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# PATRICK TESTIN

## STATE SENATOR

**DATE:** December 12, 2017  
**RE:** Testimony on 2017 Assembly Bill 567  
**TO:** The Assembly Committee on Colleges and Universities  
**FROM:** Senator Patrick Testin

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Thank you to Chairman Murphy and the members of the committee for the opportunity to present testimony on Assembly Bill 567 (AB 567). 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. Twenty-three Wisconsin counties have twenty or fewer practicing attorneys.

Concurrently, 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 time public defenders and keep the scales of justice even by helping ensure that rural Wisconsinites have access to a qualified defense attorney.

AB 567 incentivizes attorneys to practice in rural counties by paying the attorney \$20,000 per year or the balance of their student loans (whichever is less) to be used for the repayment of student loans. 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 6<sup>th</sup> 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.



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# RON TUSLER

STATE REPRESENTATIVE • 3<sup>rd</sup> ASSEMBLY DISTRICT

**Testimony Before the  
Assembly Committee on Colleges & Universities  
on  
Assembly Bill 567  
December 12, 2017**

Mr. Chairman and members of the committee, thank you for the opportunity to comment on Assembly Bill 567. 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.<sup>1</sup> 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.<sup>2</sup> 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.

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<sup>1</sup> A list of counties affected by the legislation is attached.

<sup>2</sup> See generally Wisconsin Supreme Court Rules Chapter 20, Subchapter 1.

For example, OSPD is spending more than \$41,000 in Ashland County and more than \$21,000 in Bayfield County to hire private bar attorneys elsewhere in the state to drive to the jail and courthouse—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. According to a Wisconsin State Bar study, approximately 64% of attorneys practice in Waukesha, Milwaukee and Dane Counties. Fifteen counties have 10 or few attorneys practicing in them; that number includes the district attorney, any assistant district attorneys and the judge.<sup>3</sup> Not only are there few attorneys providing quality legal services in our rural communities, but 53% of the state's 17,000 attorneys are aged 50 or older.<sup>4</sup> 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 that there is legal work available in rural communities across Wisconsin and as rural attorneys grow closer to retirement less and less legal talent is moving into rural Wisconsin to fill needed positions.

In addition to the program's public defender appointments requirement, these private bar attorneys will be required to maintain a law practice or conduct a 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.

This 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 was modeled after the successful Wisconsin Rural Physician Residency Assistance Program. Further, our pilot program is not unprecedented as Nebraska has instituted a similar program to bring attorneys to rural areas of its state.<sup>5</sup>

Thank you for your time. I hope you join Senator Testin and me by supporting this bill and addressing these pressing needs for rural Wisconsin.

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<sup>3</sup> 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>.

<sup>4</sup> *Id.*

<sup>5</sup> 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](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).

**Wisconsin Counties with Populations Under 25,000**

Adams	Crawford	Iron	Marquette	Rusk	Waushara
Ashland	Florence	Jackson	Menominee	Sawyer	
Bayfield	Forest	Kewaunee	Pepin	Taylor	
Buffalo	Green Lake	Lafayette	Price	Vilas	
Burnett	Iowa	Langlade	Richland	Washburn	



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**Michael Tobin**  
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Assembly Committee on Colleges and Universities

Assembly Bill 567

Tuesday, December 12, 2017

Dear Chairman Murphy and members,

Thank you for having this hearing on Assembly Bill (AB) 567 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, Senator Testin and Representative Tusler, for introducing this legislation.

We'd like to begin with some background. The State Public Defender (SPD) provides representation in criminal or civil case in which a person is at risk of losing liberty. SPD provides representation through a hybrid system of staff attorneys and certified assigned counsel attorneys. The assigned counsel attorneys are compensated at the nation's lowest hourly rate of \$40 and are appointed when, for instance, there is a conflict of interest with another client represented by SPD staff attorneys.

Recently there has been an increasing trend of attorneys in more rural parts of Wisconsin retiring but without new graduates to replace them. Also, some of the remaining attorneys decline SPD appointments because of the low reimbursement rate. Therefore, it has become increasingly difficult to find assigned counsel to take conflict appointments. We are often having to make dozens or even hundreds of contacts to find an attorney for these cases and increasingly having to appoint counsel further and further from rural areas.

A recent survey of statewide appointments found some interesting data. The Appleton office had to make an average of 17 contacts per case to find an assigned counsel attorney. In three particularly difficult cases, it took 302, 261, and 260 contacts to find an attorney. The Ashland office (which covers Ashland, Bayfield, and Iron counties) needed nearly 39 contacts per case and an average of 24 days to find an attorney. By contrast, the Milwaukee Juvenile/Mental Health office needed fewer than 2 contacts per appoints, and Madison averaged about 2.5. The Madison office also has an average of 3 days to appoint an attorney. However, the lack of availability in rural areas is beginning to have an indirect effect in Milwaukee and Madison as more and more attorneys from those areas are appointed to cases in rural counties.

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 not only inefficient for SPD, but also 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. Using Ashland and Bayfield counties for example, we estimate that the cost to SPD will be more than \$100,000 in travel costs related to representation by out-of-county attorneys in those counties. Out of 509 appointments to attorneys from outside of Ashland or Bayfield counties, 155 were made to attorneys whose practice is located 150 miles or more, one-way, from Ashland and Bayfield. In Vilas County, 3 appointments were accepted by attorneys from Dane County; 2 from Sheboygan; and 3 from Washington county. While some of these costs and out-of-county appointments are unavoidable, the longer term impact of AB 567 would be to provide an incentive for counsel to locate closer to rural areas and mitigate some of these costs.

The goal of AB 567 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. SPD would look to the Physician Shortage Grant program and the Higher Educational Aids Board 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 being 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 AB567.

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.



## STATE BAR OF WISCONSIN

*Leaders in the Law. Advocates for Justice.®*

To: Members, Assembly Committee on Colleges and Universities  
From: State Bar of Wisconsin  
Date: December 12, 2017  
Re: AB 567 – tuition reimbursement

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The State Bar of Wisconsin encourages your support on AB 567, creating a student loan payment pilot program for private bar attorneys who accept public defender appointments. The State Bar also appreciates and thanks Sen. Testin and Rep. Tusler 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 first year of the bus trip, the State Bar focused on the northeast counties bordering the UP of Michigan. This past fall, the tour went to the northwestern region of the state, which includes Bayfield and Ashland counties, areas which would qualify under this bill. Next year the State Bar is going to western WI and will visit Pepin, Buffalo, Jackson, and Crawford counties, counties that meet the criteria outlined in this bill.

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. While we believe increasing the rate paid to attorneys who take these cases, which hasn't been increased in decades, would also improve this situation, we are pleased to support Sen. Testin and Rep. Tusler's leadership on this issue.

For these reasons, the **State Bar of Wisconsin respectfully requests the Colleges and Universities committee members' support AB 567.**

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