



STATE REPRESENTATIVE  
**STEVE DOYLE**

WISCONSIN STATE ASSEMBLY

94<sup>TH</sup> DISTRICT

TO: Chairman Ott, Vice-Chair Horlacher and Members of the Assembly Committee on Judiciary

FROM: State Representative Steve Doyle

DATE: January 30, 2018

SUBJECT: Testimony in support of AB 778

Thank you for holding a public hearing on Assembly Bill 778 which makes several changes to the appellate proceedings in termination of parental rights (TPR) cases. This bill is part of the Foster Forward Legislative Agenda and came out of the bipartisan Speaker's Task Force on Foster Care which I had the honor of co-chairing with Representative Snyder. I would also like to thank my co-authors Representative Terry Katsma and Senator Luther Olsen for joining me on this bill.

During our tour of the state, the Task Force on Foster Care heard from judges, district attorneys corporation counsel, and other stakeholders on how the TPR process can often be lengthy and create significant delays to adoption. These are children for whom reunification is simply not an option and they need to find permanency in another home. The changes that AB 778 makes occur near the end of the TPR process once a judge has already ruled in favor of terminating parental rights.

The first change would require that any Notice of Intent to appeal a TPR decision include the signature of the attorney and the respondent parent. Judges who testified at our Milwaukee and La Crosse hearings stated that often times attorneys initiate the appeals process on their own because they feel ethically compelled to do so or for fear they will be accused of ineffective assistance of counsel if they do not. After a trial, attorneys are often not in close contact with their client and they feel the need to file the notice of intent before the deadline. The respondent parent might not have been aware of the appeal, so the system spends time and resources tracking them down only to declare the case abandoned. When this notice of intent is filed, the adoption is put on hold until a formal decision is conveyed to the court and the child becomes stuck in a sort of legal limbo.

At the suggestion of the judges, we drafted an amendment that would also require the appellant's signature for the Notice of Appeal and for the Petition for Review. Together these three

requirements would help avoid wasting time and money on appeals that the parent may not even want to proceed with or know about. We also included changes at the request of the Office of the State Public Defender to account for parents who represent themselves.

AB 778 would also require that whoever files a motion to remand a case to the lower court for additional fact-finding also file an affidavit stating the specific reasons why the additional fact-finding is necessary. Again, we heard this recommendation from judges who believe that this additional requirement would streamline these cases and unclog the court system. Often times, a case is remanded to the circuit court only to be dismissed because additional fact-finding was unnecessary and there was no reason for the remand. As with the Notice of Intent, this remand puts the entire process on hold and prevents children from achieving timely permanency.

We believe that the changes in this bill will help streamline the end of the TPR process by eliminating unnecessary appeals and ensuring that an appeal or remand is truly the wishes of the respondent parent. But most importantly, this bill will help children in the foster care system get to their forever homes sooner and without as much legal back and forth. I hope that you will support AB 778. I would be happy to answer any questions at this time.



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## Luther S. Olsen

State Senator

14th District

**TO:** Assembly Committee on Judiciary  
**FROM:** Senator Luther Olsen  
**DATE:** January 30, 2018  
**SUBJECT:** Testimony in favor of Assembly Bill 778

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Thank you Chairman Ott and the Assembly Committee on Judiciary for holding a hearing and allowing me to testify in favor of Assembly Bill 778.

When children in out-of-home care cannot return safely to their homes, they deserve the opportunity to achieve timely permanency through adoption. In order to initiate an adoption proceeding, a Termination of Parental Rights (TPR) order has to be established. Termination of Parental Rights (TPR) proceedings can often be lengthy and create significant delays to adoption.

The Speaker's Task Force on Foster Care task examined ways in which the TPR process can be streamlined and modified to achieve timely permanency for these children. This proposal makes two changes to appellate proceedings related to TPR.

The first change would require that any notice of intent to appeal a TPR decision include the signature of the attorney and the respondent parent. During the task force hearings, judges stated that often times attorneys initiate the appeals process on their own because they feel ethically compelled to do so or for fear they will be accused of ineffective assistance of counsel if they do not. The respondent parent might not have been aware of the appeal, so the system spends time and resources tracking them down only to declare the case abandoned. Although an appeal is not actually started by filing this notice, the fact that it has been filed puts a hold on the adoption until a formal decision whether to file the appeal or not is conveyed to the court. The requirement of a parent's signature will help children who spend time in the legal process in "limbo" and streamline their process to permanency through adoption.

Additionally, this proposal requires that whoever files a motion to remand a case to the lower court for additional fact-finding also file an affidavit stating the specific reasons why the additional fact-finding is necessary. Multiple judges recommended this proposal during the hearings, stating this additional requirement would streamline these cases and unclog the court system. Often times, a case is remanded to the circuit court only to be dismissed because additional fact-finding was unnecessary and there was no reason for the remand.

With the input from the Office of the State Public Defender, different standards were included for parents who represent themselves, including a longer period of time to file the affidavit.

Thank you, members. I ask for your support and would be more than happy to answer any questions.





# TERRY KATSMAS

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**Date:** January 30<sup>th</sup>, 2018  
**To:** Assembly Judiciary Committee  
**From:** Representative Terry Katsma  
**Re:** Assembly Bill 778: related to appellate procedure in the proceedings related to termination of parental rights

Dear Chairman Ott and committee members,

Thank you for convening to hear Assembly Bill (AB) 778, which will expedite permanency for children that are being adopted through the foster care system.

One precondition of adopting a child through the foster care system is a Termination of Parental Rights (TPR) proceeding. These proceedings can often be lengthy, stressful for a child, and increase instability in the child's life, especially if the decision is appealed. TPR proceedings can cause significant delays in adoption, further postponing stability and security for a child.

In order to reduce the length of time that a TPR proceeding may continue, AB 778 revises the appellate procedure in such cases to accelerate permanency for the child and adoptive parents, while only placing minimal burden on well-intentioned appellants. The first change requires that an appellant in a TPR case must sign the notice of appeal that is required to appeal the court's decision. If the appellant has counsel, he or she must also sign the notice of appeal, but may not sign in lieu of the appellant. This requirement eliminates situations in which the parent's counsel appeals a case without the approval of his or her client—an action which only delays the child's permanency and stability while the court attempts to track down a parent that did not want to initiate an appeal.

The second provision of the bill requires that an appellant in a TPR case that files a motion to remand a case to the lower court for additional fact-finding, must also submit an affidavit stating why the fact-finding is necessary. Currently, a parent may file a motion for fact-finding, even though it is unnecessary and unproductive, which needlessly delays permanency and stalls the courts.

By the time a child is being adopted through the foster care system, he or she has likely already faced significant stress and instability. By implementing these requirements, Termination of Parental Rights proceedings may be shortened, leading to quicker permanency.

Thank you for your time and your consideration of AB 778.

