JOEL KITCHENS
STATE REPRESENTATIVE • 1ST ASSEMBLY DISTRICT

Testimony for the Assembly Committee on Family Law
Assembly Bill 775
Tuesday, January 9th, 2018

Thank you Chairwoman Rodriguez and committee members for holding a public hearing on Assembly Bill 775. This bill amends state statutes regarding the showing of a substantial likelihood that a parent will not meet the conditions established for the safe return of the child to the home in a termination of parental rights proceeding.

I don't want to spend my testimony focused on the technical aspects of these proceedings, CHIPS orders or court timelines. There are plenty of testifiers who will speak after me who are far more qualified to discuss those details. I want to focus on why we need this bill.

Through public hearings with the Speaker's Task Force on Foster Care, and through my discussions with my local county human services directors and my own constituents involved in the foster care system, the length of the termination of parental rights proceedings is something we heard over and over and over again. To me, this stood out as one of the primary deterrents to a child reaching permanency, happiness and success.

This change to termination of parental rights, or TPR, proceedings must occur in order to achieve a timely permanence for the child. Ongoing TPR proceedings are hindrances for foster parents, to adoptions, and to the good of the child involved. The extra months that this takes up and that these proceedings drag on may seem a minor inconvenience to us, but to the child, this is a prolonged period of confusion and uncertainty, and of not having a home they know is theirs.

To put this in the simplest of terms; this bill is for the good of the child involved. A quote that has always stuck with me that I remember from one of our Task Force hearings was when an individual testifying asked us, "Is this the child welfare system or the parent welfare system?".

Our responsibility as a state is to the children. While I can sympathize that the parents are perhaps in difficult stages of their lives, our primary concern must be achieving timely permanency for the child, and this bill will make that just a little bit easier. I want to note that we are working with the State Public Defender's Office on an amendment to address their concerns of substance abusing parents who are actively seeking treatment which I am sure Adam will eloquently share with you when he testifies.

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JOEL KITCHENS

STATE REPRESENTATIVE • 1ST ASSEMBLY DISTRICT

I want to thank my co-authors Representative Doyle and Senator Darling for their support and thank the Speaker's Task Force on Foster Care for giving us all the opportunity to delve into this important issue and address the concerns we heard from those involved in the child welfare system.

Thank you for taking the time to consider my testimony and I'll be happy to take any questions.

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STATE REPRESENTATIVE
STEVE DOYLE

WISCONSIN STATE ASSEMBLY

94TH DISTRICT

TO: Chair Rodriguez, Vice-Chair Duchow and the Members of the Assembly Committee on Family Law

FROM: Representative Steve Doyle

DATE: January 9, 2018

RE: Written testimony in support of Assembly Bill 775

Thank you for holding a public hearing on Assembly Bill 775, eliminating the 9 month look ahead period in termination of parental rights (TPR) proceedings. As you know, this proposal came out of the Speaker's Task Force on Foster Care, which I had the honor of co-chairing with Rep. Pat Snyder, and is part of the Foster Forward legislative package. AB 775 was drafted at the request of foster parents, judges, and district attorneys and is designed to help streamline the TPR process and prevent children from being stuck in the foster care system for years on end.

Under current law, involuntary TPR cannot occur unless a court finds that one or more statutory grounds for TPR exist. One of these grounds is if the child is in continuing need of protection services which includes the requirement that it be shown that there is "substantial likelihood" that the parent will continue to not be able to meet the conditions established for the safe return of the child within the next nine months. This is known as the "9 month look ahead."

One of the frustrations we heard on our tour across the state was that of foster parents whose foster children were stuck in legal limbo. Often, their biological parents' rights had yet to be terminated despite ample evidence to do so because it was difficult to determine how a parent would be doing in 9 months. In other cases, a parent would sporadically comply with their CHIPS order only to "drop off" after a few months and cause the 9 month cycle to begin again. This has led to unnecessary delays in TPR cases and prevented foster children from being available for adoption.

This bill removes the requirement that this 9 month prediction be made in order to meet this grounds requirement. Instead, if the child has been placed outside their home by a CHIPS order for less than 15 of the past 22 months (the federal standard), the court must find that the parents will not meet the conditions for a safe return by the time they reach 15 of the last 22 months. This ensures that TPR will not occur too quickly but prevent the child from being stuck in legal limbo.

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STATE REPRESENTATIVE
STEVE DOYLE

WISCONSIN STATE ASSEMBLY

94TH DISTRICT

During the Task Force's public hearing in La Crosse, several of our local judges testified in favor of this proposal. They believe this change will result in less litigation, time and resources since the court will no longer be required to predict a parent's compliance with a CHIPS order.

I hope you will support this proposal to help streamline the TPR system and unite foster children with their forever families in a safe and timely manner. Please feel free to contact my office if you have any questions on this proposal or any of the others in the Foster Forward package.

Sincerely,

STEVE DOYLE
State Representative
94th Assembly District

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Alberta Darling

Wisconsin State Senator

Co-Chair, Joint Committee on Finance

Testimony before the Assembly Committee on Family Law
Assembly Bill 775

Thank you Chair Rodriguez and committee members for holding a hearing on Assembly Bill 775. This bill will help Wisconsin's foster youth find permanency faster by eliminating a nine month look ahead period in certain termination of parental rights (TPR) cases.

In Wisconsin, approximately 7,000 children are living in out-of-home care at any given time. According to data from the Department of Children and Families, the median length of stay in out-of-home care is about 11.5 months. During this time, a child will undergo an average of three placements. However, these averages are not the case for every child, especially older foster youth, who have much longer stays in the system and sometimes can have ten or more changes in placement.

National data has demonstrated the need for children to find permanency faster. In fact, the data on youth who never find permanency and age out of the system is striking. In Wisconsin, 6.1% of our foster youth age out of the system. According to data from the National Conference of State Legislatures, foster youth who age out of the system are 5 times more likely to become homeless, have only a 58% high school graduation rate, and have a 25% incarceration rate within 2 years of leaving foster care. Reducing the length of stay and improving permanency rates is crucial to the welfare of our foster youth.

Assembly Bill 775 alters current TPR procedures in order to improve permanency rates for foster youth by eliminating a nine month look ahead element. Under current law, a petitioner in a TPR case must prove that there is substantial likelihood that the parent will continue to fail to provide a safe home for nine months beyond a fact finding hearing. This requirement unnecessarily drags out TPR proceedings.

Assembly Bill 775 states that if a child has been out of the home for less than 15 months, the petitioner must still show there is a substantial likelihood the parent will continue to fail to provide a safe home for re-entry at the time the child has been out of the home for 15 of the most recent 22 months. However, if a child has already been out of the home for 15 months, Assembly Bill 775 establishes that there is no need to consider the parent's likelihood to meet the conditions established for a safe return in the future.

The current TPR procedure is failing kids who have already been in the system for too long. A child who has already been in out-of-home care for 15 or more months deserves permanency, and should not be held into a prolonged TPR case to consider another prospective nine months. Assembly Bill 775 maintains parents' rights by still considering a parent's ability to create a safe home environment for children who are in the system for less than 15 months, while streamlining TPR cases to increase permanency for foster youth who have been in the system for more than 15 months.

I'd like to thank Representatives Kitchens and Doyle for their work on this bill. I urge your support on Assembly Bill 775.

Children's
Hospital of Wisconsin

TO: **Assembly Committee on Family Law**
FROM: **David Whelan, Director of Family Case Management Services, Children's Hospital of Wisconsin**
DATE: **Tuesday, January 9, 2018**
RE: **Support for AB 775—Showing a substantial likelihood that a parent will not meet the conditions established for the safe return of a child to a home in a TPR proceeding**

Good morning, Chairwoman Rodriguez and members of the committee. My name is David Whelan and I am the director of Family Case Management Services at Children's Hospital of Wisconsin. Thank you for allowing me this opportunity to testify today in support of AB 775 which relates to parental conditions for the safe return of a child to a home during TPR (termination of parental rights) proceedings. I want to thank the Speaker's Task Force on Foster Care for holding public hearings last year and to the authors, Representative Kitchens and Senator Darling, for sponsoring this legislation.

As you know, Children's Hospital of Wisconsin (Children's Hospital) serves children and families in every county across the state. We have inpatient hospitals in Milwaukee and the Fox Valley. We care for every part of a child's health, from critical care at one of our hospitals, to routine checkups in our primary care clinics. Children's Hospital also provides specialty care, urgent care, emergency care, dental care, school health nurses, foster care and adoption services, family resource centers, child health advocacy, health education, family preservation and support, mental health services, pediatric medical research and the statewide poison hotline.

Children's Hospital is the largest not-for-profit, community-based agency serving children and families in the state, providing community services to more than 15,000 children and families annually. In partnership with the Division of Milwaukee Child Protective Services, Children's Hospital is responsible for the ongoing case management of approximately half of the youth and families involved in out-of-home care in Milwaukee County. We ensure parents who have had their child removed from the home are assessed and have access to services they need to become a safer, more protective parent. We report to the court on our efforts and the parent's progress in demonstrating the behavioral changes needed to safely care for their child. We have a team of Family Support Specialists, trained in evidence-based models of coaching and nurturing, who engage parents early and give them every opportunity to be successful. Children's Hospital is proud that more than 200 children and youth were reunified with their parents in 2017 in our ongoing case management program. Reunification is the most likely outcome for any child when they come into our care.

As every child welfare agency should be, we are committed to following the ASFA (Adoption & Safe Families Act) timelines. ASFA timelines were established to reduce the amount of time a child lingers in the child welfare system, as well as give our staff and the parents we work with a clear understanding of acting with a sense of urgency to follow these timelines. When a parent is unable or unwilling to make the changes needed to safely care for their child, then that child deserves to be raised in a loving home. In our work for the Division of Milwaukee Child Protective Services, we recruit, license and support foster and adoptive parents. We also match and place children with foster and adoptive parents. The majority of children and youth have some degree of physical, behavioral and emotional needs stemming from the trauma they have experienced in their lives.

Currently, in order to involuntarily terminate a person's parental rights, a court or jury must determine that statutory grounds exist to terminate rights by establishing grounds on a number of important components. These include demonstrating reasonable efforts by a social services agency to provide services and demonstrating the child's placement outside the home for an extended period of time, among others. If a child has been placed outside the home under a CHIPS (child in need of protection or services) order for 15 of the past 22 months, a TPR proceeding must be filed. One of the statutory elements to consider for TPR is the substantial likelihood that a parent will not meet the conditions for the safe return of the child to the home within the next nine months, following a TPR fact-finding hearing.

AB 775 removes the requirement to demonstrate the substantial likelihood that the parent will continue to fail for the next nine months to meet the conditions established for the safe return of the child to the home. Instead, if a child has been placed outside the home for less than 15 months of the past 22 months, the petitioner must demonstrate that the parent will not meet the safe return conditions when the child reaches placement outside the home for 15 months.

Essentially, removing this additional nine-month demonstration requirement will help alleviate delays to permanency. Similarly, if a child has been in out-of-home placement for 15 months or longer, this additional demonstration of a parent's continual failure to meet conditions will not be required. In the circumstances where a parent has continually failed to meet the conditions for the child's safe return to the home, it is in the child's best interest to expedite TPR to support a safe and permanent placement alternative.

Chairwoman Rodriguez and committee members, I thank you again for the opportunity to testify in support of AB 775. I am happy to answer any questions now. If you have any questions, comments or concerns after the hearing, please feel free to contact me via email at dwhelan@chw.org or via phone at 414-292-4170.

Forest County Potawatomi Community
P.O. BOX 340 • Crandon, WI 54520

Assembly Committee on Family Law
Tuesday, January 9, 2018
Madison, Wisconsin

Testimony of FCP Tribal Secretary James Crawford in support of AB-775

Chairwoman Rodriguez, Vice-Chair Duchow, and esteemed members of the committee – thank you for allowing me to provide testimony on this critical topic. The well-being of our children in the foster-care system is something that is of the utmost importance to the Forest County Potawatomi Community, and also to me personally.

My name is James Crawford. I currently serve as an elected tribal leader of the Forest County Potawatomi. However, an even more important role that I serve is that of a foster parent. Over the last decade, my wife, Jennifer, and I have fostered 5 children. Right now, we have established long-term guardianships of Curtis, Payton, and Mary Jane after having fostered them for 5 years. These children have been in our home for over 6 years. My family has committed to care for them for as long as they should need us.

As you likely already understand, being a foster parent is not easy. It requires patience, understanding, long hours, and in many cases additional resources. Despite the potential difficulties that go along side of being a foster parent, it can also be one of the most rewarding things you ever do. Providing a stable home environment to a child in need is one of the most important things we can do to ensure that child can be successful later in life. Putting that child in an environment where they will no longer be unsafe, abused or neglected - and instead be supported, nurtured and loved – will undoubtedly enhance their development and overall well-being.

Unfortunately, there are cases in the foster care system where children should not be returned to their biological parents due to unsafe living conditions. In these situations, an involuntary termination of parental rights (TPR) might be needed to ensure children are not being returned to biological parents in dangerous situations. AB775, by altering the 9-month look-ahead requirement, modifies one of several items that must be proven prior to terminating a person's parental rights. The presence of the 9-month element often causes delays or resets progress made towards ensuring children are in permanent homes.

Thank you for the opportunity to testify today, and we sincerely appreciate your efforts to address this important issue.

January 5, 2018

Chairwoman Jessie Rodriguez
State Representative, 21st Assembly District
P.O. Box 8953
Madison, Wisconsin 53708

RE: Proposed Amendment to TPR Statutes//Assembly Bill 775

Chairwoman Rodriguez and Members of the Assembly Committee on Family Law

I sincerely appreciate the opportunity to appear and testify in support of the proposed legislation to change the projective element of the Continuing Need of Protection and Services ground for involuntary termination of parental rights. (Assembly Bill 775). I note I offer my personal opinions based on my own experience and observations; I do not purport to represent the views of the Wisconsin judiciary. I offer these written comments in the hopes of limiting the amount of time the committee will have to dedicate to my testimony and I am advised copies of this correspondence will be provided to Committee members.

I support the amendment of 48.415 (2) although, for reasons to which I will advert, not without some ambivalence.

Wisconsin law, pursuant to the dictates of the Adoption and Safe Families Act, strongly presumes children in out of home care due to abuse and neglect should achieve permanence---either through safe reunification with family or through alternative permanence of adoption, guardianship or permanent placement with a fit and willing relative---within 15 months of the date of first removal from the parental home (assuming the removal to be continuous). 48.417 (1) (a); 48.38 (5) (c) 6. No one can or should question the importance of timely permanence to the healthy development of our abused and neglected children.

The present substance of 48.415 (2) renders it nearly impossible to achieve timely permanence through that ground and is substantially inconsistent with the timely permanence presumption of state and federal law. To invoke and establish this ground, the child must be in out of home care for a minimum of 6 months after the underlying child in need of protection and services (CHIPS) order is granted. The court process by which that court order is obtained anticipates---if there are no delays, for instance for the appointment of counsel or an evaluation of the parent's psychological status or need for

AODA treatment---the process will take 90 days, and far more typically, much longer. At a minimum then, 9 of the 15 months have elapsed as of the time this ground can first be alleged.

Without consideration of the need to prove the present projective element of this ground---it is substantially unlikely the parent(s) will demonstrate safe parenting competence within 9 months from the end of the trial---the TPR litigation process also anticipates, without delays for the appointment of counsel or other necessary cause, an additional potential 120 days from filing to disposition.[1] Potentially, 13 of the 15 month presumptive permanency window is consumed by the minimum operative period of the underlying CHIPS order and the time limits dictated by law for the CHIPS and TPR proceedings. When you add in delays almost invariably encountered---appointment of counsel; paternity testing; delays in service due to the parent's residence having changed---the legal process itself takes longer---sometimes far longer---than the presumptive period for achievement of alternative permanence.

Applicable ethical constraints prohibit a prosecutor from filing a TPR petition until they believe, in good faith, they can prove all the requisite elements of a TPR ground. If a CHIPS order is not in place until, for example, 5 months after removal, the ground can first be invoked at 11 months from the date of removal. Services under the order would have only been in place for 6 months. Prosecutors are quite justifiably concerned and doubtful at that point they can prove a substantial likelihood the parents will not achieve safe parenting competence (meet the conditions of safe return) within 9 months and delay--sometimes substantially---filing a TPR petitions as a result. When, and if, they do ultimately file, the 15 month period has already expired. In substance, as previously stated, this last element is substantially inconsistent with and a strong impediment to more timely permanence for our abused and neglected children. Systemic failure to achieve timely permanence puts Wisconsin at risk of financial sanctions for non-compliance with the dictates of the Adoptions and Safe Families Act.

With some of the considerations noted above, I think it should be openly acknowledged the likely effect of Assembly Bill 775 is to eliminate altogether the last element of the continuing need ground on many, if not most, of the cases which would be filed in the future. By the time the case reaches the trial stage, the 15 month window will have lapsed and the trier of fact (jury or court) will not have to answer the last question as their determination as to whether the parent has presently met the conditions of safe return will be determinative of whether they will or will not meet these conditions within 15 months of removal. It will also eliminate or substantially alleviate the reticence of prosecutors to file as the 15 month window will have elapsed or be nearly elapsed as of the time of filing.

I am also hopeful the change would serve to impact our attitudes and practices in the underlying CHIPS process. I have come to believe in the 30+ years I have been doing this work the real issue in CHIPS cases is almost never whether there is a problem; the issue is how do we fix the problem (and if we can't timely fix the problem, what form of alternative permanence best serves the child). We spend

[1] I would sadly acknowledge that the median time from filing to disposition of TPR cases in Milwaukee in 2017 was 284 days---nearly 10 months of the presumptive 15 month permanency window. Since, as noted, this Chips ground cannot be invoked until six months have elapsed under the Chips order, the 15 month window had likely elapsed in the vast majority of those cases as of the time of resolution.

inordinate amounts of time and effort on the pretend issues---whether there is a safety problem---substantially delaying and diverting attention to/from the real issue---how are we going to solve this problem. If this change is made, it will be incumbent on all---judges, lawyers, social workers, and, in particular, parents to understand the 15 month window the law provides to resolve the safety issues and demonstrate safe parenting competence has become much more fully operative. The parent's timely commitment to partnering with the system to **timely resolve** those safety issues is imperative to them maintaining their status as parent.

I noted earlier an ambivalence about this proposal. It arises primarily, though not exclusively, over concerns for a particular population potentially impacted by this proposal. The legislature, as much as the courts, are fully aware of the opioid crisis our communities are facing. Children are so often the collateral victims of such abuse---whether it be opioids or other substances. A nine month window---the arguable practical effect of changing the fourth element of this ground---to resolve serious substance abuse problems is not a realistic (or, in my view, morally acceptable) expectation even considering a child's need for timely permanence. This concern is at least partially ameliorated, in my mind, by these observations.

Pursuit of TPR is not mandated by federal or state law in all instances in which safe reunification will not and cannot be achieved within 15 months. The law recognizes an exception when it is demonstrated TPR does not serve the best interests of the child. 48.417 (2). The best interests of a child of a parent who has succumbed to serious substance abuse but who timely commits to and diligently pursues rehabilitation—yes, even when there may be relapses--- while remaining as fully engaged with their child as the circumstances permit are not served by termination of parental rights---and the law recognizes this. In addition, drug courts, including Milwaukee's Family Drug Treatment Court, are the essence of focusing on the real issue---resolving the problem---never pretending there is not a problem.

It is also appropriate to note this change impacts only the grounds phase of TPR proceedings. When grounds are established, it remains the responsibility of the judge to determine whether TPR is in the child's best interests. The projected ability of the parent to resolve the safety issues in the near future is clearly an operative and significant consideration in that analysis. 48.426 (3) (c) and (f).

I hope the committee and legislature will find these comments helpful. I look forward to discussing the proposed legislation with the committee on Tuesday.

Sincerely,

Christopher R. Foley
Circuit Judge

COMMENTS IN SUPPORT OF ASSEMBLY BILL 775

Good morning and thank you for allowing me to speak in support of Assembly Bill 775. My name is Teresa Kovach and I am a Child Protective Services Supervisor for the Portage County Health and Human Services Department in Stevens Point, WI. I have worked in the field of Child Protective Services for the past 24 years. The importance of achieving permanency for children and youth who have become involved in the Child Protective Services system is second only to ensuring safety in their current homes. One of the ways we seek to achieve permanency for children is to pursue Termination of Parental Rights proceedings for children who have been placed in out of home care for at least 15 of the past 22 months and their parents' have been unable to meet the conditions ordered by the Juvenile Court for the children's safe return to their care. Filing a petition for Termination of Parental Rights is a complex and complicated effort involving the Department, the Department's legal counsel and the Juvenile Court. The Department and their legal counsel are required to demonstrate that the Department has made reasonable efforts to provide services to parents and families that will correct the conditions that led to the child's initial removal from the home. The Termination of Parental Rights statute, as it currently reads, also requires the Department to prove that the parents' would also be unlikely to meet the conditions for return set forth by the Court in the next nine months from the time of petition filing. The predictive nature of this legal requirement has caused real challenges and delays when seeking permanency for children in out of home care. This is particularly true for children whose parents have struggled with alcohol, substance abuse problems or mental health issues. Due to the long term and cyclical nature of alcohol, substance abuse and mental health problems, it is often very difficult, if not impossible to predict how a parent will be functioning nine months from the time of the TPR filing. During treatment, often referred to as recovery, parents go through cycles of sobriety and relative stability, demonstrating short periods of recovery; however, these cycles of sobriety are frequently interrupted by periods of alcohol or substance abuse relapse or other conditions that cause their mental health to deteriorate. The inability to predict when relapse will occur and how severe it will be makes it very difficult to keep children safe in the care of parents during recovery. So, while the Department continues to work very hard with parents to help them overcome AODA and mental health issues, children continue to wait for permanency during their parent's recovery. This lack of permanence contributes to further trauma for children involved in the CPS system.

For one family in Portage County, the children involved have been waiting for permanency either through reunification or adoption for more than three years. Attempts to return the children to their mother during periods of time when her mental health was more stable were unsuccessful because she could not maintain the changes she had made and care for the children at the same time. For these children, whose placement in out of home care began when they were 7 and 22 months of age respectively, the home of their foster parents, who are also the prospective adoptive parents, is the home where they have spent the majority of their lives. Those caregivers feel frustrated by their inability to adopt these children, who are now 3 and 4 years old. The mother of these children has demonstrated a life long struggle with mental health problems which have prevented her from being able to provide safe and stable care for her children. Recently, the TPR petition for those children was again delayed because the mother was experiencing a period of more stable mental health. At the time

of the proposed TPR filing, concerns were raised, given that the mother was again in a period of stability, about the Department's ability to prove the mother would be unable to meet the conditions for return ordered by the Court within the next nine months.

In another Portage County case, the children were in out of home care with a relative caregiver for 24 months. This relative was willing to be an adoptive resource for the children. The children were returned to their mother during a period of time when she demonstrated a significant period of abstinence from illegal drugs. However, the Department recently learned the mother has relapsed, is incarcerated, the children's other parent is also incarcerated and the children are currently being cared for by a number of related and unrelated adults causing uncertainty and instability in the children's lives again. While the children's mother should be commended for the long period of abstinence she was able to achieve, her overall life long pattern of substance abuse, legal issues and incarceration have created a situation where the children have been exposed to the CPS system, out of home care and multiple placement changes. When looking back on the life of this case, it is clear that at the time the children were returned to the mother's care, it was believed that a Termination of Parental Rights petition would not be successful because, at the time of filing, the mother was in a longer period of abstinence and there was no way to reliably predict whether she would be able to continue with recovery or would relapse. Today we know she was not successful in maintaining abstinence from the use of illegal drugs and this has resulted in additional CPS involvement for these children.

While those who oppose this bill may be concerned this change will make it easier to terminate the parental rights of individuals who have substance abuse or mental health problems, I want to assure you that our staff are ethically committed to safely returning children to their home whenever possible. CPS Social Workers are family advocates. They are committed, not only from a practice perspective, but are also legally bound to actively and reasonably provide services to parents with mental health and substance abuse problems in an effort to help them achieve the safe return of their children to their care. However, in cases where safe return is not possible within the timeframe prescribed by the federal requirement set forth in the Adoption and Safe Families Act, which is 15 of the last 22 months, then it is also our responsibility to seek other safe and permanent homes for these children so that they may grow up in safe, stable and permanent homes. I believe the passage of Assembly Bill 775 will help us achieve this.

Thank you

Wisconsin State Public Defender

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Protecting Justice for all Since 1977

Kelli S. Thompson
State Public Defender

Michael Tobin
Deputy State Public Defender

Assembly Committee on Family Law
Assembly Bill 775
Tuesday, January 9, 2018

Good morning Chairwoman Rodriguez and members,

Thank you for having this hearing on Assembly Bill (AB) 775, which makes changes to the timeline related to filing a termination of parental rights petition based on a continuing need of protection or services. The State Public Defender (SPD) has concerns related to the impact that the bill would have on the stability and potential reunification of families. We would like to thank the author and Foster Care Task Force co-chairs for their willingness to discuss this issue prior to today's hearing.

Under current federal and state law, there are two provisions related to the timeline of filing a termination of parental rights (TPR) petition on the grounds of a continuing Child in Need of Protection and Services (CHIPs) order. First, under the federal Adoption and Safe Families Act (ASFA), if a child has been placed out-of-custody for more than 15 of 22 months, there is a presumption that a TPR petition should be filed. Second, and more specifically, a TPR petition based on a continuing CHIPS order may only be filed if there is a substantial likelihood that a parent will not meet the conditions established for the safe return of the child within a 9-month period following a fact-finding hearing on the TPR petition.

AB 775 makes two significant changes to this process. First, it removes the requirement that there be a substantial likelihood that a parent will not meet the CHIPS conditions in the 9-month period of time following the fact-finding hearing on the TPR petition. Instead, it allows the filing of a TPR petition if a child has been placed outside of the parent's home for only 6 months, and allows the government to assert at that point that there is a substantial likelihood that the parent will not meet the conditions of return in the next 6-9 months. The effect is to move the timeline back and allow less time to demonstrate an ability to make reasonable progress towards meeting conditions. Although six months may sound like a long time, it is not a realistic time frame in which to determine whether termination of a parent's rights is in the best interest of a child or a family.

These proposed changes do not simply shorten the time frame in which a parent's rights may be terminated and a child may find permanency, they rush the process. Given the lack of services and waitlists in many communities for various services, parents may have just begun services after 6 months. Because many parents under CHIPS orders face mental health, economic, and educational challenges, they may need more than 6 months to find suitable housing, jobs, medical providers, and support. Many of these parents can successfully meet the conditions of safe return if they have adequate support; these proposed changes shortchange that opportunity.

SPD believes that changing this law in these two ways could infringe on the substantive due process rights of parents, similar to the Wisconsin Supreme Court's ruling in In re the Termination of Parental Rights to Max G.W. (State v. Jodie W.) 2006 WI 93. The Jodie W. case found that courts cannot find parental unfitness based on a condition of return that was impossible for a parent to meet.

If the best interests of the child can, in many cases, be preserved by keeping the family unit intact, this legislation would decrease the opportunity for success of a parent once grounds have been found in a CHIPS proceeding.

We have talked with the author's office and Co-Chairs about creating exceptions in the bill related to factors beyond the parent's control such as availability of treatment programs, poverty, and the best interests of the child which would preserve the ability for parents to demonstrate that they are committed to making reasonable progress, even in the face of factors beyond their control which are working against their efforts. We plan to work on potential amendment language with those offices for the committee's consideration.

Thank you again for the opportunity to speak on Assembly Bill 775 and for the willingness to consider an amendment.

Chambers of
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Written Testimony
Of
Jason A. Rossell
Chief Judge 2nd Judicial District
Kenosha County Circuit Court Branch 2
For Informational Purposes
Committee on Family Law
Chair Jessie Rodriquez
2017Assembly Bill 775
Continuing CHIPS Ground for TPR

Please accept this written testimony about the above entitled bill. I wanted to be there in person however I am out of state. My testimony is for information only. My name is Jason A. Rossell, I am the Circuit Court Judge for Branch 2 of Kenosha County Circuit Court and a member of the Wisconsin Judicial Committee on Child Welfare. I am assigned to the Juvenile Court for the past 6 years and have conducted many termination of parental rights cases. I am writing on my own accord and I do not represent the entire judiciary.

Termination of parental rights (TPR) cases are two part cases with the Jury or Judge determining if grounds are proven and then the Judge determines if it is in the best interests of the child to ultimately terminate the parental rights. Termination of parental rights cases can be some of the most complicated cases heard by juries in Wisconsin. For children in foster care, the most common ground alleged is the continuing need of protection or services ground. This ground requires proof that the child has been placed under Court jurisdiction as being in need of protection and services and the following elements have been proven: 1) that the child has been in out of home care for 6 months or more 2) the agency has made a reasonable effort to provide the services ordered by the court 3) the parent has not met the conditions of return and 4) there is a substantial likelihood that the parent will not meet the conditions of return within the 9-month period following the hearing in the TPR. This final element causes juries and judges the most difficulty since it requires them to look into the future and make predictions.

This difficulty results in delays for filing these cases while the petitioners await more time to pass in order to establish this ground. This additional time harms the children in out of home care who are denied a permanent home. It also insufficiently motivates the parents to work on the conditions of return since there is no definite timeline a parent can consider when working on

the conditions of return.

The proposed change will result in a more definite standard based on the federal guidelines for permanency. While it will still require judges and juries to speculate about the future, it provides a definite time frame. Additionally it establishes a 15-month timeline which will increase the timeliness of parents' efforts and children's permanency. This will assist children and families of Wisconsin and I support its passage.

Thank you for your time and consideration.

Sincerely,

/s/

Hon. Jason A. Rossell