



OFFICE OF DISTRICT ATTORNEY
CHILDREN'S COURT CENTER

Milwaukee County

E. MICHAEL McCANN • District Attorney

TO: Rep. Suzanne Jeskewitz, Chairperson
Committee Members, Special Committee on Adoption and Termination of Parental Rights

FROM: Assistant District Attorney Mary M. Sowinski
Team Captain, Milwaukee County District Attorney's Office TPR Unit

DATE: October 13, 2004

RE: **Legislative Changes Necessary to Allow Compliance with ASFA and The Federal Lawsuit Consent Decree**

Beginning in approximately 2000, the Milwaukee County District Attorney's Office in cooperation with the Bureau of Milwaukee Child Welfare (BMCW) and the Milwaukee County circuit court began a concerted effort to meet the expectations for permanency outlined in federal law (specifically ASFA). That effort only strengthened in the summer of 2002, when a federal court consent decree resolved a civil rights lawsuit filed on behalf of children in foster care in Milwaukee County, required the filing of TPR petitions for certain percentages of foster care children, each year, for a three-year period.

Accordingly, the number of Termination of Parental Rights (TPR) petitions filed by the Milwaukee County District Attorney's Office nearly quadrupled between the passage of ASFA in 1997 and the entry of the consent decree in 2002. Specifically, the 227 TPR petitions that were filed in 1997 increased to 719 in 2002, and further increased to 857 in 2003.

This dramatic increase was made possible by the incredible commitment of everyone involved in the Milwaukee County Children's Court system. Resources were devoted to increase ADA's and judges to litigate the cases. Solicitations were made to large Milwaukee law firms to provide legal representation to parents; even a new courtroom was built in an effort to comply with both federal law and the requirements of the consent decree.

This TPR litigation impacts a significant portion of the children that have been placed in Milwaukee County's foster care system. According to the BMCW evaluation of Period 1 of the federal consent decree requirements (January 1 – December 31, 2003), nearly the same number of children were reunified with their parents (864) as had TPR petitions filed on their behalf (857).

Despite this incredible improvement, however, we are faced with the unfortunate reality that we simply cannot comply with the time-limit requirements established by state statutes, federal law and the consent decree without significant changes to the statutes that govern TPR proceedings.

Time limits required by ASFA and the consent decree:

ASFA anticipates that TPR petitions will be filed on children when they have been placed in foster care for 15 months (or 454 days), and that the litigation process will be complete and the children will be adopted by their 24th month in foster care (approximately 728 days after placement). Milwaukee County failed at two different performance standards for 2003 that were outlined in the consent decree resolving the federal lawsuit. **First**, we failed to move enough children out of foster care within the 24 months anticipated by ASFA. **Second**, we failed to finalize a sufficient number of adoptions within the 24-month ASFA timeline. In fact, of the 585 adoptions finalized in Milwaukee County in 2003, only 14 percent were completed within 24 months of the child's placement in foster care, as mandated by ASFA and the federal consent decree. That percentage has remained virtually unchanged for the first six months of 2004.

Statutory Timelines: The timelines outlined in Wisconsin statutes require that the circuit court phase of TPR litigation be completed within 140 days (this does not include the appeal process). Earlier this year we analyzed the TPR cases working their way through the Milwaukee County Children's Court Center, to assess our compliance with this statutory expectation:

- Of the 673 pending TPR cases, 99 cases had been pending in the court system for **more than one year, including four cases that were pending for more than two years.** Nearly all of these cases involved parents who initially requested jury trials.
- A random sample of these cases indicates that **on average, a TPR case takes 196 days to be completed.**
- **No petition filed in 2003 that was resolved by way of a jury trial took less than 180 days to litigate.**
- **Of the 673 cases, 72 resolved by way of a jury trial.**
- **Of those cases resolved by jury trial, 50 percent took 226-364 days to litigate.**
- **Of those cases resolved by jury trial, 23 (roughly one-third) took over one year to litigate.**

We cannot improve the efficiency of this litigation without changes to the statutes previously outlined for you by Deputy District Attorney Kenney in his memo dated August 28, 2004. Most importantly, allowing parents to seek jury trials significantly adds to the expense and length of litigation, while only a very few ultimately choose to avail themselves of this right. In addition, the grounds currently available in the statute (which pre-date both ASFA and the consent decree) simply do not allow for the efficient litigation of these cases required by state statute, ASFA and the consent decree.