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Special Committee on Permanency for Young Children in the Child Welfare System
Testimony from the Office of the Public Defender
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Thank you to Chair Samantha Kerkman and Committee Members for giving the State Public Defender (SPD) time on your agenda today to talk about data related to Termination of Parental Rights (TPR) cases in Wisconsin.

Attached to this testimony are four charts that detail the number of cases and average number of days to resolution by both type of disposition and type of resolution. These numbers are further broken down to show averages in Milwaukee County only, the rest of the state without Milwaukee County and the overall statewide average.

The first chart breaks down the total number of TPR cases per disposition type that were opened and concluded in Fiscal Year 2012. The types of disposition types are: involuntary, voluntary, dismissed, and other. "Involuntary" would include any time a parents rights are terminated involuntarily, including through a jury trial, a court trial or a stipulation to jurisdiction and a contested dispositional hearing that results in a termination of parental rights. "Voluntary" would include each time a parent voluntarily gives up his/her parental rights. "Dismissed" would include any time a TPR petition is dismissed, whether it be for a court/jury not finding grounds, a judge not finding it is in the child's best interest to terminate, or when there is a resolution negotiated which includes a dismissal of the petition, and "other" in most cases would include anytime a parent is found in default (which ultimately results in an involuntary termination of parental rights). Because "other" results in involuntary termination, there is also a column showing the total number of cases with disposition types involuntary and other combined. In total, 783 TPR cases were opened in FY12, and just over 28% of them were resolved in the same fiscal year. Also, of the 783 total cases opened in FY12, 39% (308) were in Milwaukee County, 61% (473) were from the rest of the state.

The second chart shows the average number of days to resolution per disposition type. In each disposition type, but also in the overall average number of days to disposition, it's important to note that Milwaukee and the rest of the state have remarkably similar timelines.

The third chart details the number of cases per resolution type. Resolution type includes non-jury, jury trials, and court trials. "Non-jury" would include any time a case is resolved short of a jury trial, which would include defaults, stipulations to grounds with dispositional hearings, dismissals, or any other way a case may be resolved without a jury trial. "Jury trials" are just that, cases that are resolved through a jury trial, and "court trials" are those cases which are resolved with a trial to the court. In Milwaukee County, juries were empanelled in 33 TPR cases; only 22 of which were ultimately submitted to the jury for decision. It is also worth noting that jury trials were requested in about 8% of TPR cases statewide. In fact, 84% of SPD cases initiated and concluded in FY12 were resolved without a trial.

The last chart is the average number of days per resolution type. The last time TPR numbers were examined this closely was Fiscal Year 2003 and at that time showed a much greater disparity between Milwaukee County and the rest of the state. For non-jury and jury trial resolutions, cases have been resolved in a third of the time they were in 2003. For court trials, it is now two-thirds faster to resolution compared to 8 years ago. There are several reasons that the numbers have changed over the last 8 years.

1. The lag in the system has caught up with cases that were not ASFA (Adoption and Safe Families Act) compliant. i.e. children out of home for 15 out of the last 22 months.
2. The availability and use of summary judgment.
3. Discovery issues were resolved when a Discovery CD was ordered to be made available at the initial hearing.
4. Two hard-working full-time judges (including Judge Foley) devoted to TPR cases, as well as the availability of the Chief Judge to hear cases.
5. There are more attorneys - both public defender and private bar - trained to take these types of cases.
6. There is more cooperation between stakeholders in making sure parents are evaluated for public defender representation at the earliest available opportunity. (Bureau of Milwaukee Child Welfare, judges, DAs, and private CHIPS attorneys)
7. Discovery cut off, final pretrials, and jury trials are set at the initial appearance.

Out of the 783 TPR cases appointed in FY12, Notice of Intent to Appeal was filed in 206 cases, or about 26% of the time. Reasons to appeal include the fact that many attorneys view TPRs as a “civil death penalty”, and suggest to clients that all means of fighting the case be exhausted, parents may want to appeal to continue the fight for their children, there may be a legitimate legal issues to appeal, and lawyers may appeal a default case because there is no clear guidance as to their role in a default situation, and they want to preserve their client’s rights and meet their own ethical obligations.

While our main focus at this meeting is on data, Diane will briefly address, from the SPD perspective, some of the barriers to reunification and delays in the system.

The barriers to reunification Diane often see in her practice of both representing children in Children in Need of Protective Services (CHIPS) cases as well as parents in TPR cases include:

1. The parents refusal to participate in services or the lack of successful completion of services, or a parent is missing.
2. The parents have untreated AODA issues and/or relapse; waiting for AODA assessments, psychological evaluations and waiting lists for AODA treatment programs.
3. Parents experiencing mental health issues and the ability to access appropriate mental health services for the parents.
4. Parents coping with cognitive disabilities and the ability to access appropriate services that address the disability.
5. Frequent changes in social workers and network providers which lead, in many cases, to “having to start over” in establishing relationships and services.
6. Children with special needs and the ability to address those needs in the parental home, as well as the wishes of the child.
7. The reluctance to change the status quo without a court order, specifically as this applies to visitation.
8. Dealing with language barriers and families that are not English speaking; accessing bilingual service providers or other special services ex. deaf interpreters.
9. Identified ongoing safety issues in the home that may or may not have been a basis for the original

detention.

10. The ability to identify and access services as well as communicate with incarcerated parents, out of county parents or out of state parents.

11. Poverty related issues: Homelessness and joblessness often are the last difficult conditions for a parent to meet before reunification.

Delays in the system for both CHIPS and TPR cases:

1. Providing proper notice to all parties, particularly fathers. Adjudicating fathers.
2. Parents not appearing in court, being found in default, then subsequently appearing, resulting in motions to vacate the default finding.
3. Delays in a parent either requesting, being evaluated for, or appointed counsel, and changes in attorney representation.
4. Discovery delays including records being obtained and forwarded to opposing counsel, delays with depositions, interrogatories and requests for admission. Further delays while the attorneys sift through sometimes several thousand pages of discovery.
5. Dueling court systems, specifically when a parent is charged in criminal court.
6. The crowded court calendars that lead to adjournment of trials.
7. Human/Attorney delays: Attorney case scheduling, lack of client cooperation, missing witnesses.
8. Communication and transportation issues with incarcerated or out of state/county parents.
9. The children's placement disrupting, requiring additional time to find an alternative resource.
10. Stipulated delays as a means of accomplishing reunification or an alternative form of permanence other than TPR.
11. A TPR not in the child's best interest, and/or the child's wishes to return home often require creative resolutions that don't fit in ASFA timelines.

Submitted by:

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