



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2017 Assembly Bill 784

**Assembly Substitute
Amendment 1**

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2017 ASSEMBLY BILL 784

Assembly Bill 784 repeals a statutory prohibition on appointing counsel for a parent in a child in need of protection or services (CHIPS) proceeding. In addition, the bill creates a pilot program in five counties to provide counsel to parents in CHIPS proceedings.

Counsel for Parent in CHIPS Proceeding

Under current law, a court generally may not appoint counsel for any party, other than the child, in a CHIPS proceeding. In *Joni B. v. State*, the Wisconsin Supreme Court held that this prohibition violates the separation of powers doctrine of the Wisconsin Constitution and the Due Process Clause of the U.S. Constitution. [202 Wis. 2d 1 (1996).]

The bill repeals this prohibition, thus aligning the statutes with case law.

Pilot Program

The bill requires the State Public Defender (SPD), no later than July 1, 2018, to establish a pilot program in Brown, Outagamie, Racine, Kenosha, and Winnebago counties to provide counsel to parents in CHIPS proceedings. The pilot program does not apply to a proceeding commenced after June 30, 2021.

Under the bill, in a CHIPS proceeding in a county participating in the pilot program, any nonpetitioning parent who appears before the court must be represented by counsel throughout the proceeding. The right to be represented by counsel begins any time after a petition is filed to initiate a CHIPS proceeding. Once begun, the right to be represented by counsel continues throughout all stages of the proceedings. A parent may waive counsel if the court is satisfied that the waiver is knowingly and voluntarily made.

Initial Applicability

The bill, if enacted, first applies to CHIPS proceedings commenced on the effective date of the act.

ASSEMBLY SUBSTITUTE AMENDMENT 1

Assembly Substitute Amendment 1 also repeals the prohibition on the appointment of counsel for any party, other than the child, in a CHIPS proceeding. However, the substitute amendment differs from the bill with respect to the pilot program and the initial applicability clause.

Pilot Program

Like the bill, the substitute amendment requires the SPD, no later than July 1, 2018, to establish a pilot program in Brown, Outagamie, Racine, Kenosha, and Winnebago counties to provide counsel to parents in CHIPS proceedings. The pilot program does not apply to a proceeding commenced after June 30, 2021.

However, the substitute amendment omits the requirement in the bill that a nonpetitioning parent in a CHIPS proceeding be represented by counsel if the proceeding occurs in a county participating in the pilot program. Instead, under the substitute amendment, the SPD provides counsel to a nonpetitioning parent in a CHIPS proceeding under the pilot program, after a CHIPS petition has been filed, if a court appoints counsel for the parent.

Initial Applicability

The substitute amendment omits the initial applicability clause.

BILL HISTORY

On January 26, 2018, Assembly Substitute Amendment 1 was offered by Representative Ballweg. On January 31, 2018, the Assembly Committee on Judiciary recommended adoption of the substitute amendment on a vote of Ayes, 9; Noes, 0; and passage of Assembly Bill 784, as amended, on a vote of Ayes, 8; Noes, 1.

JKR:ksm