



PATRICK TESTIN

STATE SENATOR

DATE: November 21st, 2019
RE: Testimony on 2019 Assembly Bill 512
TO: The Assembly Committee on Judiciary
FROM: Senator Patrick Testin

Thank you to Chairman Ott and the members of the committee for the opportunity to present testimony on Assembly Bill 512 (AB 512). This bill establishes a student loan repayment pilot program for rural public defenders.

Currently, approximately 64% of attorneys practicing in Wisconsin are located in Milwaukee, Dane, or Waukesha Counties. That means that only a little more than one third of our state's attorneys are practicing in the remaining 69 counties.

Unfortunately, as many counties are facing shortages, caseloads for public defenders have become more burdensome. The average Wisconsin public defender is responsible for handling a caseload that is 125% of what the American Bar Association recommends. By increasing the number of private attorneys in rural areas willing to take on public defender appointments, we reduce the work pressure on our public defenders. This keeps the scales of justice even by helping ensure that rural Wisconsinites have access to a qualified defense attorney.

AB 512 incentivizes attorneys to practice in rural counties by offering them \$20,000 per year in loan assistance or the balance of their student loans (whichever is less) to be used for the student loan repayment. To be eligible, the attorney must maintain a law practice or demonstrate that their practice conducts a majority of its work in one of Wisconsin's counties with less than 25,000 residents. Additionally, the attorney must be licensed to practice in Wisconsin, must be certified to accept state public defender appointments, must accept a minimum of at least 50 state public defender appointments per year, and have outstanding student loans.

The 6th Amendment to the U.S. Constitution guarantees every citizen the right to a speedy public trial and the use of counsel. By ensuring the availability of counsel in rural areas, this bill helps also ensure the availability of a timely trial.

I hope you will join me in support of this bill.



RON TUSLER

STATE REPRESENTATIVE • 3rd ASSEMBLY DISTRICT

**Testimony Before the
Assembly Committee on Judiciary**

on

**Assembly Bill 512
November 21, 2019**

Mr. Chairman and members of the committee, thank you for the opportunity to comment on Assembly Bill 512. This bill establishes a two-year pilot program that incentivizes attorneys to relocate to rural counties, defined as a county with a population of 25,000 or less.¹ In each year of the program, attorneys will be eligible to receive up to \$20,000 in loan repayment assistance if they take at least 50 public defender appointments and maintain a law practice or conduct a majority of their legal work in a rural county. This pilot program will help remedy two issues that face rural Wisconsin: 1) client conflicts that prevent staff public defenders from taking on cases, compounded by extremely high caseloads; and 2) providing access to quality legal services in rural Wisconsin.

Attorneys' rules of professional conduct include provisions that describe conflicts between clients.² These rules exist to ensure that an attorney can zealously represent their clients. In the criminal context, especially when a defendant may face time in jail, having an attorney who can represent their client's interests is of the utmost importance. Rural staff public defenders have been prevented from taking on clients because of conflicts. Often these conflicts arise because the public defender represents or has represented someone who was involved in the same crime or is in the same family, among other potential conflicts.

To aggravate this client conflict problem, Wisconsin's public defender caseload is approximately 125% of the recommended American Bar Association caseload for public defenders. At any given time, a Wisconsin public defender will have 60-75 active cases and approximately 300 clients per year. The answer is not simply having a staff public defender take another case.

The current, unsustainable solution to this problem is having the Office of the State Public Defender (OSPD) find private bar attorneys to take cases. Private bar attorneys frequently do not take public defender appointments, especially in a rural county, because the reimbursement rate is low and the time involved to meet a client and appear in court takes away from the attorney's own clients. The OSPD's office is currently spending thousands of dollars to find attorneys from around the state to take cases in our rural counties.

¹ A list of counties affected by the legislation is attached.

² See generally Wisconsin Supreme Court Rules Chapter 20, Subchapter 1.

For example, OSPD is spending tens of thousands of dollars to hire private bar attorneys elsewhere in the state to drive to the Ashland and Bayfield Counties—often multiple times to meet with and appear for a client—and spend time actually representing the client and putting together a defense. Ashland and Bayfield Counties are only two of the 26 counties that would benefit from this pilot program. Having attorneys in rural areas available to take public defender appointments would save money currently being wasted on mileage and drive-time reimbursement.

The second issue that this program addresses is legal services scarcity in rural Wisconsin. Nearly half of all lawyers in Wisconsin work in the state's seven most populous counties.³ "Wisconsin has 24 counties with 20 or fewer attorneys practicing in the county. . . . Of the Wisconsin counties with 20 or fewer attorneys, all counties except three have 10 or fewer attorneys practicing in the areas of criminal law, family law, juvenile and children's law, or general practice."⁴

Not only are there few attorneys providing quality legal services in our rural communities, but 53% of the state's 17,000 attorneys are age 50 or older.⁵ Rural Wisconsin communities have seen young, highly educated professionals leaving to find work in our major cities. These young professionals include attorneys. The fact is, there *is* legal work available in rural communities across Wisconsin. As rural attorneys grow closer to retirement, less and less legal talent is moving into rural Wisconsin to fill needed positions. One of the barriers to entry is student debt, an often necessary evil for law students.

In addition to the pilot program's public defender appointments requirement, these private bar attorneys will be required to maintain a law practice or conduct the majority of their legal work in a rural county. This pilot program will inject youth and needed legal talent into our rural communities. Further, once an attorney has established a practice in a community, it lessens the likelihood that he or she will leave the community and their client base and start fresh elsewhere. According to the Wisconsin State Bar:

Encouraging attorneys to settle in rural areas to practice benefits the whole community. Professionally, what starts as a criminal defense attorney often turns into a general practice attorney to address the needs of the community as they inevitably expand their practice to estate and family issues, among others. Settling into a community

³ Christopher Shattuck, *Going Rural: Insights from Park Falls to Monroe*, WISCONSIN LAWYER, Sept. 2018, available at: <https://www.wisbar.org/NewsPublications/Pages/General-Article.aspx?ArticleID=26568#a>.

⁴ Lori S. Kornblum & Daniel Pollack, *Out of Luck: Need a Rural Family Law Attorney?*, WISCONSIN LAWYER, Sept. 2019, available at <https://www.wisbar.org/NewsPublications/WisconsinLawyer/Pages/Article.aspx?Volume=92&Issue=8&ArticleID=27194>.

⁵ Kaeding, Danielle, *Rural Wisconsin Lacking lawyers, Especially Up North*, Wisconsin Public Radio (August 23, 2016), available at <https://www.wpr.org/rural-wisconsin-lacking-lawyers-especially-north>.

professionally will often lead to involvement in other aspects of the local community as well.⁶

Recognizing the lack of access to legal services in rural areas, the Wisconsin State Bar began the “Greater Wisconsin Initiative,” which encourages law students and attorneys to consider practicing in rural Wisconsin. These efforts would only be bolstered by addressing the financial barrier to establishing a practice in rural Wisconsin, especially for young attorneys facing debt.

AB 512’s pilot program not only addresses the public defender and legal services needs in rural Wisconsin, but has the potential to bring youthful talent back to rural communities. This pilot program is modeled after the successful Wisconsin Rural Physician Residency Assistance Program. Further, this type of incentive program is not unprecedented as Nebraska⁷ and South Dakota,⁸ among other states, have similar programs to promote access to legal services in rural areas.

Thank you for your time and consideration.

⁶ *State Bar Supports Legislation to Assist Rural Lawyers with Student Loans*, STATE BAR OF WISCONSIN, <https://www.wisbar.org/NewsPublications/Pages/General-Article.aspx?ArticleID=26059> (last visited Nov. 19, 2019).

⁷ Paquette, Danielle, *8,500 residents. 12 attorneys: America’s rural lawyer shortage*, The Washington Post (August 25, 2014), available at https://www.washingtonpost.com/news/storyline/wp/2014/08/25/how-do-you-keep-them-down-on-the-farm-once-theyve-passed-the-bar/?utm_term=.dd39245427a4.

⁸ See *Rural Recruitment Program*, South Dakota Unified Judicial System (last visited Nov. 19, 2019), available at <https://uj.s.sd.gov/Attorneys/RuralRecruitment.aspx>.

Wisconsin Counties Affected by 2019 AB 512

(M)

Adams	Crawford	Iowa	Lincoln	Pepin	Taylor
Ashland	Douglas	Iron	Marinette	Polk	Trempealeau
Barron	Dunn	Jackson	Marquette	Price	Vernon
Bayfield	Florence	Juneau	Menominee	Richland	Vilas
Buffalo	Forest	Kewaunee	Monroe	Rusk	Washburn
Burnett	Grant	Lafayette	Oconto	Sawyer	Waushara
Clark	Green Lake	Langlade	Oneida	Shawano	



STATE BAR OF WISCONSIN

Leaders in the Law. Advocates for Justice.®

To: Members, Assembly Judiciary Committee
From: State Bar of Wisconsin
Date: November 21, 2019
Re: AB 512 – tuition reimbursement

The State Bar of Wisconsin encourages your support on AB 512, creating a student loan payment pilot program for private bar attorneys who accept public defender appointments. The State Bar also appreciates and thanks Rep. Tusler and Sen. Testin for introducing this important legislation.

Our association has a longstanding policy of supporting efforts to reduce the cost of a legal education and to provide loan repayment assistance programs for its members. Attorneys have a deep commitment to ensuring access to justice for all citizens, but many find that the rising cost of a legal education forces them to forego any form of public service or to practice in fields or settings that result in substantially lower loan repayment opportunities. We support efforts to remove these barriers to ensure all involved in the criminal justice system receive the representation they deserve, and this legislation is a significant step in that direction.

The State Bar developed an initiative to expose WI attorneys and law students to underserved areas of the state through annual bus trips. The tour invites law students and attorneys interested in learning more about practicing in rural areas of Wisconsin to meet with local officials and learn about living and working in these communities. The State Bar focused on the northeast counties bordering the UP of Michigan, northwestern region of the state, which includes Bayfield and Ashland counties and western WI and will visit Pepin, Buffalo, Jackson, and Crawford counties, counties that meet the criteria outlined in this bill. The State Bar is now working to further evaluate the legal needs of rural Wisconsin, looking for obstacles and challenges to practicing law in these communities and identifying where the State Bar can address these needs and challenges.

Encouraging attorneys to settle in rural areas to practice benefits the whole community. Professionally, what starts as a criminal defense attorney often turns into a general practice attorney to address the needs of the community, as they inevitably expand their practice to estate and family issues, among others. Settling into a community professionally will often lead to involvement in other aspects of the local community as well.

This legislation is an opportunity to improve the two issues facing the state – the crippling student debt crisis that affects many attorneys in WI, particularly the younger ones, as well as the attorney shortage issue that plagues many regions of the state. We are pleased to support Rep. Tusler and Sen. Testin's leadership on this issue.

For these reasons, the State Bar of Wisconsin respectfully requests the Judiciary committee members' support AB 512.

For more information, please do not hesitate to contact our Government Relations Coordinators, Lynne Davis, ldavis@wisbar.org, 608.852.3603 or Cale Battles, cbattles@wisbar.org, 608.695.5686.



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Assembly Committee on Judiciary
Assembly Bill 512
Thursday, November 21, 2019

Dear Chairman Ott and members,

Thank you for having this hearing on Assembly Bill (AB) 512 which creates a pilot tuition reimbursement program for attorneys who accept State Public Defender appointments in rural counties. We would like to thank the authors, Representative Tusler and Senator Testin, for introducing this legislation.

We would like to begin with some background. The State Public Defender (SPD) provides legal representation in criminal or civil case in which a person is at risk of losing liberty. The SPD provides representation through a hybrid system of staff attorneys and certified assigned counsel attorneys. The assigned counsel attorneys are appointed when, for instance, there is a conflict of interest with another client represented by SPD staff attorneys. While assigned counsel attorneys are currently compensated at the nation's lowest hourly rate of \$40, we are extremely thankful that the budget approved by the legislature raised that rate to \$70 beginning with cases appointed on January 1, 2020.

While we expect this increased rate to have a significant impact on the number of private attorneys accepting SPD appointments, some counties, particularly in rural parts of Wisconsin, have such a shortage of private attorneys in all areas of the law that the increased rate will have a more limited impact. Efforts to address this lack of attorneys in rural parts of Wisconsin by the SPD, the State Bar of Wisconsin, Marquette University Law School, the University of Wisconsin Law School have been met with limited success.

The State Bar of Wisconsin also conducted a review on the geographic dispersion of attorneys in Wisconsin. Here are some of the key findings:

- Fewer than 40% of Wisconsin's 12,752 active attorneys practice law outside of major urban areas
- 15 counties have 10 or fewer attorneys actively practicing law
- 9 of those counties are in northern Wisconsin, including Iron, Langlade, and Forest Counties
- In Vilas County, only 6 of the county's 40 attorneys are under the age of 50
- Around 64 percent of active attorneys in Wisconsin practice law in Waukesha, Milwaukee, and Dane Counties

These demographics are concerning for the practice of law in general. Specifically to SPD, it will result in delays in court hearings, which increase costs for courts and counties as clients sit in pretrial custody. Appointment of attorneys from significant distances from where the case is pending also results in increased costs to SPD. To prepare for this hearing, we looked at a few counties that we know anecdotally have few attorneys and make a significant number of appointments from out of county. We looked at the total amount paid in Fiscal Year 2019 travel costs for private attorneys appointed to SPD cases from nine counties: Ashland, Bayfield, Marathon, Burnett, Douglas, Vilas, Sawyer, Barron, and

Washburn. Given the goal of AB 512 to incentivize attorneys to locate in counties such as these, we looked at the costs just for attorneys who travelled from an office outside of those counties. The total travel cost paid was nearly \$668,000. In addition, appointments in some of these counties were from distances that make client communication difficult and unnecessarily increase costs and decrease efficiency. Examples include 204 appointments to Dane County-based attorneys to cases in those 9 counties, 82 appointments to Milwaukee attorneys, and even a case in Barron County that was appointed to an attorney from Kenosha. I want to make sure to say that we are grateful that these attorneys accepted these appointments. While AB 512 wouldn't eliminate these costs, we are hoping it would have an impact.

Again, the goal of AB 512 is to provide an incentive for attorneys to accept appointments in rural counties by providing tuition loan assistance. The framework of the bill is based on programs that are in effect in other states as well as the State of Wisconsin's own Primary Care and Physician Shortage Grant program. The SPD would look to the Physician Shortage Grant program for additional guidance on best practices in operating a loan assistance program.

While the low rate of reimbursement for assigned counsel is likely the primary cause of a lack of outside counsel willing to accept appointments from the private bar, the general reduction of the number of attorneys in rural parts of the state, whether or not they accept SPD appointments, is an issue that can begin to be addressed by AB 512.

Thank you again to the author's for introducing this legislation and to the committee for having a hearing on it. We urge you to support this bill and recommend its passage by the Legislature.



TO: Members, Assembly Committee on Judiciary /
FROM: Margaret Raymond, Dean, University of Wisconsin Law School
DATE: November 20, 2019
RE: Assembly Bill 512

The University of Wisconsin Law School is in support of Assembly Bill 512. The bill would create a student loan forgiveness program for attorneys in private practice in rural areas who take on court-appointed representation of criminal defendants.

This bill has the potential to help address problems both for counties struggling to find sufficient attorneys to take on court appointments, and for new law graduates eager for help with their student loans.

Wisconsin is the number one destination for our graduates. Close to two-thirds of our recent alumni have stayed to practice in WI. It can, however, be a challenge to recruit students to practice in the more rural areas of the state. As one example, while many of our students are interested in careers in the criminal justice system, our Prosecution and Public Defender Projects, which provide student summer externships, are finding it increasingly difficult to recruit students to participate in counties outside of Madison and Milwaukee and nearly impossible to place students in communities north of Highway 29. This trend carries through our post-graduation data. Only 10% of the 2018 class of UW Law School practices in a rural community in Wisconsin that is not within a commuting distance of Madison or Milwaukee.

While we have worked hard to contain the cost of our program, a legal education is a significant investment for every single one of our students. Nearly 70% of our students incur debt to complete their law degree. The average debt load for the 2018 graduating class was just over \$79,000. Help with repayment of that debt would be a very important enticement to encourage new graduates to practice in underserved areas of the state.

Once there, our graduates may find, as many University of Wisconsin Law School graduates have found in past years, that these parts of the state provide a wonderful place to establish a career, be a community leader, and perhaps raise a family. Our hope would be that this program would help young lawyers get a good start and help meet the needs of their communities at the same time.

There is not one simple solution to addressing the problem of underserved areas and meeting the legal needs of rural Wisconsin, however, AB 512 can be one piece of a larger solution to address this challenge.

Please feel free to reach out to me or UW-Madison Assistant Director State Relations, Ben Van Pelt, with any questions. Thank you for your consideration of this legislation.

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