



Wisconsin State Public Defender

315 N. Henry St. - 2nd Floor
PO Box 7923 Madison, WI 53707-7923
Office Number: 608-266-0087 / Fax Number: 608-267-0584
www.wisspd.org

Nicholas L. Chiarkas
State Public Defender

Kelli S. Thompson
Deputy State Public
Defender

Assembly Bill 395 & Senate Bill 263

Testimony by: Wisconsin State Public Defender Nicholas L. Chiarkas

October 6, 2009

Good morning. My name is Nick Chiarkas and I am the Wisconsin State Public Defender. First, thank you for this extremely important improvement in eligibility for public defender representation in Wisconsin. I am honored and encouraged to be here today to testify in support of Assembly Bill 395 & Senate Bill 263.

As you know, the State Public Defender's Office (SPD) provides constitutionally-mandated legal representation to the indigent who meet Wisconsin's statutory eligibility standards. The problem Wisconsin is currently facing is that these standards, set by statute, have not been updated since 1987, leaving many of our poorest citizens without access to legal representation in matters where their liberty is at stake. In addition, enacting this legislation would save Wisconsin taxpayers \$2 million dollars per year.

A Joint Finance Committee amendment to the 2009-11 biennial budget bill would have updated this financial criterion, but was vetoed. Similar legislation was previously introduced in the 2007 (SB 321, AB 576), 2005 (AB 1219), and 2003 (AB 616) sessions.

The Governor's Racial Disparities Oversight Commission recently stated that people of color receive disparate treatment in the criminal justice system and that African-Americans and Hispanics constitute a disproportionately high percentage of the incarcerated population in Wisconsin. The Commission also stated that Wisconsin's eligibility standards should be revised because they not only prevent many minorities who are unable to retain counsel from qualifying for appointed counsel through the SPD, legal representation is also essential to any effort to address racial disparity and disproportionate minority confinement in the criminal justice system. All of our citizens should have access to justice, no matter what color their skin, how poor they are or what zip code they live in.

If you will indulge me, I would like to give you two examples of people who would not qualify for public defender representation in Wisconsin but would in every other state.

1. If you are charged with a misdemeanor and you gross \$62.50 per week, (you are at 30% of the Federal Poverty Guidelines), and your only assets are \$300 in cash and a beat-up \$2000 car, you are not going to qualify for SPD representation in Wisconsin.

2. If you are charged with a felony, you have 2 children, you make \$7.25 per hour, and your only assets are \$300 in cash and a beat-up \$2000 car you are not going to qualify in Wisconsin for SPD representation.

Wisconsin's standards are the lowest in the country. They are an embarrassment to our state and need to be fixed.

I would also like to point out some problems with the current law. Many people 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. This legislation would provide equal protection for all our citizens, not just those who can afford a lawyer.

In addition, courts and counties have to divert taxpayer dollars and 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. In CY 2008, 69 of the 72 counties reported spending approximately \$6 million of taxpayers dollars for county appointed lawyers. The actual amounts are increasing 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, 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.

I've long believed that those who have less in life should have more in law. Maybe that sounds a bit pie-in-the-sky naïve, but certainly you would agree that they should have an equal measure of law – as promised by the last three words of our Pledge of Allegiance – yet we know too well that they do not. As I have stated in previous testimony on this issue, 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 263 and AB 395 keep the promise of our pledge of allegiance...it is the ideal that is Wisconsin and the idea that is America. This proposed legislation (2009 SB 263 & AB 395) will update the financial eligibility standards to match those of Wisconsin Works (W2).

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 395 and SB 263 will dramatically reduce county liability for providing counsel to indigent persons who do not presently qualify for SPD representation. The SPD will provide legal representation in

about 12,800 additional cases per year. The legislation will authorize 29.7 new attorney and 15.7 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, 2011, no state costs will be incurred during the current 2009-2011 biennium. The annual cost in FY 2012 is projected to be \$3.8 million. The ongoing annual cost, beginning in FY 2013 is projected to be \$ 4.1 million. Based on the reported numbers from the counties in 2008, enacting this important legislation will therefore save taxpayers at least \$2 million per year.

On June 24, 2009, U. S. Attorney General Eric Holder addressed the American Council of Chief Defenders in Washington, D.C. He stated, “When I took the oath of office as Attorney General, I swore to support and defend the Constitution of the United States. Supporting and defending the Constitution includes, in my view, a responsibility to serve as guardians of the rights of all Americans, including the poor and underprivileged.”

Denying SPD representation to those whose income is below the federal poverty guidelines is a disappointing departure from Attorney General Holder’s commitment to justice for all, and cannot be reconciled with common and fundamental ideas of fairness. Moreover, it subjects Wisconsin’s poorest citizens to increased dangers of conviction merely because of their poverty.

Today, in this room, you—Senators and Representatives—have given Wisconsin an opportunity to fulfill the promise of our Pledge of Allegiance and the promise of Gideon. This issue is not about public defenders, nor about policy or politics. It is about Wisconsin’s poorest and most disenfranchised citizens reaching for justice. And Wisconsin’s lawmakers bringing that promise of justice to every Wisconsin citizen, no matter how poor, no matter how powerless.

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