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Assembly Bill 576 & Senate Bill 321

Testimony by: Wisconsin State Public Defender Nicholas L. Chiarkas

December 4, 2007

Good morning/afternoon, Members of the Assembly Corrections and Courts Committee & Members of the Senate Judiciary, Corrections and Courts Committee. I am honored to appear here today in support of Assembly Bill 576 & Senate Bill 321, and to thank you for your consideration of this important legislation.

Justice, in the criminal sphere, is the law-breaker receiving what is due him or her, both in process and punishment. And it is the process, not the punishment, which distinguishes just governments. In the United States, we have agreed that before the government can take away our liberty, it must first provide us with a fair process. This process is not a gift—rather, it is owed to us...it is due us. That is the simple meaning of Due Process. What this process includes is what makes it complex. So complex, that whenever the government seeks to remove a citizen's liberty, the government is represented by an attorney (a prosecutor). Justice therefore dictates that throughout this complex process, the citizen facing the loss of liberty should also be represented by an attorney. Our pledge of allegiance promises in its last three words: "...justice for ALL." Consequently, citizens too poor to afford an attorney must be provided an attorney by the government.

SB 321 and AB 576 keep the promise of our pledge of allegiance...it is the ideal that is Wisconsin and the Idea that is America.

More specifically, and as you know, the Wisconsin State Public Defender's Office (SPD) provides constitutionally-mandated legal representation to indigents who meet financial eligibility standards. The standards, set by statute, have not been updated since 1987—leaving many of our poor without access to SPD representation.

I would like to point out some problems with the current law. Many individuals who do not qualify for SPD representation are still too poor to afford a lawyer. In these cases, the courts (must) appoint a lawyer at county taxpayer expense. Consequently there is inconsistent application from court to court, and county to county. For example, a person may be provided a county-appointed attorney in one court, yet be denied an appointed attorney under the same circumstances in an adjoining courtroom or in another county. Passage of this legislation would ensure consistency and equal access throughout all 72 Wisconsin counties.

In addition, courts and counties have to divert resources from other important services to create an appointment-of-counsel structure that already exists within the SPD. The reimbursement rate for county-appointed attorneys is, in many cases, almost twice the rate paid by the SPD (\$40/hour) to its appointed private attorneys. Seventy of the 72 counties reported spending approximately \$4.7 million (total for all reporting counties in 2006 to appoint counsel for these indigent individuals). In 2004, fifty-eight of the 72 counties reported that they spent \$3.3 million. The actual amounts change from year to year and may actually be higher as there is not a standard reporting system required for use by the county court systems. Unlike the SPD, which implemented a statewide client collections program with consistent standards more than 10 years ago, individual judges have discretion to order defendants with court-appointed counsel to pay attorney fees; thus the offsetting revenue varies from court to court and from county to county.

If enacted, this legislation will not only save taxpayer money but will ensure consistent eligibility standards and equal protection throughout Wisconsin.

With your help, we are hopeful this significant problem will be resolved. AB 576 and SB 321 would make SPD's financial eligibility criteria consistent with the W2 program eligibility criteria (except the SPD criterion takes the cost to hire an attorney into account). The new criteria will dramatically reduce county liability for providing counsel to indigent persons who do not qualify for SPD representation. The SPD will provide legal representation in about 15,400 additional cases per year. The legislation authorizes 33.6 new attorney and 17.7 new support staff positions to handle approximately 75% of these cases, with the remaining 25% appointed to private attorneys.

With an effective date of July 1, 2009, no state costs will be incurred during the current 2007-2009 biennium. The annual cost in FY 2010 is projected to be \$4.3 million. The ongoing annual cost, beginning in FY 2011 is projected to be \$ 4.6 million. These costs would largely be offset by savings in county budgets due to fewer court appointments.

I am happy to answer any questions. Thank you very much for your consideration, leadership and support of this important legislation.

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