



ANDRÉ JACQUE

STATE SENATOR • 1ST SENATE DISTRICT

Phone: (608) 266-3312

Fax: (608) 282-3541

Sen.Jacque@legis.wi.gov

State Capitol - P.O. Box 7882

Madison, WI 53707-7882

*Testimony before the Assembly Committee on Judiciary
State Senator André Jacque
November 21, 2019*

Chairman Ott and Committee Members,

Thank you for holding this hearing on Assembly Bill 514, relating to Public Defender Board regulation.

Under current law, the Public Defender Board may promulgate rules to ensure indigent client representation by private bar attorneys is at the level as provided by the State Public Defender, but current statutory language limits the scope to which the State Public Defender can promulgate these rules.

This bill expands the Public Defender Board's rulemaking authority to permit conditions for private bar attorney certification, decertification, or recertification and adds the following reasons as grounds for exclusion of private bar attorneys to take public defender cases:

- The attorney fails or has failed to meet minimum attorney performance standards adopted by the state public defender;
- The attorney fails or has failed to comply with Supreme Court Rule Chapter 20 (Rules of Professional Responsibility);
- The attorney engages in conduct that is contrary to the interests of clients, the interests of justice, or the interests of the state public defender;
- The state public defender learns of any information that raises a concern about the attorney's character, performance, ability, or behavior.

The State Public Defender's Office supports these changes.

Thank you for your consideration of Assembly Bill 514.



RON TUSLER

STATE REPRESENTATIVE • 3rd ASSEMBLY DISTRICT

**Testimony Before the
Assembly Committee on Judiciary**

on

Assembly Bill 514

November 21, 2019

Mr. Chairman and members of the committee, thank you for the opportunity to comment on Assembly Bill 514. This bill codifies the minimum professional standards for private bar attorneys who take public defender cases.

Currently, the State Public Defender (SPD) Board may regulate private bar attorneys who take public defender cases to ensure representation is at the same level as provided by the state public defender.¹ This bill gives specific statutory authority to the SPD to set standards for and impose conditions for attorney certification, decertification, or recertification. Specifically, the following standards are codified:

- The attorney fails or has failed to meet minimum attorney performance standards adopted by the state public defender;²
- The attorney fails or has failed to comply with Supreme Court Rule Chapter 20 (Rules of Professional Conduct for Attorneys);³
- The attorney engages in conduct that is contrary to the interests of clients, the interests of justice, or the interests of the state public defender;
- The state public defender learns of any information that raises a concern about the attorney's character, performance, ability, or behavior.

To reiterate, private bar attorneys are already regulated and held to minimum performance standards; this bill codifies certain minimum standards and provides the SPD with solid statutory footing for any necessary rulemaking and places these standards in one central place for reference.

Thank you for your consideration of this bill and I urge your support.

¹ See Wis. Stat. 977.02(5) (2017-18).

² Available at: http://wispd.org/images/18_2_6_Final_Minimum_Attorney_Performance_Standards.pdf.

³ Available at: <https://docs.legis.wisconsin.gov/misc/scr/20>.



Wisconsin State Public Defender

17 S. Fairchild St. - 5th Floor
PO Box 7923 Madison, WI 53707-7923
Office Number: 608-266-0087 / Fax Number: 608-267-0584
www.wisspd.org

Kelli S. Thompson
State Public Defender

Jon Padgham
Deputy State
Public Defender

Assembly Committee on Judiciary
Assembly Bill 514
Thursday, November 21, 2019

Dear Chairman Ott and members,

Thank you for having this hearing on Assembly Bill (AB) 514 which allows the State Public Defender (SPD) Board to promulgate rules regarding the standards and conditions for a private attorney to be certified to accept SPD appointments. We would like to thank the authors, Representative Tusler and Senator Jacque, for introducing this legislation.

The SPD in Wisconsin provides representation in all criminal and certain civil matters. Representation is provided by both SPD staff attorneys who provide representation in all 72 counties from 40 different offices around the state as well as private attorneys who are certified to handle specific types of cases when an SPD attorney has a conflict of interest or a vacancy in a staff attorney position means cases have to be appointed.

As you know and as was reiterated in our testimony on Assembly Bill 512, the current rate of \$40 an hour at which certified attorneys are paid is the lowest in the nation. Again, thanks to the 2019 budget, that rate will increase to \$70 an hour effective January 1, 2020. This rate increase will have a significant effect on fulfilling the constitutional, statutory, and case law enumerated right to the effective assistance of counsel for indigent defendants in Wisconsin.

The goal of the bill authors is to provide additional mechanisms for the SPD to set standards and impose conditions related to the certification, decertification, or recertification of private bar attorneys who represent SPD clients. While many of the provisions in AB 514 can currently be found in statute, administrative code, or Supreme Court rules, consolidating them within statute will make it more clear what the standards are moving forward.

Thank you again for the opportunity to testify on Assembly Bill 514. I'm happy to answer any additional questions the committee may have.