

LEGAL ACTION OF WISCONSIN

Providing free legal services to low-income Wisconsin clients since 1968 • Proporcionando servicios legales gratuitos a clientes de bajos ingresos en Wisconsin desde 1968

TO: Members of the Assembly Committee on Family Law
FROM: Abby Bar-Lev Wiley, Legislative Director, Legal Action of Wisconsin;
Robert Held, Family Law Priority Coordinator & Managing Attorney,
Legal Action of Wisconsin
RE: Impact of AB 628 on Legal Action's Clients
DATE: December 1, 2021

Thank you for the opportunity to comment on AB 628. Legal Action of Wisconsin (LAW) is a nonprofit law firm that provides free civil legal aid to low-income people in 39 of Wisconsin's southern counties. One of our priority areas is serving low-income, domestic abuse victims with their family law needs; we work to help victims become safe. Our Family Law attorneys may handle a variety of types of cases for domestic abuse victims, including domestic abuse and child abuse injunctions; divorce cases; maintenance and child support; child custody and placement; paternity, and modification of divorce, paternity, custody, placement maintenance, or child support judgments, among other types of cases. We have concerns that AB 628's removal of the right to a trial by jury in parental termination proceedings would be deeply harmful to our clients and their families.

The Right to Parent is Critical, but AB 628 Would Diminish That Right for our Clients:

The parental relationship is paramount, one of the most critical rights that exists. At Legal Action, we see parents with low incomes who work endlessly to stretch each penny, particularly during the pandemic economy, to provide for their families. We see parents who are not able to be home after school because they work multiple low-income jobs that barely earn enough for groceries and rent. We see the multiple stressors on families with low incomes, from issues with transportation access, to lack of healthcare or sick days, to providing childcare. We see how parents rely on a village of support networks to help take care of their families. We see that even when they struggle and sacrifice, there is nothing more important to a parent on any income than the health, safety, and well-being of their children. When a parent's right to their children is being challenged, they deserve to choose whether to have a jury of their peers make that ultimate decision. The termination of parental rights not only impacts the parent, but is a trauma on children as well; a decision of whether to break apart a family is one of the most formative moments in a child's life.

Juries Bring 12 Times More Life Experience to a Trial Than a Single Judge:

AB 628 proposes to remove the statutory right to a jury trial in a termination of parental rights proceeding, putting the decision solely in the hands of a judge. Although judges are experts in law, they are no more experts in understanding a family's dynamics than anyone else. Where a judge represents a single point of reference, a jury is comprised of people from different backgrounds, different types of families, different racial and ethnic make-ups, different faith traditions, different ages, different cultural experiences. In other words, juries bring 12 times more life experience to a trial than a single judge. Working together, a jury is capable of determining facts and deciding whether a parent is statutorily fit to care for their child or not. The parent—and society at large—benefits when such fundamental, critical decisions are decided by a jury of peers. It adds credibility to a decision to terminate parental rights, as it is a decision made by a majority rather than a single judge.

Parental Termination Hearings are Better Suited for Trials by Jury than by Judge:

There are certainly times when it makes sense to have decision made by a judge rather than juries. At Legal Action, many of the cases we take on behalf of low-income individuals are decided by judges. Sometimes it is simply more efficient to have a bench trial, particularly when the issue involves interpretation of a statutory

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claim or the rote application of law. But when it comes to a decision that is as context-driven, subjective, and consequential as the termination of parental rights, it is respectful of the nature of the right at hand, and critical to a parent's acceptance of the ultimate decision, that a parent has the right to decide whether to be heard by a judge or a jury.

AB 628 takes away a parent's statutory right to a trial by jury in a termination of parental rights proceeding, hampering a parent's rights before her hearing has even begun. If AB 628 were to pass, it would represent a fundamental disrespect for the importance of the decision to terminate parental rights and the impact that such a decision has on children and families—particularly for those with low incomes like the clients we serve every day.

Thank you for your consideration.

Sincerely,



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Legislative & Compliance Director
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