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Assembly Bill 784: Appointment of Counsel in CHIPS Proceedings  
Testimony of State Representative Joan Ballweg  
Assembly Committee on Judiciary  
January 30, 2018

Thank you, Chair Ott, and members of the Committee on Judiciary for holding this public hearing on AB 784.

You've heard myself, fellow legislatures, and Governor Walker all refer to the work of First Lady Tonette Walker's Fostering Futures initiative that promotes Trauma Informed Care and Early Childhood issues. In 2011, her steering committee formed an advisory committee that included state agencies, healthcare and county organizations, the courts and legislators. I was one of the four members that had the opportunity to dive-in to the issues affecting Wisconsin children.

Because of these connections, I was invited to participate in a conference sponsored by the American Bar Association on Parent Representation. State Public Defenders, private bar attorneys, and judges attended to hear about best practices that help the courts run more effectively and efficiently by getting children to permanency sooner. The result of this work is the proposal before you, developed with the State Public Defenders office, over the last three years. The Speakers Task Force on Foster Care has heard that this is a priority for the courts, so I am proud that this proposal is included in the recommendations from the task force.

Based on additional feedback from the courts, we introduced a substitute amendment to address the concerns that the language as drafted accidentally created an equal protection concern because it established a right to representation in the counties in the pilot program and not in other counties. The substitute amendment adjusted some language and more clearly separates the pilot program from the rest of the statutes that affect legal representation in CHIPS proceedings. My description of what the bill does will therefore be based on the substitute amendment.

AB 784 authorizes the State Public Defender (SPD) to create a pilot program to provide legal representation to parents whose children are the subject of a Child in Need of Protective Services (CHIPS) petition. The goal of this proposal is to provide legal representation to biological parents so they have the ability to follow the Court's orders at the initial hearings and not cause delays if the case proceeds to termination of parental rights. This will improve outcomes for children in protective services by providing a quicker path to permanency either by reunification or adoption.

Studies in other states have shown measurable cost-savings to the state and counties as well as increases in rates of reunification, adoption, and guardianship and a decrease in the number of Termination of Parental Rights (TPR) petitions. Similar pilots were done in New York and

Washington State, and eventually expanded to statewide programs because of their positive results:

- From Washington State (piloted 2002-2005)
  - Average days to permanency dropped from 344.8 to 251.9 (equates to foster care cost savings)
  - 44% decrease in TPR filings
  - 39% increase in reunification
  - 104% faster to adoption, 83% faster to guardianship
- From New York State
  - Estimated \$2,340,837 in foster care savings between July 2007 and March 2008
  - 10.2% reduction in re-entry of children to foster care

Wisconsin's SPD has provided legal representation to parents involved in CHIPS cases in the past, but in 1995 the state passed a law preventing this. Subsequently, TPR cases filed increased 81% the next year. Law prohibiting the state from providing legal representation was ruled unconstitutional in 1996 by the Wisconsin State Supreme Court. The Legislature, to date, has not addressed this issue.

AB 784 creates a 5 county (Brown, Outagamie, Winnebago, Racine, and Kenosha), 3 year pilot program with data collection and reporting requirements to determine the programs efficacy. The cost of the pilot program this biennium is \$739,600. The SPD's office advises that it does not need additional staff to provide representation, but instead will use additional funding to appoint cases currently assigned to staff attorneys to private bar attorneys. In addition, funding for private bar representation for adults in these cases is also required as SPD staff attorneys cannot represent both parents in one case, if applicable. If the pilot proves to be effective, then the legislature can consider expanding this to more counties.

The Wisconsin Association of Family & Childrens Agencies and the Wisconsin Chapter of the National Association of Social Workers registered in favor of this bill.

Thank you for your consideration of AB 784, and I am happy to answer any questions.



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Assembly Committee on Judiciary  
Assembly Bill 784  
Tuesday, January 30, 2018

Chairman Ott and members,

Thank you for having this hearing on Assembly Bill (AB) 784. The State Public Defender would like to thank Representative Ballweg for her dedication to this issue and for introducing this legislation following the work of the Speaker's Task Force on Foster Care co-chaired by Representatives Snyder and Doyle.

AB 784 creates a pilot program to provide legal representation for parents who are the subject of a Children in Need of Protection and Services (CHIPS) petition or order. The pilot program would operate for three years and includes five counties - Brown, Outagamie, Winnebago, Racine, and Kenosha. These counties were identified based on the following reasons:

- They do not regularly appoint private attorneys at county expense to represent parents in CHIPS proceedings.
- They have a sufficient number of CHIPS filings to be able to determine if the pilot program has been successful.
- The SPD offices that provide representation in those counties have the infrastructure and staffing to participate in the pilot with minimal disruption to the office and criminal justice system.

Essentially, the bill provides funding to free up enough staff attorney time to handle the additional cases by appointing some of their current caseload to certified assigned counsel attorneys. It also provides funding for the cases in which there are two parents involved in a case. In that situation, SPD staff could represent one parent but the other parent would present a conflict of interest and would need representation from an assigned counsel attorney.

Currently, SPD is only authorized to provide representation for any child who is the subject of a Juvenile in Need of Protection and Services (JIPS) order, CHIPS order, or is accused of having committed a delinquent act.

Specifically regarding representation in CHIPS cases, SPD is only authorized to provide representation for children. In the very limited circumstance of an Indian Child Welfare Act case, SPD is able to provide representation for the parent as well.

Before 1995, SPD was authorized to provide representation for both the parent and child in a CHIPS proceeding. The 1995 state budget, in an effort to reduce expenditures, removed the ability for the SPD to represent parents in the CHIPS proceeding. As we will go into shortly, this change carried cost implications at other levels of state government and we have also seen an increase in the number of termination of parental rights cases in which the SPD provided representation. There was an 81% increase in TPR filings the year following this change, and there has been a 340% increase in TPR

filings in the last two decades. One of the issues driving that increase is a lack of representation for the parent in the CHIPS proceeding, which makes it more difficult for the parent to meet conditions of the CHIPS order.

In an effort to determine whether the savings anticipated by the 1995 budget were realized, SPD looked at the assumed savings in the 1995 budget bill of \$1.5 million. Based on the actual decrease in the number of cases and the average cost of a CHIPS case, the realized savings was closer to \$340,000. Conversely, the increase in costs related to TPR cases in the first year was approximately \$147,000.

Although the net result was a savings, it was significantly less than anticipated in terms of direct spending on SPD representation, and the change also arguably drove additional costs elsewhere in the system. Aside from the fiscal impact, the resulting shift to increased TPR filings has a direct impact on children, parents, and the foster care system.

The statutory intent of Chapter 48 in general can be found in s. 48.01, which makes clear that the ultimate goal of the Children's Code is to determine the best interests of the child. The first stated goal is to assist parents in changing any circumstances in the home that might harm the child. The next sentence states that courts should recognize they have the authority not to reunite the child with their family. In sum, while making appropriate allowance for either temporary or permanent removal of the child, the assumption is that the best interests of the child should first be to preserve the unity of the family.

When viewed in that context, a Child in Need of Protection and Services order can be seen as an opportunity to assist parents in fulfilling their responsibilities. A CHIPS petition and order can highlight the need and opportunity for a parent to succeed. In setting the conditions in the CHIPS order, the court will look at parental needs and order education, training, and services as appropriate. Sometimes the order is achievable by a conscientious parent dedicated to meeting the terms. Other times, individual conditions in the order are simply unachievable. We have seen conditions placed on parents such as required drug or alcohol treatment within 6 months. Unfortunately, the only available treatment program had a 9-month waiting list. Although this is an extreme example, it demonstrates one of the consequences of not providing counsel for parents in CHIPS proceedings. Counsel can work with clients to determine their individual needs and ability to obtain the services necessary. While drug treatment, employment, education, and parenting skills are frequent subject of a CHIPS order, each parent has a varying degree of need and ability to fulfill those requirements.

A parent appearing in court on a CHIPS proceeding without counsel has a difficult time understanding the proceeding generally and a difficulty assessing his or her ability to comply with the court order before it is set. An attorney can advocate to clarify the client's needs for the court and can explain to the client the practical implications of complying with a court order. Something as simple as trying to balance maintaining a job while attending treatment or classes during normal working hours can often be enough to set up parents to fail before they've even had an opportunity to make a good faith effort to comply with the CHIPS order.

Since the 1995 change, there have been a few counties that regularly appoint an attorney at county expense for the parent in a CHIPS proceeding. Other counties will make appointments occasionally. With the help of the Wisconsin Counties Association, SPD was able to gather data from 41 counties about the hourly rate and total amounts paid for these appointments. The average hourly rate from these counties was \$71 per hour, and the average annual expenditure was \$49,000.

One of the advantages of Wisconsin's indigent defense system is that it is a statewide agency employing both staff attorneys and assigned counsel (to handle conflict-of-interest cases). In the context of representing parents in CHIPS proceedings, conflicts of interests are common because each parent and child may have a different perspective and desired outcome regarding the court hearing. SPD can provide the representation, removing this responsibility from the county, and SPD can assign separate and independent attorneys for the parents and children in a CHIPS proceeding. SPD representation also allows for more consistent training and practices statewide.

There are a few states that provide representation for parents at the CHIPS stage of juvenile proceedings. Unfortunately there have not been many studies which have looked at the impact of providing representation. There are two, however, that I wanted to highlight for the task force.

First, Washington State began a pilot project around 2000 in a few counties and has expanded the project now to cover about half of the state. In 2012, a study was conducted by the University of Chicago and University of Washington on the efficacy of representing parents. The study was commissioned with an assumption that providing attorneys for the parent increased the amount of time it took for the child to reach permanency. What the study found was just the opposite. In counties in which parents were represented, children reached permanency 11% faster for reunification, 83% faster for guardianship, and 104% faster for adoption. Overall, the average number of days to reach permanency dropped from 344.8 to 251.9. Additionally, there was an 11% increase in reunification rates, a 102% increase in guardianship rates, and an 83% increase in adoption rates. Finally, Washington noted a 44% decrease in the number of termination of parental rights petitions filed. If permanency in placement is the best outcome for the child, these results suggest that representing the parent in the CHIPS proceeding not only gets there faster, but at a greater rate of permanency.

Second, a 2008 survey in New York State showed a savings in the foster care system of about \$2.3 million in the 9 months between July 2007 and March 2008. Their findings also showed a 10% reduction in re-entry of children to foster care in cases where the parent was represented.

These two key studies show both a fiscal and a social benefit to providing representation for parents in CHIPS proceedings.

Since the ability for SPD to represent parents was removed, we have heard from many legislators about the impact that the change has had on families statewide. Interest in reauthorizing SPD to provide this representation usually is limited by the potential fiscal impact. With more data becoming available and a growing national network looking at this issue, we are getting more information to be able to quantify the positive impact this change would have. A recent re-estimate on the cost to have SPD provide this representation statewide came up as approximately \$4 million. This is the cost both to hire additional staff attorneys as well as funding to pay for the increased number of cases appointed to assigned counsel and costs for ancillary expenses such as discovery, experts, and transcripts.

Studies like those from Washington and New York allow us to help identify potential cost offsets such as the following:

- A reduction in the number of TPR cases in which the SPD provides representation as well as the savings to corporation counsel, district attorneys, and courts from not having to handle as many TPRs.
- As a result of a faster path to permanence, a reduction in the number of days a child is placed in foster care.

- A reduction of expense at the county level by not having to appoint counsel for parents in all CHIPS cases.

Thank you again for this opportunity to testify in support of Assembly Bill 784. By providing consistent, effective representation for the parents at the CHIPS proceeding, the chances for more timely and permanent placement increase measurably.



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Written Testimony  
Of  
Jason A. Rossell  
Chief Judge 2<sup>nd</sup> Judicial District  
Kenosha County Circuit Court Branch 2  
For Informational Purposes  
Assembly Judiciary Committee, Rep. Jim Ott, Chair  
2017 Assembly Bill 784  
Counsel for CHIPS Parents

I sincerely appreciate the opportunity to appear and testify regarding providing counsel to CHIPS parents. My name is Jason A Rossell; I am the Circuit Court Judge for Branch 2 of Kenosha County Circuit Court and a Member of the Wisconsin Judicial Committee on Child Welfare. I have been assigned to the Juvenile Court for the past 6 years. I am writing on my own accord and I do not represent the entire judiciary.

The statutes currently prohibit the Court from appointing counsel to parents in CHIPS (child in need of protection or services) cases. This portion of the statute, however, was invalidated by the Supreme Court in Joni B v. State, 202 Wis. 2d 1, (1996). Since that time, Courts have in various degrees and methods appointed counsel for parents in these cases. Many of the parents involved in CHIPS cases are in poverty and unable to afford counsel at their own cost. Therefore, many parents go through the system without representation.

When I first came to the Juvenile Rotation, my belief was that parental representation slowed down cases and made things more difficult. I was wrong. At the time in Kenosha, appointment of counsel was left up to the Judge's discretion and parents were rarely told they could ask for an attorney. After being informed of the research regarding parent representation causing increased permanency and having further discussions, we started informing the parents about their right to ask the Court for an appointed attorney.

In Kenosha over the last four years, we have tracked our Child Welfare data to determine the effectiveness of practices and procedures. Between October 2012 and December 2016, Kenosha County increased the percentage of parents appointed attorneys in CHIPS matters from 31% to 54% and reduced the average numbers of days in care for children from 423 days to 280 days. This data is indicative of national studies reviewing the effectiveness of parent's counsel. Research has shown that quality and effective legal representation, starting at the initial

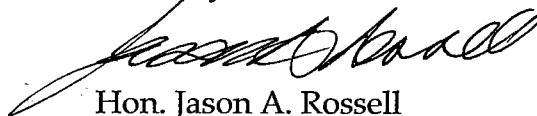
proceeding, can lead to increased permanency for children and ultimate cost savings for the state and counties.<sup>1</sup>

In addition to tracking the outcomes, Kenosha County Circuit Court has provided training to attorneys regarding these cases to improve their abilities to represent parents. We have seen many benefits including fewer case adjournments and more time effective hearings. Judges, prosecutors, and caseworkers are not put in the position of providing legal advice to pro se parents. Most importantly, we have seen that having an attorney with his/her interests in mind allows for better parental engagement with caseworker and services. They can focus on the plan of getting their children home instead of the legal process. This is invaluable to our system.

Like many areas in Child Welfare, the Court must be careful to appropriately use the County's resources and for that reason, Kenosha has not been able to appoint counsel in every case. The proposed pilot project with accompanying data review will hopefully demonstrate that effective parental representation will save money and resources for both the State and the Counties.

Thank you for your time and consideration.

Sincerely,



Hon. Jason A. Rossell

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<sup>1</sup> See *Representation of Parents and Children in Abuse and Neglect Cases: The Importance of Early Appointment*, Judge Leonard Edwards (Spring 2012); *Court-Based Child Welfare Reforms: Improved Child/Family Outcomes and Potential Cost Savings*, Elizabeth Thornton (August 2012); and *Evaluation of the Impact of Enhanced Parental Legal Representation on the Timing of Permanency Outcomes for Children in Foster Care*, Mark E. Courtney, Jennifer L. Hook, and Matt Orme (February 2011).

One study in Washington State found that providing representation to parents where the attorneys had limited caseloads and were highly trained as part of a Parent Representation Program (PRP) resulted in the following outcomes for children and families:

- Children were reunified with their parents 11% faster.
- Reunification with a parent occurred approximately one month sooner, saving an estimated \$374 per child in foster care maintenance payments. If all children in the study who ultimately reunified with a parent were able to reunify one month sooner, the public would have saved \$3 million annually.
- Children were adopted 104% faster and entered guardianship 83% faster. For these children in counties with PRP who could not be reunified with a parent, their adoptions and guardianships were accelerated by approximately one year when compared to children in counties without PRP.





**Testimony on AB784**

**Assembly Committee on Judiciary**

**Shel Gross, Director of Public Policy**

**Mental Health America of Wisconsin**

Mental Health America of Wisconsin (MHA) supports AB784. For more than 10 years MHA's Strong Families/Health Homes (SF/HH) program has served parents with mental illnesses who have dependent children in the home. Many of these parents have had their children removed, often due to the impact of the parental mental illness on the ability to parent. SF/HH provides support to the parent, facilitates access to treatment for both the parent and the child, teaches parenting skills and supports the parent's recovery. The program has been very successful, and with regard to families involved with the child welfare system has achieved an 86% reunification rate.

Parents whose children have been removed from the home can be viewed in a negative light. But parents who are experiencing mental illnesses are not "bad" they are "ill". It is clear from our experience that with the proper supports they can and do recover and can be good parents. This is the outcome I believe all of us want to see.

MHA believes that the ability for the parent to have a public defender will facilitate the parent's involvement in the proceedings and will ensure that the parent's needs, as well as the child's needs, will be addressed to the long-term benefit of both.

We urge your support of this bill.

Thank you.

[www.mhawisconsin.org](http://www.mhawisconsin.org)

