Alberta Darling

Wisconsin State Senator

Co-Chair, Joint Committee on Finance

Testimony before the Senate Committee on Judiciary and Public Safety
Senate Bill 652

Thank you Chair Wanggaard and committee members for holding a hearing on Senate Bill 652. This bill will help Wisconsin's foster youth find permanency faster by eliminating a nine month look ahead period in certain termination of parental rights (TPR) cases.

In Wisconsin, approximately 7,000 children are living in out-of-home care at any given time. According to data from the Department of Children and Families, the median length of stay in out-of-home care is about 11.5 months. During this time, a child will undergo an average of three placements. However, these averages are not the case for every child, especially older foster youth, who have much longer stays in the system and sometimes can have ten or more changes in placement.

National data has demonstrated the need for children to find permanency faster. In fact, the data on youth who never find permanency and age out of the system is striking. In Wisconsin, 6.1% of our foster youth age out of the system. According to data from the National Conference of State Legislatures, foster youth who age out of the system are 5 times more likely to become homeless, have only a 58% high school graduation rate, and have a 25% incarceration rate within 2 years of leaving foster care. Reducing the length of stay and improving permanency rates is crucial to the welfare of our foster youth.

Senate Bill 652 alters current TPR procedures in order to improve permanency rates for foster youth by eliminating a nine month look ahead element. Under current law, a petitioner in a TPR case must prove that there is substantial likelihood that the parent will continue to fail to provide a safe home for nine months beyond a fact finding hearing. This requirement unnecessarily drags out TPR proceedings.

Senate Bill 652 states that if a child has been out of the home for less than 15 months, the petitioner must still show there is a substantial likelihood the parent will continue to fail to provide a safe home for re-entry at the time the child has been out of the home for 15 of the most recent 22 months. However, if a child has already been out of the home for 15 months, Senate Bill 652 establishes that there is no need to consider the parent's likelihood to meet the conditions established for a safe return in the future.

The current TPR procedure is failing kids who have already been in the system for too long. A child who has already been in out-of-home care for 15 or more months deserves permanency, and should not be held into a prolonged TPR case to consider another prospective nine months. Senate Bill 652 maintains parents' rights by still considering a parent's ability to create a safe home environment for children who are in the system for less than 15 months, while streamlining TPR cases to increase permanency for foster youth who have been in the system for more than 15 months.

I'd like to thank Representatives Kitchens and Doyle for their work on this bill. I urge your support on Senate Bill 652.

JOEL KITCHENS
STATE REPRESENTATIVE • 1ST ASSEMBLY DISTRICT

Testimony for the Senate Committee on Judiciary and Public Safety
Senate Bill 652
Tuesday, January 30th, 2018

Thank you Chairman Wanggaard and committee members for holding a public hearing on Senate Bill 652. I apologize I could not attend today's hearing. This bill amends state statutes regarding the showing of a substantial likelihood that a parent will not meet the conditions established for the safe return of the child to the home in a termination of parental rights proceeding.

I don't want to spend my testimony focused on the technical aspects of these proceedings, CHIPS orders or court timelines. There are testifiers who will speak to you today, such as Judge Foley, who are far more qualified to discuss those details. I want to focus on why we need this bill.

Through public hearings with the Speaker's Task Force on Foster Care, and through my discussions with my local county human services directors and my own constituents involved in the foster care system, the length of the termination of parental rights proceedings is something we heard over and over and over again. To me, this stood out as one of the primary deterrents to a child reaching permanency, happiness and success.

This change to termination of parental rights, or TPR, proceedings must occur in order to achieve a timely permanence for the child. Ongoing TPR proceedings are hindrances for foster parents, to adoptions, and to the good of the child involved. The extra months that this takes up and that these proceedings drag on may seem a minor inconvenience to us, but to the child, this is a prolonged period of confusion and uncertainty, and of not having a home they know is theirs.

To put this in the simplest of terms; this bill is for the good of the child involved. A quote that has always stuck with me that I remember from one of our Task Force hearings was when an individual testifying asked us, "Is this the child welfare system or the parent welfare system?"

Our responsibility as a state is to the children. While I can sympathize that the parents are perhaps in difficult stages of their lives, our primary concern must be achieving timely permanency for the child, and this bill will make that just a little bit easier.

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I want to thank my co-authors Representative Doyle and Senator Darling for their support and thank the Speaker's Task Force on Foster Care for giving us all the opportunity to delve into this important issue and address the concerns we heard from those involved in the child welfare system.

Thank you for taking the time to consider my testimony and I hope you will support this great bill.

STATE REPRESENTATIVE
STEVE DOYLE

WISCONSIN STATE ASSEMBLY

94TH DISTRICT

TO: Chairman Wanggaard, Vice-Chair Testin and Members of the Senate Committee on Judiciary and Public Safety

FROM: Representative Steve Doyle

DATE: January 30, 2018

RE: Written testimony in support of Senate Bill 652 and Assembly Bill 775

Thank you for holding a public hearing on Senate Bill 652 and Assembly Bill 775, eliminating the 9 month look ahead period in termination of parental rights (TPR) proceedings. As you know, this proposal came out of the Speaker's Task Force on Foster Care, which I had the honor of co-chairing with Rep. Pat Snyder, and is part of the Foster Forward legislative package. AB 775 was drafted at the request of foster parents, judges, and district attorneys and is designed to help streamline the TPR process and prevent children from being stuck in the foster care system for years on end.

Under current law, involuntary TPR cannot occur unless a court finds that one or more statutory grounds for TPR exist. One of these grounds is if the child is in continuing need of protection services which includes the requirement that it be shown that there is "substantial likelihood" that the parent will continue to not be able to meet the conditions established for the safe return of the child within the next nine months. This is known as the "9 month look ahead."

One of the frustrations we heard on our tour across the state was that of foster parents whose foster children were stuck in legal limbo. Often, their biological parents' rights had yet to be terminated despite ample evidence to do so because it was difficult to determine how a parent would be doing in 9 months. In other cases, a parent would sporadically comply with their CHIPS order only to "drop off" after a few months and cause the 9 month cycle to begin again. This has led to unnecessary delays in TPR cases and prevented foster children from being available for adoption.

This bill removes the requirement that this 9 month prediction be made in order to meet this grounds requirement. Instead, if the child has been placed outside their home by a CHIPS order for less than 15 of the past 22 months (the federal standard), the court must find that the parents will not meet the conditions for a safe return by the time they reach 15 of the last 22 months. This ensures that TPR will not occur too quickly but prevent the child from being stuck in legal limbo.

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During the Task Force's public hearing in La Crosse, several of our local judges testified in favor of this proposal. They believe this change will result in less litigation, time and resources since the court will no longer be required to predict a parent's compliance with a CHIPS order.

I hope you will support this proposal to help streamline the TPR system and unite foster children with their forever families in a safe and timely manner. Please feel free to contact my office if you have any questions on this proposal or any of the others in the Foster Forward package.

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Written Testimony
Of
Jason A. Rossell
Chief Judge 2nd Judicial District
Kenosha County Circuit Court Branch 2
For Informational Purposes
Senate Committee on Judiciary and Public Safety, Sen. Van Wanggaard, Chair
2017 Senate Bill 652
Continuing CHIPS Ground for TPR

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 am assigned to the Juvenile Court for the past 6 years and have conducted many termination of parental rights cases. I am writing on my own accord and I do not represent the entire judiciary.

Termination of Parental Rights (TPR) cases are two-part cases with the jury or judge determining if grounds are proven in the first part and then the judge determining if it is in the best interests of the child to ultimately terminate the parental rights. Termination of parental rights cases can be some of the most complicated cases heard by juries in Wisconsin.

For children in foster care, the most common ground alleged is the continuing need of protection or services ground. This ground requires proof that the child has been placed under Court jurisdiction as being in need of protection and services and the following elements have been proven: 1) that the child has been in out of home care for 6 months or more; 2) the child welfare agency has made a reasonable effort to provide the services ordered by the court; 3) the parent has not met the conditions of return; and 4) there is a substantial likelihood that the parent will not meet the conditions of return within the 9-month period following the hearing in the TPR. This final element causes juries and judges the most difficulty since it requires them to look into the future and make predictions.

This difficulty results in delays for filing these cases while the petitioners wait for more time to pass in order to establish this ground. This additional time harms the children in out-of-home care who are denied a permanent home. It also insufficiently motivates the parents to work on the conditions of return since there is no definite timeline a parent can consider when working on the conditions of return.

The proposed change will result in a more definite standard based on the federal requirements for permanency. While it will still require judges and juries to speculate about the future, it provides a definite time frame. Additionally, it establishes a 15-month timeline, which will increase the timeliness of parent's efforts and children's permanency. This will assist children and families of Wisconsin.

Thank you for your time and consideration.

Sincerely,

Hon. Jason A. Rossell

Testimony Regarding SB ~~654~~ 652 (Eliminating the 9 Month Predictor in TPR Cases)

Thank you for considering my written testimony. I apologize that I am not available to be there in person today. My name is Eve Dorman. I am currently an Assistant Corporation Counsel here in Dane County where I prosecute CHIPS and TPR cases and provide advice and counsel to the department of Human Services. I am here representing the Dane Co Corporation Counsel's office. I have served in this role for a little over 14 years. Prior to my work here, I worked in Cook County as an attorney for DCFS and, for a number of years before that, as a social worker for emotionally and behaviorally disturbed children in foster care. That work was in the early 1990's before the passage of AFSA – my caseload of children were reviewed by a court only once every 18 months with no push whatsoever so get them to any form of legal permanency. My caseload then, and caseloads like it everywhere, were the reason ASFA was passed.

As you likely know, acting on a presumption that children lingering in foster care is not in their best interest, ASFA requires states to file a TPR when a child has been out of home for 15 of the prior 22 months unless there a good cause not do so. Good cause is specifically defined in the federal law, and includes cases in which a child is placed with a relative. A TPR also cannot be filed in good faith where the prosecutor does not believe that s/he can prove each element by clear and convincing evidence.

I do want to note that the Dane County Department of Human Services is committed to making every effort toward reunification and has been committing ever more resources to services at the front end of cases. It is a small percentage of cases (20-30% in my estimation) that actually do go to TPR. I should also note that it is common in Dane County that we do not file right at the 15 month mark. It is often closer to two years in out of home care before these cases are filed.

The statute under consideration here is Sec. 48.415(2). In those cases that do go to trial, this is by far the most common ground and by far the one most likely to go to trial. The last element of this ground is that there is a "substantial likelihood that the parent will not meet these conditions in the nine months following" the fact-finding hearing. When I started here in 2003, the timeframe of the predictor was 12 months. In 2005, it was shortened to the current 9 months. This predictive element works to delay permanency for children at several stages of the proceedings.

First, vagueness of the substantial likelihood requirement also delays filing for TPR and permanency because we as prosecutors don't know what it means. In reviewing cases for possible filing we have to consider whether we have sufficient proof on that element. If we don't, we are prohibited by ethical rules from filing, which further delays permanency for children – the exact opposite of the result sought by ASFA and Ch. 48. The predictor enacted in Wisconsin law needlessly delays permanency for many many children by creating unpredictability and uncertainty in a key element of the primary ground used in these cases.

Second, part of the reason these cases are so likely to go to trial is that parents can always argue the 9 month predictor – they just need one more chance, they will change and do better. Often with the pressure of a pending TPR a parent will start drug treatment or mental health counseling and do just enough that they have an argument that they can meet the conditions in the following nine months despite what is, at that point, often close to two years of treatment failures.

Third, the predictive element in this statute also makes these trials significantly longer and more complex as old information becomes relevant to show a pattern of behavior that is probative to the question of whether a parent is likely or not to meet the conditions in the future. *See, Tara P. v. LaCrosse County Department of Human Services,* 252 Wis.2d 179 (2002), 643 N.W.2d 194, 2002 WI App 84. In Dane County these trials are often a week long. Finding that much time in the court's calendar requires that these trials be set out 4-5 months – much longer than the 45 days that the statute contemplates. *See* Sec. 48.422(2) Wis. Stats.

Finally, asking a jury to predict human behavior, particularly human behavior in a context with which they may have little if any real-world experience, such as severe mental illness or drug abuse, is setting them an impossible task. Most of the attorneys in my office actually use a crystal ball analogy when we describe this requirement to juries. Currently the statute asks juries to predict whether a parent is substantially likely to fail to meet the conditions for return, which is confusing in itself. Again, there is very little legal guidance on what "substantial likelihood" means or what that would look like in real life. Juries don't want to guess, they want to rely on facts; particularly in a TPR case where they understand that their decision has a tremendous impact on the parent and child even if they don't make the final decision on TPR. The only thing we can tell them is to look at past behavior by the parent - the same evidence that will come in already on the third question of this ground (whether or not the parent has met the conditions at the time of filing of the petition). Thus, ultimately evidence offered on the 9-month predictor does not add anything the information a jury has to make the decision about whether continuing need of protection or services has been proven. Additionally I am not aware of any other verdict on any other type of claim in Wisconsin that asks a jury to predict future behavior.

The purpose of ASFA and our own Ch. 48 is expressly to eliminate kids remaining in out of home care for an unreasonable time while their parents attempt to correct the problems that brought them into care. That is the reason that ASFA expressly requires filing at the 15 month mark absent a specific exception. The nine month predictor (and any predictor really) does not serve any legislative purpose outlined in Ch. 48 and instead, offers a parent more time with very little legal guidance. Presumably they have had something approaching 15 months to make changes and show they are serious about meeting the conditions for return. Then they get 4-6 months while the case is pending before trial (again I speak for Dane County), then if there is an appeal, there is another 6-8 months before the TPR decision is final.

I believe it is helpful to review the purposes of ASFA as you consider this legislation.

These are notes from the congressional record from ASFA at a time when 500,000 children were languishing in out of home care:

The Adoption and Safe Families Act of 1997 is most significant in its focus on moving children out of foster care and into adoptive and other positive, permanent placements. If American child welfare policy does not succeed in providing a real sense of belonging and identity to children living in the foster care system, we will be denying these young people the fundamental supports they need to become satisfied and caring adults. It would be a tragedy to write these children off as a lost generation, just another group of children from broken homes and a broken system who just didn't get enough support to make a difference.

Every child deserves a safe, loving, permanent family. For a lot of us, it's inconceivable that this most basic need is out of reach for hundreds of thousands of children across the nation. Although we've tried to provide a safety net to protect children at risk of abuse or neglect, that safety net is failing all too many children. The problem does not lie with the vast majority of foster parents, relatives and caseworkers who work valiantly to provide the care needed by these children. ***Rather, the problem is the system itself, and incentives built into it.*** On one end, it's allowing children to slip back into abusive homes; on the other end, it's trapping them in what was supposed to be ``temporary'' foster care, instead of moving them into permanent homes.

The legislation proposed here preserves the time limits envisioned by ASFA. Parents have 15 months to make changes toward having their children returned. It preserves a predictor if a child has not yet been out of home for 15 months, thus ensuring that parents retain the timeframe envisioned by ASFA to make changes. Children are asked to wait in out of home care for 15 months, but hopefully not longer. If a child has already been out of home for 15 months, it eliminates the predictor with the rationale that parents have had the time envisioned by ASFA to make change. The balance struck by Congress in passing ASFA was a reasonable one and should be reflected in the TPR statutes here in Wisconsin. With numbers of children in out of home care edging up again, we need to make sure that prosecutors have the tools they need to pursue permanency in a timely and efficient fashion

Thank you again for your consideration.