County, and about 15% each from LaCrosse and Rock Counties. Ninety-seven (or 84%) of the cases in which parents were surveyed involved delinquency charges, and 18 (or 15%) were CHIPS cases (Children in Need of Protection or Services). While there is currently no systemwide data on the per cent of public defender juvenile cases which are delinquency matters as opposed to CHIPS matters, it is believed that this per cent is well above any trial office's actual experience. One possible explanation for this figure is that parents in delinquency matters were more willing to respond to the questionnaire since there is generally a lower frequency of estrangement between parents and child in these cases than in CHIPS cases.

The committee decided to ask about the living arrangements in the family because it was felt it might have a bearing on policy considerations relative to recoupment. For example, there could be differing views about holding parents liable for costs when the child has already been placed out of the home, and may not have actually lived with the family for some time. Data obtained from this question also raised concerns about how to handle liability vis a vis non-custodial parents (in the case of divorce) or step-parents, which do not currently have any financial responsibility for their step-children. The juvenile client was living with both parents in 36% of the cases and with only one parent in 46%. Three children were living with relatives and 20 (16%) were in out-of-home placements (e.g., foster homes or group homes). The question was not asked in a manner that enabled us to determine the number of step-parent families.

Questions regarding financial status were taken from the standard indigency determination form used by the State Public Defender, and indigency was computed in the

regular manner. Financial data was obtained from 109 of the total 125 respondents to the survey (some refused to provide data on income or supplied incomplete data, rendering it impossible to compute indigency). Thirty-eight of the 109 respondents (35%) were not indigent. Sixty-six (61%) of the respondents were indigent; in Milwaukee County the figure is 70%. Five of the respondents (only 4%) were found partially indigent. Using the projected fiscal year juvenile caseload of 14,428, one could extrapolate from the above figures and assume that in approximately 5,627 cases this fiscal year, under public defender income standards, parents would be financially able to make some contribution toward the costs of representation for their children. This figure would not take into account any exemptions made for such things as conflicts of interest or parent as petitioning party.

Four questions on attitudes of parents toward payment of counsel were asked to get at their willingness to pay for counsel, their preference for public defender services as opposed to private attorney services, and feelings as to the responsibility of the attorney if they were required to pay. Responses to these questions should be considered in light of earlier discussions regarding the professional obligations of the attorney and the kind of pressures parents might place on their children's attorneys if they were paying for representation.

Parents were asked whether, if they were told they had to pay for legal representation for their child, they would prefer to use public defender services or to hire their own attorney. Sixty-seven per cent of the respondents preferred the public defender; 15% preferred to retain private counsel; and 18% had no preference. Of particular interest are the responses on expectations regarding attorney responsibility when parents pay the costs. Out of 118 responses, 102 (86%) of the parents surveyed said that, if they had to pay for public defender services, they would expect the attorney to

represent their wishes or desires as well as their child's. In the case of payment for private attorneys, 89% expected him/her to represent their wishes or desires as well as their child's.

When asked whether, regardless of ability to pay for an attorney, they would be willing to hire an attorney for their child, 75% of the parents said they were willing. Twenty-five per cent of the parents admitted they were not willing to hire an attorney for their child.

At the conclusion of the questionnaire, attorneys for the juvenile were asked to determine whether, in their judgment, there was a conflict of interest between parents and child in the case. In 50% of the cases (42 of 84 responses) a conflict existed. In two-thirds of the CHIPS cases there was a conflict between parents and child.

ADDITIONAL ISSUES

It is clear from the above discussion that the issue of recoupment from parents for the costs of counsel for their minor children is more complicated than it seems at first glance. Several issues, relating to such things as constitutionality, professional ethics, and conflicts of interest have been discussed. However, many issues have been barely touched on and are in need of further examination before any policy decisions are made. Among the concerns requiring more detailed consideration are:

(1) Discretionary vs. Mandatory Recoupment. Most statutes make recoupment discretionary on the part of the courts. Court decisions in adult probation cases seem to indicate that this decision must be discretionary and based on ability to pay.

(2) Timing of Recoupment Decision. Should the recoupment decision by the court be made before or after adjudication of the child? Most jurisdictions make it

after adjudication, thereby minimizing pressures on the child to plead in order to avoid costly attorney fees.

(3) Notice. What type of notice, if any, should parents be entitled to if recoupment is possible? Should parents have the opportunity for a hearing on the question of recoupment? If parents are given notice, will they be likely to pressure their child to waive his/her right to counsel or to admit to charges rather than contest them?

(4) Ability to pay. How should parental ability to pay be determined? The two most viable approaches are to either use the public defender indigency standards or to apply the guidelines used in the DHSS uniform fee system.

(5) Exemptions from Recoupment Provisions. Should certain types of cases or situations be grounds for exemptions from any type of recoupment system? Possible considerations are: restricting recoupment to delinquency cases, allowing exemptions in cases where there is a conflict of interest (how would this be determined?), allowing exemptions in cases where the parent is the complaining or petitioning party.

(6) Non-custodial Parents and Step-parents. What should be the liability of non-custodial parents, either in cases of divorce or cases where custody of the child has previously been transferred from the parents? Should ability-to-pay determinations exclude the income of a step-parent?

(7) Collection Authority. What agency or program should be responsible for collecting on court orders for reimbursement? In most jurisdictions, the court is the collection authority; in others, it is the county or the public defender. The proposal that defenders participate in the collection process is viewed as creating an inherent conflict of interest situation for them.

(8) Affect on Parent-Child Relationship. What is the affect of recoupment provisions on the parent-child relationship? Some experts feel it could serve to create tensions within the family and, in many instances, worsen already tenuous relationships.

CONCLUSION

The issue of parental liability for minor children has been debated often in recent years in relation to such things as medical care, vandalism committed by children, and services provided by county or state programs. In the area of parental responsibility for the costs of legal representation for children, it is clear that recoupment requirements, if properly structured, would meet a constitutional test. However, many factors militate in favor of careful consideration of such a policy. Any proposal for recoupment should be analyzed in terms of the benefits to be gained, and the costs, financial and human, of its implementation.

Attachment A

programs for purchase of services. The county board may delegate this authority to county social services departments.

(6) (a) On or after July 1, 1978, a county shall be reimbursed by the state for 50% of the per capita cost of care of the children who are in a shelter care facility. Reimbursement shall be limited to the first 20 days of care per episode and shall not exceed $15 per day. Payments shall be made from the appropriation under s. 20.435 (4) (dj).

(b) Eligibility for state reimbursement under par. (a) shall be subject to the following conditions:

1. A plan demonstrating the need for shelter care in that location and the need for the number of beds proposed, and outlining specific methods for the reduction of the number of children held in jail or detention shall be submitted to and approved by the department;

2. The facility shall be licensed under s. 48.66;

3. The county in which the facility is located shall have a 24-hour-a-day screening service for all children taken into custody;

4. The facility may not receive any other form of federal or state reimbursement for the per capita cost of care of children in the shelter care portion of the facility's program.

(7) No person may establish a shelter care facility without first obtaining a license under s. 48.66.

History: 1977 c. 29, 194; 1977 c. 354 ss. 39, 52; 1977 c. 418 ss. 305, 305m, 928 (55) (c); 1977 c. 447, 449.

48.225 State-wide plan for detention homes. The department shall assist counties in establishing detention homes under s. 48.22 by developing and promulgating a state-wide plan for the establishment and maintenance of suitable detention facilities reasonably accessible to each court.

History: 1977 c. 354 s. 54; 1977 c. 447 s. 210.

48.227 Approval of runaway homes; procedures. (1) The judge may utilize homes licensed under ss. 48.48 and 48.75 for purposes of temporary care and housing of runaway children without consent of the child's parent, guardian or legal custodian. The homes may house and care for such children until such time as:

(a) A child returns to his or her parent, guardian or legal custodian; or

(b) The court, after a hearing, orders the child's removal.

(2) Any person who operates a home under sub. (1) and licensed under ss. 48.48 and 48.75, when engaged in sheltering a runaway child without consent of the child's parent, guardian or legal custodian, shall notify the intake worker of the presence of the child in the home within 12 hours. The intake worker shall notify the parent, guardian or legal custodian as soon as possible of the child's presence in that home. The child shall not be removed from the home except with the approval of the court under sub. (3). This section does not prohibit the parent, guardian or legal custodian from conferring with the child or the person operating the home.

(3) If the child sheltered in a home under sub. (2) does not return to the parent, guardian or legal custodian within 72 hours after the time of first arrival at the home, the parent, guardian, legal custodian, runaway home or child may request a hearing, in which case the court shall schedule a hearing under s. 48.21.

(4) No person operating an approved or licensed home in compliance with this section is subject to civil or criminal liability by virtue of false imprisonment.

(6) This section does not preclude the right of the child to be released immediately upon his or her request to the custody of a parent, guardian or legal custodian.

History: 1977 c. 354.

48.23 Right to counsel. (1) RIGHT OF CHILDREN TO LEGAL REPRESENTATION. Children subject to proceedings under this chapter shall be afforded legal representation as follows:

(a) Any child alleged to be delinquent under s. 48.12 or held in a secure detention facility shall be represented by counsel at all stages of the proceedings, but a child 15 years of age or older may waive counsel provided the court is satisfied such waiver is knowingly and voluntarily made and the court accepts the waiver. If the waiver is accepted, the court may not make a disposition under s. 48.34 (4m) or transfer jurisdiction over the child to adult court.

(b) If a child is alleged to be in need of protection or services under s. 48.13, the child may be represented by counsel at the discretion of the court; but a child 15 years of age or older may waive counsel provided the court is satisfied such waiver is knowingly and voluntarily made and the court accepts the waiver. If the child is not represented by counsel at the fact-finding hearing and subsequent proceedings, the court may not place the child outside his or her home in making a disposition under s. 48.345 or in approving a change of placement under s. 48.357 or an extension of placement under s. 48.365. For a child under 12 years of age, the judge may appoint a guardian ad litem instead of counsel.

(c) Any child subject to the jurisdiction of the court assigned to exercise jurisdiction under

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this chapter under s. 48.14 (5) shall be represented by counsel. No waiver of counsel may be accepted by the court.

(d) If a child is the subject of a proceeding involving a contested adoption or the involuntary termination of parental rights, the court shall appoint legal counsel or a guardian ad litem for the child.

(2) RIGHT OF PARENTS TO COUNSEL. (a) Whenever a child is alleged to be in need of protection or services under s. 48.13, or is the subject of a proceeding involving a contested adoption or the involuntary termination of parental rights, any parent under 18 years of age who appears before the court shall be represented by counsel; but no such parent may waive counsel. A minor parent petitioning for the voluntary termination of parental rights shall be represented by a guardian ad litem. If a proceeding involves a contested adoption or the involuntary termination of parental rights, any parent 18 years old or older who appears before the court shall be represented by counsel; but the parent may waive counsel provided the court is satisfied such waiver is knowingly and voluntarily made.

(b) No child alleged to be in need of protection or services under s. 48.13 may be placed outside his or her home under s. 48.345 unless counsel has been appointed for a nonpetitioning parent. The parent may waive counsel provided the court is satisfied such waiver is knowingly and voluntarily made.

(3) POWER OF THE COURT TO REQUIRE REPRESENTATION AND APPOINT GUARDIANS AD LITEM. At any time, upon request or on its own motion, the court may:

(a) Require that a child or any interested party be represented by counsel, but the child or interested party may waive counsel provided the court is satisifed such waiver is knowingly and voluntarily made.

(b) Appoint a guardian ad litem for a child or any interested party.

(3m) GUARDIANS AD LITEM FOR ABUSED OR NEGLECTED CHILDREN. The court shall appoint a guardian ad litem for each child subject to a judicial proceeding regarding child abuse or neglect. The guardian ad litem for the child shall not be the same as counsel for the alleged abuser or neglector or any governmental or social agency involved.

(4) ROLE OF THE STATE PUBLIC DEFENDER; OTHER METHODS FOR PROVIDING COUNSEL. In any situation under this section in which a child has a right to be represented by counsel or is provided counsel at the discretion of the court, except for situations arising under sub. (2) where the child entitled to representation is a parent; and counsel is not knowingly and voluntarily waived; and it appears that the child is unable to afford counsel in full, or the child so indicates; the court shall refer the child to the state public defender for an indigency determination and appointment of counsel under ch. 977; but if there is no state public defender program in the county, the court shall determine whether the child is indigent, if so shall appoint counsel, and shall provide for counsel's reimbursement in any manner suitable to the court. In any situation under sub. (2) in which a parent is entitled to representation by counsel; counsel is not knowingly and voluntarily waived; and it appears that the parent is unable to afford counsel in full, or the parent so indicates; the court shall refer the parent to the state public defender for an indigency determination and appointment of counsel under ch. 977; but if there is no state public defender program in the county, the court shall determine whether the parent is indigent, and if so shall appoint counsel, and shall provide for counsel's reimbursement in any manner suitable to the court. The court may appoint a guardian ad litem in any appropriate matter. In any other situation under this section in which a person has a right to be represented by counsel or guardian ad litem or is provided counsel or guardian ad litem at the discretion of the court, competent and independent counsel or guardian ad litem shall be provided and reimbursed in any manner suitable to the court regardless of the person's ability to pay.

(5) COUNSEL OF OWN CHOOSING. Regardless of any provision of this section, any party is entitled to retain counsel of his or her own choosing at his or her own expense in any proceeding under this chapter.

(6) DEFINITION. For the purposes of this section, "counsel" means an attorney acting as adversary counsel who shall advance and protect the legal rights of the party represented, and who may not act as guardian ad litem for any party in the same proceeding.

History: 1977 c. 354, 355, 447, 449.

48.235 Guardian ad litem. A guardian ad litem appointed under this chapter shall be appointed under s. 879.23. On order of the court, the guardian ad litem shall be allowed reasonable compensation to be paid by the county in which the proceeding is held. The guardian ad litem has none of the rights of a general guardian. No person who is an interested party in a proceeding, appears as counsel in a proceeding on behalf of any party, or is a relative or representative of an interested party,

Attachment B

STATE OF WISCONSIN CIRCUIT COURT _____ COUNTY

STATE OF WISCONSIN,
Plaintiff,

v. AFFIDAVIT OF INDIGENCY

Defendant.

STATE OF WISCONSIN)
) ss.
_____ COUNTY)

The undersigned defendant being first duly sworn on oath deposes and says:

1. That s/he is (not employed) (employed with a take home pay of $_____/monthly).

2. That s/he receives monthly welfare, disability, pension or social security payment of $_____.

3. That s/he has following assets which are valued as shown:

		Yes	No	Value/Equity
a.	Savings Account	___	___	_____
b.	Checking Account	___	___	_____
c.	Cash	___	___	_____
d.	Miscellaneous Funds	___	___	_____
e.	Money Owed him/her	___	___	_____
f.	Stocks and/or Bonds	___	___	_____
g.	Real Estate	___	___	_____
h.	Automobile(s) and other Vehicle(s)	___	___	_____
i.	Personal Property	___	___	_____
j.	Life Insurance (list each value)	___	___	_____
k.	Other assets not listed above:			
	_____			_____
	_____			_____
	_____			_____

4. That s/he anticipates the following unusual, special, and/or emergency expenses in the next 8 months (if a felony case) or in the next 4 months (All other cases):

TYPE	AMOUNT
_____	_____
_____	_____
_____	_____

5. That Bail in this case is: _____

6. That s/he believes him/herself to be indigent, desires the assistance of counsel, that s/he does not have sufficient funds to hire counsel, and that no one will hire counsel for him/her.

7. That s/he understands any material misrepresentation herein could subject him/her to a felony charge of False Swearingpursuant to Sec. 946.32(1)(a) Stats.

8. That s/her agrees to promptly inform the State Public Defender or his/her attorney of any change in the above information.

Subscribed and sworn to before me
this ____ day of _____, 1978

_____
Notary Public, State of Wisconsin
My Commission _____.

_____
Defendant

Attachment C

STATE OF WISCONSIN : CIRCUIT COURT : COUNTY
BRANCH

IN THE INTEREST OF

AFFIDAVIT OF INDIGENCY

STATE OF WISCONSIN)
) SS.
COUNTY OF)

The undersigned being first duly sworn upon oath, deposes and says:

1. That (s)he is a minor, being under 18 years of age, who is involved in a juvenile court proceeding.

2. That (s)he believes herself/himself to be indigent, and upon information and belief there is no one who is able or willing to hire counsel for affiant, and affiant desires counsel.

3. That affiant agrees to notify the State Public Defender or her/his attorney of any change in this information.

_____
Minor

Subscribed and sworn to before me this ____ day of _____, 197__.

_____
Notary Public, State of Wisconsin
My comm. _____

Paying for Division of Corrections Care for Children

1. Parents may be billed up to $5.00 per day for each child who receives care in a residential, setting such as an institution, group home or foster home.

HOWEVER

2. You as a parent may pay less than $5.00 per day--depending on your application for a smaller payment.

3. An agency worker* will help you apply to pay according to your ability.

4. In order to be considered for smaller payments, you must provide information that includes -

- gross income (before deductions) of all family members
- court-ordered amounts paid by family members such as support or maintenance
- the names of family members and their relationship to the person in residential care.

5. An agency worker* uses the information you give and a special chart to figure your daily or monthly payment rate.

6. If the child in care has income, benefits or sufficient funds, the child may also be billed in addition to you. This billing to the child does not necessarily lower the amount you must pay. The billing to the child is described in the pamphlet titled, "Some Things Clients Should Know About Paying for Residential Care."

7. The Department of Health and Social Services may apply to the court for an order to compel parents to pay if voluntary payment arrangements cannot be worked out.

8. The Bureau of Collections periodically reviews your ability to pay. You may also request them to review your ability to pay if your income or family size changes. If family income or size changes, the payment rate may also be changed to go along with your new ability to pay.

9. If one of the parents is not living in the same household as the child when custody was transferred, the Bureau of Collections will also look into the possibility of payments from that parent. Sometimes these other payments can lower the amount paid by the parent who was caring for the child.

10. The Bureau of Collections will work with you to arrange when, where and how to make your payments. You may receive a letter, personal visit or both.

11. Payment for care is a responsibility set by law. We will make every effort to work out special payment plans for people who have unavoidable difficulties making required payments.

12. The legal basis for the fee system is found in SS. 46.03 (18) and 46.10 of the Wisconsin Statutes. Section 48.36 (1) specifically tells about the responsibility of parents to continue providing support even though legal custody is transferred. The fee system is described in most detail in the Wisconsin Administrative Code: HSS 1.01 - 1.06.

If you have questions about payment for services, please write or call:

Bureau of Collections
Department of Health
& Social Services
1 W. Wilson Street
Madison, WI 53702

Phone: (608) 266-1841

*This worker could be a field representative of the Bureau of Collections or a Probation and Parole Agent of the Division of Corrections.

A1 Attachment

Paying for Division of Corrections Care for Children

Parents may be billed for care when their child is placed in the custody of the Division of Corrections and receives care in one of the following places:

- a corrections institution
- a child-caring institution
- a group home
- a foster home

This pamphlet describes some things parents should know about their responsibilities and rights under Wisconsin's Uniform Fee System.

Wisconsin Department of
Health and Social Services

July 1, 1980

Attachment E

MAXIMUM MONTHLY PAYMENT RATE SCHEDULE Effective Aug. 1, 1980

Monthly Income	Number of Persons Dependent on Income									
	1	2	3	4	5	6	7	8	9	10 or More
601-625										
626-650										
651-675	5									
676-700	14									
701-725	22									
726-750	30									
751-775	38									
776-800	47									
801-825	55									
826-850	63									
851-875	71	5								
876-900	80	13								
901-925	88	21								
926-950	96	29								
951-975	104	36								
976-1000	113	44								
1001-1025	121	52								
1026-1050	129	60								
1051-1075	136	67								
1076-1100	144	75	2							
1101-1125	151	83	10							
1126-1150	158	91	18							
1151-1175	165	99	27							
1176-1200	173	107	35							
1201-1225	180	115	43							
1226-1250	187	123	52							
1251-1275	195	131	60							
1276-1300	203	139	68							
1301-1325	210	147	76	9						
1326-1350	218	156	85	17						
1351-1375	226	164	93	25						
1376-1400	234	172	101	33						
1401-1425	242	180	110	41						
1426-1450	250	189	118	49						
1451-1475	257	197	126	57						
1476-1500	265	205	135	65						
1501-1525	273	213	143	73	4					
1526-1550	281	222	152	82	12					
1551-1575	288	229	160	90	20					
1576-1600	296	237	168	98	28					
1601-1625	303	245	176	106	36					
1626-1650	311	253	184	114	44					
1651-1675	318	261	192	122	52					
1676-1700	325	268	200	130	60					
1701-1725	333	276	208	138	69					
1726-1750	340	284	216	146	77	8				
1751-1775	348	292	224	154	85	16				
1776-1800	355	300	232	162	93	24				

Schedule continued on next page

Attachment F

PARENTS QUESTIONNAIRE—Juvenile Costs of Council Study

Interviewer _____ County _____

The following questions are being asked as part of a study being conducted by the Office of the State Public Defender at the request of the Wisconsin Legislature. The purpose of the study is to determine whether and in what manner parents should be required to contribute to the costs of legal representation for their minor children. Your responses will be anonymous; that is, neither your name nor any identifying information will be recorded. There are presently no requirements or proceedures for you to contribute to the costs of legal representation and your response to these questions will not lead to any costs being assessed. Your cooperation in our efforts to complete this study are appreciated.

1. Type of Case: Delinquency ___ CHIPS ___ Other(explain) _____

2. Child is living with: Both parents ___ One parent(which) _____ Relatives _____
Out-of-home placement ___

3. Family size(#) _____

4. Financial Data:

(a) Parent(s) are employed ___
Parent(s) are unemployed ___
(b) Take home monthly pay of parent(s) $ _____
(c) Parent(s) receive monthly welfare, disability, pension, social security, or child support payment(s) totalling $ _____
(d) Family has the following assets valued as shown:

		Yes	No	Value/Equity
1.	Savings account			
2.	Checking account			
3.	Cash			
4.	Miscellaneous funds			
5.	Money owed			
6.	Stocks and/or bonds			
7.	Real estate			
8.	Autos or other vehicles			
9.	Personal property			
10.	Life insurance			
11.	Other assets not listed above:			

5. If you were told that you had to pay for the legal representation of your child, would you use the public defender services or would you hire your own attorney?

6. If you were to pay for public defender services, would you expect the attorney to represent your wishes or desires as well as your child's? Yes ___ No ___

7. If you were to hire a private attorney would you expect him/her to represent your wishes or desires as well as your child's? Yes ___ No ___

8. Regardless of your ability to pay for an attorney, would you be willing to hire an attorney for your child? Willing ___ Unwilling ___

Question for Attorney:

In your opinion, do you perceive a conflict of interest between parent(s) and child in this case? Yes ___ No ___

END