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Public defenders to stop representing poor parents in child protection cases

by Elizabeth Stawicki, Minnesota Public Radio
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AUDIO

Public defenders to stop representing poor parents in child protection cases (feature audio)

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Starting July 8, state public defenders outside of Hennepin County will no longer represent parents in child protection cases or in specialty courts such as drug court. Hennepin County's board provides financial support to its public defenders, but is the only one to do so.

St. Paul, Minn. — Because of state budget cuts, the Minnesota Board of Public Defense faces a \$3.8 million deficit for fiscal year 2009.

Board officials say that forces them to stop providing services the state doesn't specifically require them to provide.

The state mandates that parents in child protection cases have access to an attorney if they can't afford one. The reasoning is that having a child is a fundamental right, and the state infringes on that right when it takes away custody, even temporarily.

"When kids are in limbo and not sure what's supposed to be happening next, it really does create a lot of insecurity and anxiety in that child."

- Gail Chang Bohr, Children's Law Center of Minnesota

Attorneys help parents navigate and understand what is a highly complex area of the law. Attorney Gail Chang Bohr heads the Children's Law Project, which advocates on behalf of children in the foster care system. She says without attorneys who understand this kind of law, there will be delays.

"Those delays aren't good for kids. They're not good for anybody, but specifically for kids," said Bohr. "When kids are sitting out there in limbo and not sure what's supposed to be happening next, it really does create a lot of insecurity and anxiety in that child."

Yet while the state mandates parents have access to an attorney, it doesn't mandate that the Board of Public Defense provide that service.

The state's chief public defender, John Stuart, says his office has no choice but to step back from representing these parents. He says legislative budget cuts have shrunk his staff by 15 percent.

"Public defenders have job descriptions that are written into statute, and they say we represent the minor in juvenile court if they're over 10. We don't represent the parents. So reluctantly, we're going to say that we don't represent the parents anymore," Stuart said.

Judges may appoint other attorneys to represent parents in child protection cases, but Minnesota law is silent as to whom. Last week, the state court administrator wrote Minnesota's chief judges that the law is also vague on who will pay for those attorneys. It's likely the courts will turn to the counties

to pick up the tabs.

Keith Carlson is executive director of the Minnesota Intercounty Association, which represents Minnesota's 13 largest counties. He says counties are getting squeezed, too.

The Legislature imposed caps on property taxes and cut funding for public defenders, an expense the state agreed to pay for

during the early 1990s.

"At that time we gave up state aid, dollar for dollar, assuming the cost for public defender services," Carlson said. "So we believe we've already paid for this and that funding obligation now resides with the state. And consequently, the state is ultimately the party that should be paying for it."

When asked recently about who should pay, Gov. Tim Pawlenty responded this way.

"Well we're six months away from another legislative session, so I'm sure this is a topic that will come up during the next session," answered Pawlenty.

Judges may order counties to pay for these services, but there's nothing in the law that says counties must pay immediately.

In fact, one statute says that if a judge orders a county to pay for a service that wasn't in the budget, the county may refuse to pay that cost until the next fiscal year.

Getting attorneys for these parents in what is a highly complex area of law -- and no pay for six months -- could be a hard sell.

So while officials dispute who has to pay for these services, those at the heart of these cases -- children -- will wait longer in the limbo that is foster care, not knowing whether they'll be going home soon or up for adoption.

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