Supreme Court of Wisconsin

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Hon. Randy R. Koschnick
Director of State Courts

Testimony
Of

Nancy Rottier, Legislative Liaison
and
Bridget Bauman, Director, and Kristen Wetzel, Program Analyst
Children's Court Improvement Program

For information only on Assembly Bills 559 through 566

Assembly Committee on Family Law
Representative Jesse Rodriguez, Chair
October 29, 2019

Thank you for allowing us to testify on Assembly Bill 559 through 566, the bills introduced after several months of work by the Speaker's Task Force on Adoption. We appreciate the hard work of the Task Force and were very pleased to present information at its Waukesha public hearing.

We are appearing for information only in order to comment on various aspects of the bills that impact the court system. The Wisconsin court system administration takes no position on the policy aspects of the bills but rather seeks to highlight court procedures that may be impacted, efficiencies that may be created, resources that may be required, unintended consequences that may be identified and technical drafting issues that may require attention.

By way of introduction, we want to give a brief look at the work of the Children's Court Improvement Program (CCIP). For nearly 25 years, Wisconsin has joined with all other states in applying for and receiving federal grant funding to improve the handling of child abuse and neglect, termination of parental rights and adoption cases in the court system. CCIP staffs several committees, including the multi-disciplinary Wisconsin Commission on Children, Families and the Courts, as well as the Wisconsin Judicial Committee on Child Welfare that focuses on best practices for judges and court commissioners. We work closely with the Department of Children and Families (DCF) in an effort to make the child welfare system run more smoothly and improve outcomes for children and families.

CCIP co-sponsors with DCF a biennial conference for state, county and tribal leaders to learn innovative practices in the area of child welfare. This year's conference was held just a month ago in Wisconsin Dells and attracted over 550 participants from throughout

Wisconsin. The *Conference on Child Welfare and the Courts: Working Together to Effectuate Timely Permanence* seems particularly relevant, given the work of the Task Force.

Our interest in this subject matter runs deep, so we greatly appreciate the opportunity to submit comments on each of the bills. Given the short period of time the drafts of these bills have been available, these comments are not intended to be an exhaustive list. But we hope the questions, concerns and suggestions are helpful to the committee as it deliberates. We have also attached flow charts of the CHIPS and TPR processes, for your information; we had provided those to the Task Force in August.

2019 AB 559: CHIPS & TPR Grounds, Right to Jury Trial, & Permanency Review by Court

- Section 1: The absence of a definition for "basic needs" may result in uncertainty. See s. 48.01(1)(ag) for examples.
- Sections 5 and 21: These sections add Temporary Physical Custody (TPC) Orders and Consent Decrees to the orders that require TPR warnings under ss. 48.356 and 938.356.
    - The language states that the child has been "adjudged" CHIPS, JIPS, or delinquent under one of the various orders, but a child would not be adjudicated CHIPS, JIPS, or delinquent under a Temporary Physical Custody Order or Consent Decree.
    - As currently drafted, the court would be required to provide oral and written conditions of return when the court enters a TPC Order. See ss. 48.356 (1) & (2) and 938.356 (1) & (2). This may be difficult to accomplish in practice at such an early stage of the case. TPC hearings must be held within 24 or 48 hours of removal, so typically there is a lack of information regarding the child and parents. Furthermore, services are not usually offered by the child welfare agency or available to parents pre-disposition.
    - See also Section 11, which adds TPC Orders and Consent Decrees to the list of orders for the continuing CHIPS ground. It is unclear how these modifications to s. 48.415(2)(a)1. will interplay with s. 48.415(2)(a)3., including its application in practice and potential due process considerations.
- Section 9: In order to be consistent with the other abandonment grounds, as well as the definition of substantial parental relationship in the failure to assume parental responsibility ground, the term "care and support" should be changed to "care or support."
- Sections 6, 7, 22, and 23: These sections require the court rather than a panel to conduct the initial 6-month permanency review and the reviews done every 12 months from the previous hearing, where the administrative review panel may conduct the 12-month permanency review and the reviews conducted every 12 months from the previous review. Depending on the length of time the child/juvenile is in out-of-home care, this may result in more hearings to be conducted by the court and therefore could impact their workload. Because of the different way in which counties conduct

permanency reviews and because of the variance in the amount of time a child/juvenile may be out of home, it appears there will not be a significant impact on judicial workload.

- Section 15: This section provides an affirmative defense for the new drug-affected child TPR ground.
    - This defense does not currently include parents who are participating in a drug treatment court, nor does it define "substance abuse treatment or recovery program."
    - Parents are frequently placed on waitlists to participate in substance abuse treatment programs. Would a parent being placed on a waitlist within 90 days of the child's birth be considered "enrolled" in a substance abuse treatment or recovery program for purposes of the new TPR drug-affected child ground?
- Eliminating Right to Jury Trial in TPR Cases (numerous sections)
    - Eliminating jury trials in TPR cases would likely result in reduced judicial workload and delays. This is because trials to the court are easier to schedule and generally have less pre-trial activities. In order to preserve time for a jury trial on a judge's calendar, the judge usually has to extend the date further into the future. Dates for trials to the court can usually be scheduled more promptly. We have no data on whether the trials themselves would be shorter or longer.
    - Was it the intent to keep the right to a jury trial in CHIPS cases? The bill makes no mention of jury trials in CHIPS proceedings. If the right to a jury trial remains in CHIPS proceedings, it may result in additional litigation and jury trials, which could impact judicial, child welfare, and attorney workloads and timeliness of achieving permanency.

<u>2019 AB 560: New TPR Ground of 15/22 Months</u>

- How is "foster home" intended to be defined for purposes of calculating the child's placement for the 15 of the most recent 22 months timeframe? Specifically, was it the intent to include or exclude relative placements? Under the current definition of "foster home" in s. 48.02(6), it would include relative placements that are licensed as foster homes but exclude non-licensed relative placements.
- There may be due process/constitutional issues with this new TPR ground without requiring a CHIPS adjudication and/or other protections (e.g., dispositional order containing conditions for return, TPR warnings). See *Santosky v. Kramer*, 455 U.S. 745 (1982) and *State v. Bobby G.*, 2007 WI 77
- Should this TPR ground apply if the child welfare agency has failed to make reasonable efforts to return the child home or achieve the permanency goal of reunification? One suggestion that has been made is to add an exception to this ground when there has been a previous judicial finding that the agency failed to make reasonable efforts.

2019 AB 561: Post-TPR Contact Agreements

- No comments.

2019 AB 562: Rights of Foster Parents & Relative Caregivers

- Sections 6, 9, 11, 13, and 19: The bill needs clarification on the foster parent's and caregiver's "right to be represented by counsel".
    - Sec. 48.23(3) currently allows the court to appoint counsel for any "party" in the case. As currently drafted, the court could appoint counsel for the foster parent/relative caregiver at its discretion. By stating that the foster parent/caregiver has the right to counsel, the bill goes further than this by implying that the court would be required to appoint at county expense. This would require counties to incur additional costs and affords foster parents with a higher level of protection than biological parents.
    - Language should be modified to indicate that this right can be waived.
- Sections 1 and 15: By removing "relevant to the subject matter of a proceeding" from ss. 48.293(2) and 938.293(2), it may allow individuals listed in this section to receive access to records that are outside the scope of the proceeding or hearing.
- In an effort to ensure that the information contained in the records is not re-disclosed to another individual, the committee may want to consider adding a penalty provision for using or disclosing the information in violation of the statutes. For example, see s. 48.396(3)(d).
- This bill may result in additional contested change in placement hearings and motions to the court (e.g., requests for discovery, examinations, and counsel), which would impact judicial workload.

2019 AB 563: Copy of Permanency Plan and Comments to Foster Parent and Child

- Was it the intention to only provide a copy of the permanency plan to foster parents and children (over the age of 12) in CHIPS cases only and exclude JIPS and delinquency cases? If yes, it is fine as written. If no, similar provisions should be added to Chapter 938.
- Sections 2 and 5: How is "foster parent" and "foster home" intended to be defined for purposes of this bill? Under the current definition of "foster home" in s. 48.02(6), it would include relative placements that are licensed but exclude non-licensed relative placements.
- In an effort to ensure that the information contained in the permanency plans is not re-disclosed to another individual, the committee may want to consider adding a penalty for using or disclosing the information in violation of the statutes. For example, see s. 48.396(3)(d).

2019 AB 564: Expanding Adoption Assistance

- No comments.

2019 AB 565: Restrictions on Relative Preference

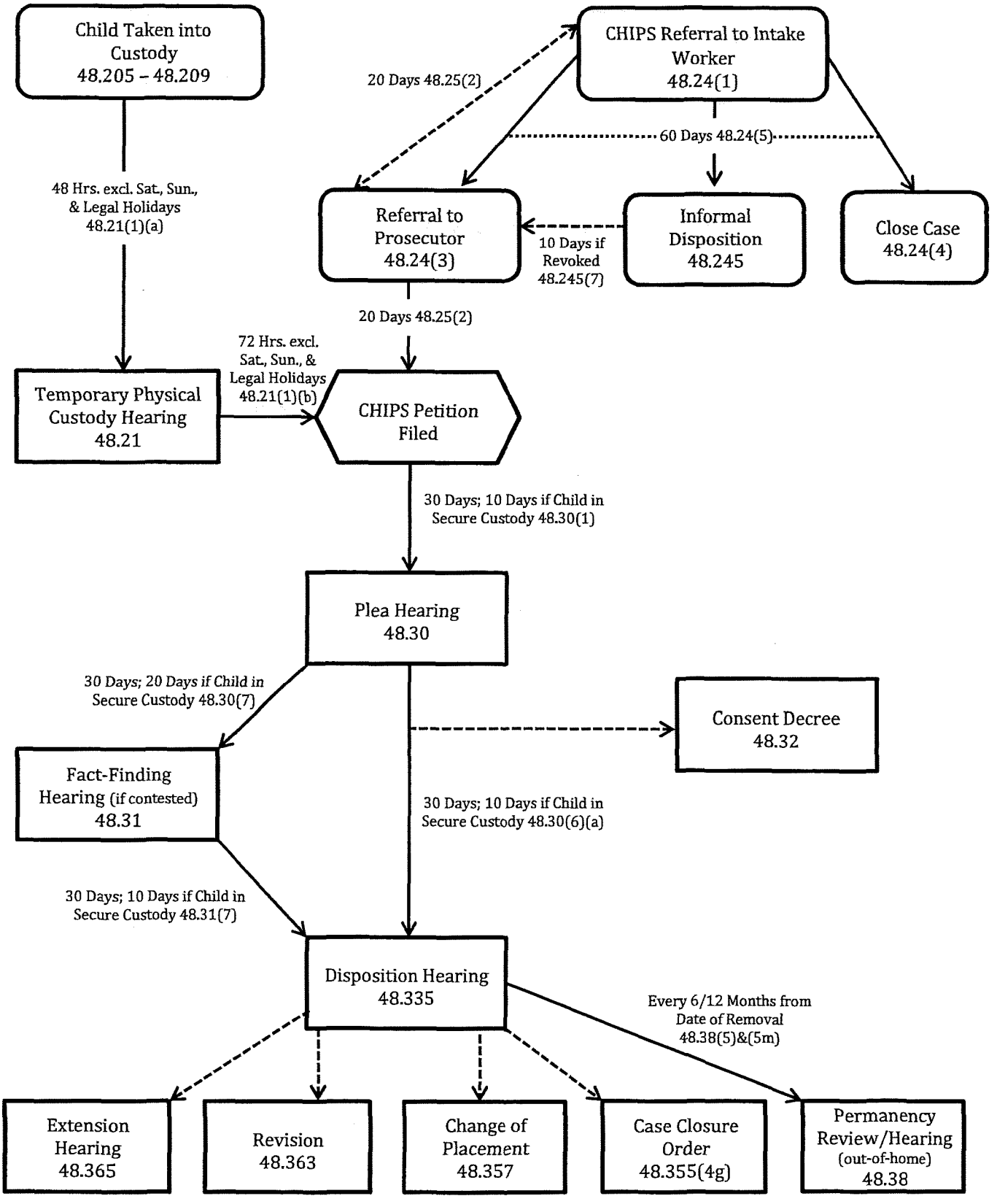
- Some of the provisions of the bill appear to conflict with federal law and policies, such as the Indian Child Welfare Act, Family First Prevention Services Act, Fostering Connections to Success and Increasing Adoptions Act of 2008, and Adoption and Safe Families Act. This legislation promotes placement, involvement, and support of relatives. There is also a focus on maintaining a child's connections to their family.
    - The bill should include an exception for cases subject to the Wisconsin Indian Child Welfare Act (WICWA) as it relates to placement preferences required under WICWA.

2019 AB 566: Filing TPR Petition in CHIPS or JIPS Case

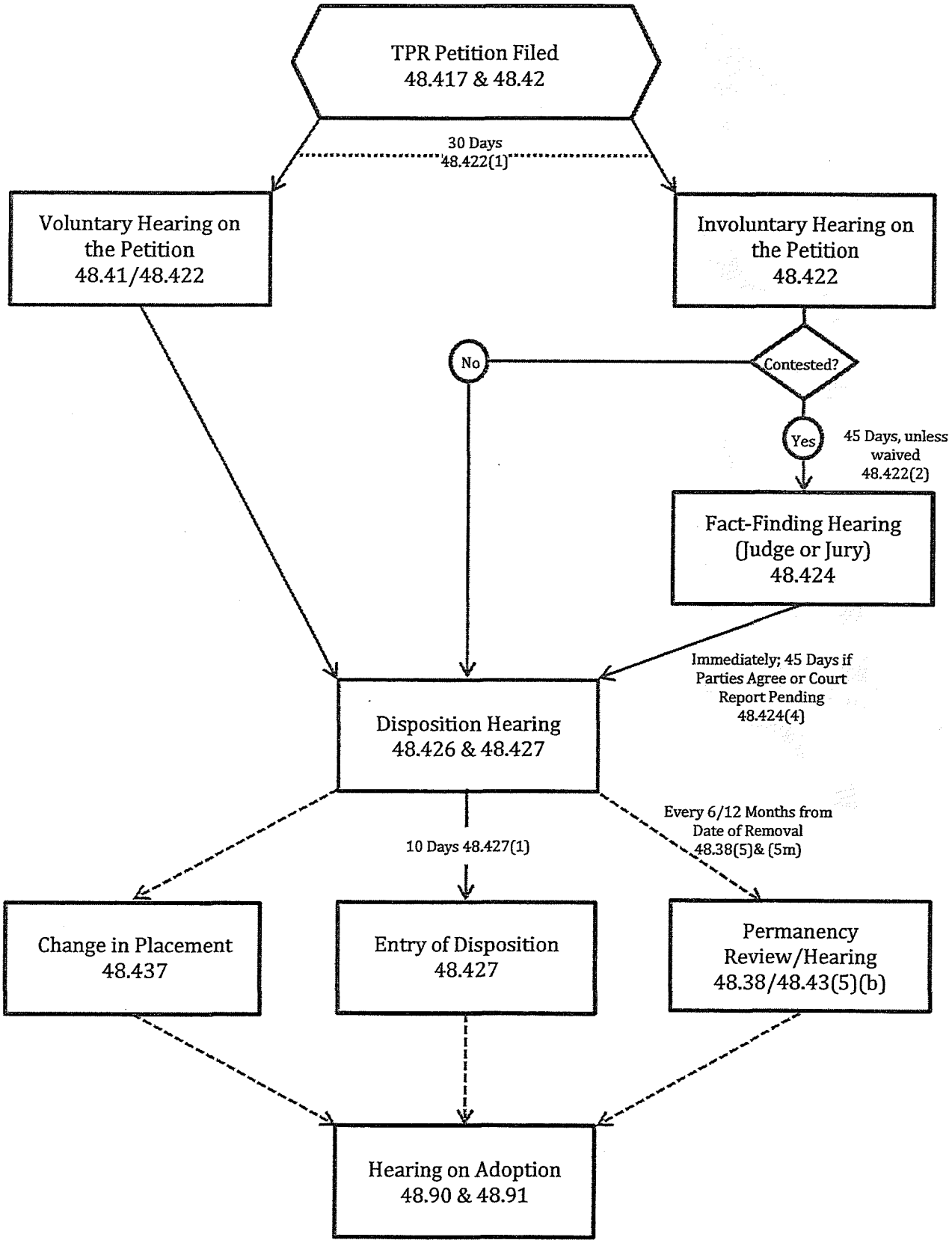
- The bill lacks clarification on how the procedures and process differ when the TPR petition is filed in the CHIPS or JIPS case instead of filing it as a separate TPR case. For example, right to substitute judge, timelines, notice/service, discovery, defaulted parties, etc.

Thank you for your attention and for allowing us to testify. If you have questions, please do not hesitate to contact our Legislative Liaison, Nancy Rottier. Thank you.

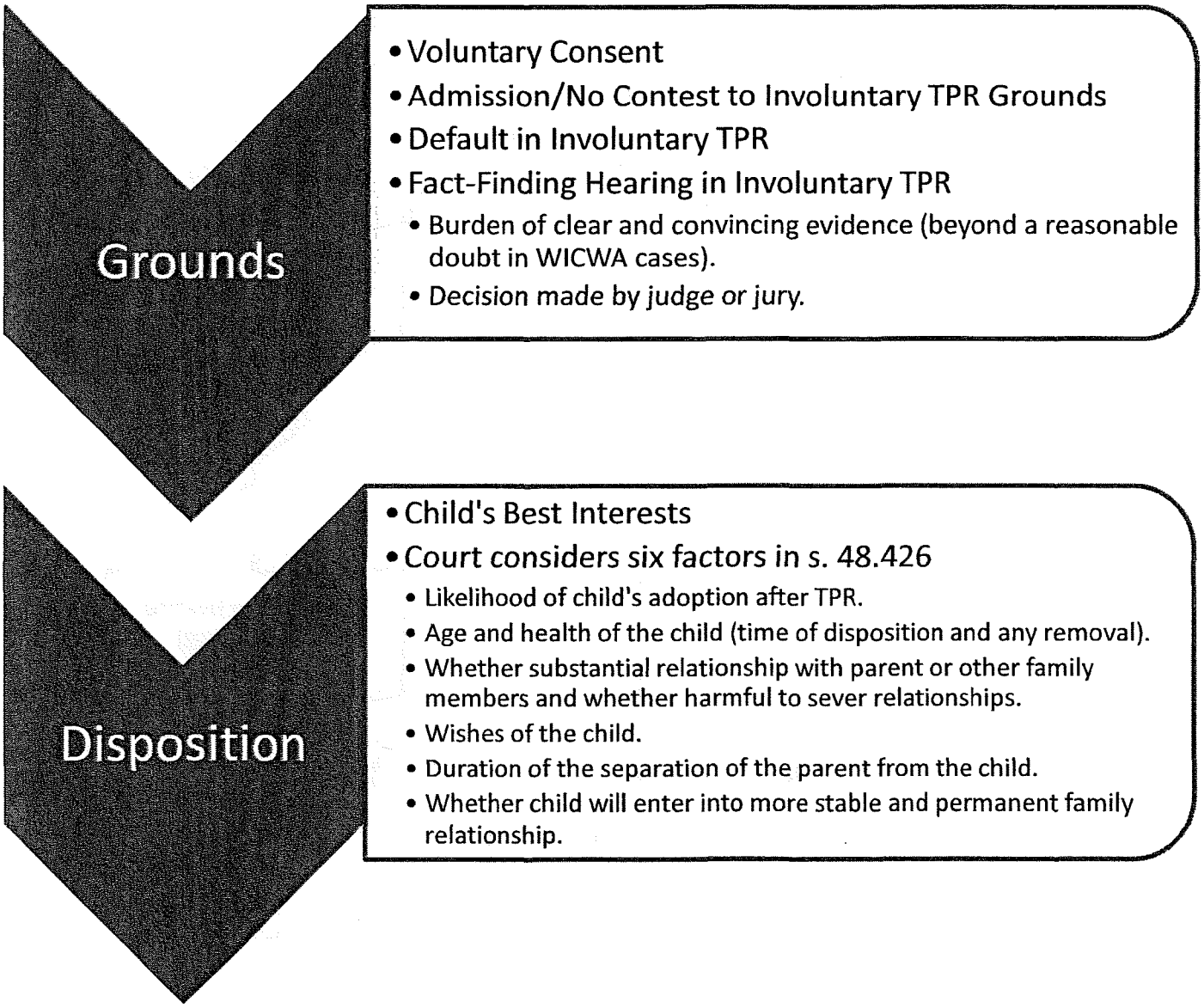
CHIPS Proceedings Flow Chart



TPR Proceedings Flow Chart



TPR Bifurcated Process



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Kelli S. Thompson
State Public Defender

Jon Padgham
Deputy State Public Defender

Assembly Committee on Family Law
Tuesday, October 29, 2019
Assembly Bills 559-566

Chair Rodriguez and members,

Thank you for the opportunity to testify on this package of bills. My name is Adam Plotkin, Legislative Liaison for the State Public Defender's Office. Joining me is our Legal Counsel, Diane Rondini. Diane has more than 30 years experience practicing juvenile law in Wisconsin. Several of the bills raise significant concerns for the practice of law and clients of the State Public Defender's (SPD) office.

SPD is authorized to provide representation for children who are the subject of a Juvenile in Need of Protection and Services (JIPS), Children in Need of Protection and Services (CHIPS), or who are accused of having committed a delinquent act.

For parents in the family system, we provide representation statewide in Termination of Parental Rights (TPR) proceedings and for parents only in Indian Child Welfare Act (ICWA) cases.

The SPD is just over a year into a pilot program of representing parents in any CHIPS case in 5 counties - Brown, Outagamie, Winnebago, Racine and Kenosha. So far we have made about 1000 appointments for parents in the pilot program under 2017 Act 253. The goal of providing representation for parents at the CHIPS stage is to increase the chances of success, reduce the number of termination proceedings, and increase the speed and permanency of placement.

Throughout these bills we are concerned about the impact on SPD clients, many of whom come from diverse backgrounds, have mental or cognitive issues, or have a history of trauma. The racial disparities in the criminal justice system extend to the family law area as well. Our concern is that many of the obstacles that lead to overrepresentation of minority groups in the justice system are impacted by changes in this package. Oftentimes it appears that assumptions are made about the type of people involved in the adoption and foster care system. Many of the children who are removed from the home are older children of color who have a history of trauma and mental health or developmental issues.

The SPD had the opportunity to speak to the Adoption Task Force in August, a copy of that testimony is attached to our written material. We discussed the importance of representing parents at CHIPS proceedings, the value of jury trials in TPR cases, and discovery issues which would all have an impact on the efficiency of cases in the family system while preserving the fundamental right of an adult to parent their child.

Following are comments related to bills in this package.

Assembly Bill 559 (grounds for finding a child in need of protection or services or for terminating parental rights, right to a jury trial in a termination of parental rights proceeding, and permanency plan reviews)

There are several concerns with most of the provisions in AB 559.

Elimination of Jury Trials for Termination of Parental Rights Proceedings

The SPD does not agree that eliminating the right to a jury trial in a TPR will result in a decrease in time to disposition and will likely result in more involuntary TPR's and appeals.

I have included two charts with our testimony. The first shows the number of cases handled by the SPD broken down by disposition type in the last 5 years. As you'll see in the most recent year for example, out of 565 appointments, 40 were concluded by jury trial. Just for clarity, our data reflects when a case is actually decided by which type.

The second chart shows the average number of days per disposition type also broken down showing Milwaukee alone, the other 71 counties, and statewide. The most telling statistic is to compare the average number of days to disposition statewide based on disposition type. It took 309 days to reach disposition when trying a case to the court, 279 days when trying it to a jury.

We believe that what is at stake in a TPR case justifies the highest and one of the most treasured rights in the justice system - right to a trial by jury. Often called the "civil death penalty," a TPR proceeding uses the power of the state to end a parent's right to custody of their child. The data indicate that removing jury trials is a drastic step to take given the limited scope of the impact they have on the system now. TPR proceedings should carry the same ability for a respondent to request a jury trial as a defendant in a criminal misdemeanor case.

TPR Grounds: Changes to abandonment grounds

The change regarding providing care and support for the mother during pregnancy could result in significant litigation regarding the definition of what "care and support" and "reasonable cause." Often times fathers are not notified that a mother is pregnant. It is unreasonable for all males to assume that a pregnancy will arise from every sexual encounter.

Adding failing without reasonable cause to pay court-ordered payments of child support is duplicative as it seems to be encompassed by the current failure to assume parental responsibility grounds. There are reasons for failing to pay child support that might not be understood by a jury or judge, including a poor economy, disabilities or borderline work capabilities, or no access to a child support attorney. This proposed change would have a significant impact on the indigent and those with mental and physical health issues.

TPR Grounds: Parental Incarceration

This new ground raises several concerns. First, it asks a judge in the TPR proceeding to guess whether the criminal case is complete when there is often no way to know whether appeals may or may not be successful. There is no mechanism to allow for a termination to be undone if a person successfully appeals the criminal case. And even if there were, this will have unnecessarily created trauma for the child.

One specific language concern in the draft is on page 8, line 20 which as drafted is unclear as to whether ANY previous CHIPS adjudication can be considered or whether the CHIPS adjudication must have been either related to or in existence at the time of the criminal conviction.

Another drafting concern is Section 24 allowing for a TPR petition to be filed on a currently incarcerated parent based on this new ground. In addition to the significant workload concern, the outcome or decisions made in the criminal case may likely have been different if this ground had been in place at the time of conviction.

Drug Affected Child Definition & TPR/CHIPS Ground

It is possible that parents may be less likely to seek substance abuse treatment for fear that their rights eventually may be terminated. Most importantly, the new TPR grounds is problematic in that it is a burden shift to the parent if the child is found to be drug affected. The burden shifting raises due process issues, and the language of the grounds requiring that the parent "maintain substantial compliance with a substance abuse treatment or recovery program" is vague. This is especially problematic in rural Wisconsin where treatment and recovery programs are hard to find, get into, or travel to.

Assembly Bill 560 (termination of parental rights if a child has been placed outside the home for 15 of the last 22 months)

AB 560, given federal law, will not be practically different than the current Continuing CHIPS ground. Federal law provides exceptions to the 15 of the last 22 month requirement for filing an involuntary termination of parental rights. Generally speaking, when the department has not provided reasonable efforts, the Department cannot pursue TPR. If AB 560 were law, it would still have to comply with federal law, the Adoption and Safe Families Act of 1997. To do so, this new ground would still need to show that the agency has provided reasonable efforts.

There is a question about whether this would apply to a privately brought TPR case. If it refers to a parent who has abandoned the child, there would still need to be constitutional protections such as "good cause," making this essentially the same as the current Abandonment ground.

The timeline does not match current availability and waiting lists for substance abuse treatment meaning that children's lives disrupted as parents are given unattainable timelines to meet conditions of the CHIPS petition.

The vagueness of AB 560 is likely to result in litigation which would potentially delay permanency for all the kids who are sought to be helped by it.

Assembly Bill 561 (postadoption contact agreements)

AB 561 is a step towards open adoptions but raises concerns about meaningful access particularly for SPD clients. Section 4 of the bill deals with future enforceability of the provisions in the contact agreement. Unfortunately it requires mediation or arbitration the costs of which are split by the birth and adoptive parents. For indigent individuals, this may put enforceability beyond their access which means the contact agreement is not meaningful if the terms can be violated without consequence.

There are also questions about workload and future representation in modification or enforcement proceedings. It is unclear whether SPD would be allowed or required to provide representation for a proceeding that may be occurring months or years after the initial representation.

Finally, the bill does not make clear the status of the postadoption contact agreement if the adoption is disrupted.

Assembly Bill 562 (the rights of a foster parent or other physical custodian of a child on removal of the child from the person's home)

One of the stated goals of the Adoption Task Force was to focus on a shortened timeline for adoptions. AB 562 will significantly increase the time that a child is in temporary, out-of-home custody by providing party status and the right to representation by counsel for foster parents.

Foster parents input on placement is already a statutory right under s. 48.357. Also, the children's best interests are represented by a court appointed Guardian Ad Litem. With the exception of the Act 253 pilot representation counties and a handful of counties which appoint counsel at county expense for parents in a CHIPS proceeding, those parents, particularly if they are indigent, are not often represented. If foster parents of means become a party and are able to hire private counsel, biological parents who still have a constitutional right to their children will be put at a significant disadvantage.

Case law on the subject also has made clear that third parties should not be given equal status to parents in CHIPS cases. Both *Troxel v. Granville* (530 U.S. 57 (2000) and *Barstad v. Frazier* (118 Wis. 2d 549 (1984) are unambiguous on this point.

This change will increase the number and complexity of hearings as it adds additional parties and attorneys. And because court appointment of counsel and access to experts is paid at county expense, the financial burden for that portion of AB 562 falls squarely on the shoulders of Wisconsin's counties.

One technical question arises when looking at AB 562 and AB 566 together. If AB 562 gives foster parents party status for the CHIPS case, and, under AB 566, the CHIPS case can be converted to a TPR within the original CHIPS filing, does the foster parent retain party status and the right to counsel under the TPR case?

It is also worth noting that the deleted language on page 12, line 5 would expand access to any record for the GAL or counsel to review, not just those deemed relevant to the case. This could mean access to all manner of records that may not have been intended under the draft.

Assembly Bill 563 (providing foster parents with a copy of a permanency plan)

The concept behind AB 563 could be useful. As drafted, and in conjunction with AB 562, questions such as how the information can be used and the re-release of information become a factor. AB 563 would be very concerning if the permanency plan were to be included in the court record that is available to the public.

Assembly Bill 564 (eligibility for adoption assistance)

AB 564 could help ensure that adoptive parents have a more appropriate level of financial assistance to better support a permanent placement.

Assembly Bill 565 (placement of a child with a relative under the Children's Code or the Juvenile Justice Code)

Often placing a child with a relative prevents a TPR by allowing permanency to be found more quickly through guardianship. When considering trauma informed care and known indicators of trauma, relative placement should be left open as an option and be easy to consider throughout the life of the case to reduce identity issues later as preteens or adolescents. Often foster care placements disrupt and having a ready and able relative as a placement option becomes important.

On page 3, line 6 of the bill, changing the language from placement with a relative "whenever possible" to "if it is in the best interest of the child" is the key change and represents a substantial culture change in out-of-home placement during the CHIPS proceeding.

In fact, AB 565 may be contrary to national trends that favor relative placement (Fostering Connections to Success and Increasing Adoptions Act 2008). If one of the goals of this bill and the package in general is to increase permanence, this bill has the potential to go the opposite direction.

Assembly Bill 566 (the procedure in a CHIPS or JIPS)

AB 566 raises several concerns. First, it seems to confuse the Juvenile in Need of Protection and Services (JIPS) case with a CHIPS case. Simply put, a JIPS case focuses on the behavior and needs of the child whereas the CHIPS case is related to the actions of the parent. AB 566 would allow a JIPS case to be converted to a Termination of Parental Rights proceeding. Essentially, this allows the parent's rights to be terminated based on the actions of the juvenile. For a child or parent with mental or physical health issues, this is particularly concerning.

Again, as discussed in AB 562, a majority of birth parents in a CHIPS proceeding are not represented by counsel. This creates not only due process concerns, but basic but important procedural questions. Under current law, with the exceptions already noted, the SPD can only represent a parent when a TPR petition is filed. If the case is a CHIPS case that is converted to a TPR as envisioned in AB 566, it does not appear that there is explicit statutory authority for the SPD to provide representation once the CHIPS case becomes a TPR.

In addition, even if the authority were clarified, it would not increase the speed or efficiency of the system. If the SPD were notified and allowed to provide representations after the conversion, it would still take the same amount of time to obtain the voluminous discovery in these types of cases and be in a position to proceed with the case. AB 566 will not have any practical effect on the system as it is now, especially since most CHIPS parents are currently unrepresented.

Thank you again for the opportunity to speak today. Ultimately, the SPD and the other system actors you will hear from today want a very complicated system to work in the best interests of children but in a way that must balance the rights of parents to retain custody of their children. Many of the provisions in the package do not increase efficiency or permanency. There are changes to the system, many of consensus across disciplines, that were presented to the Adoption Task Force that would have a significant and positive impact.

Submitted by:
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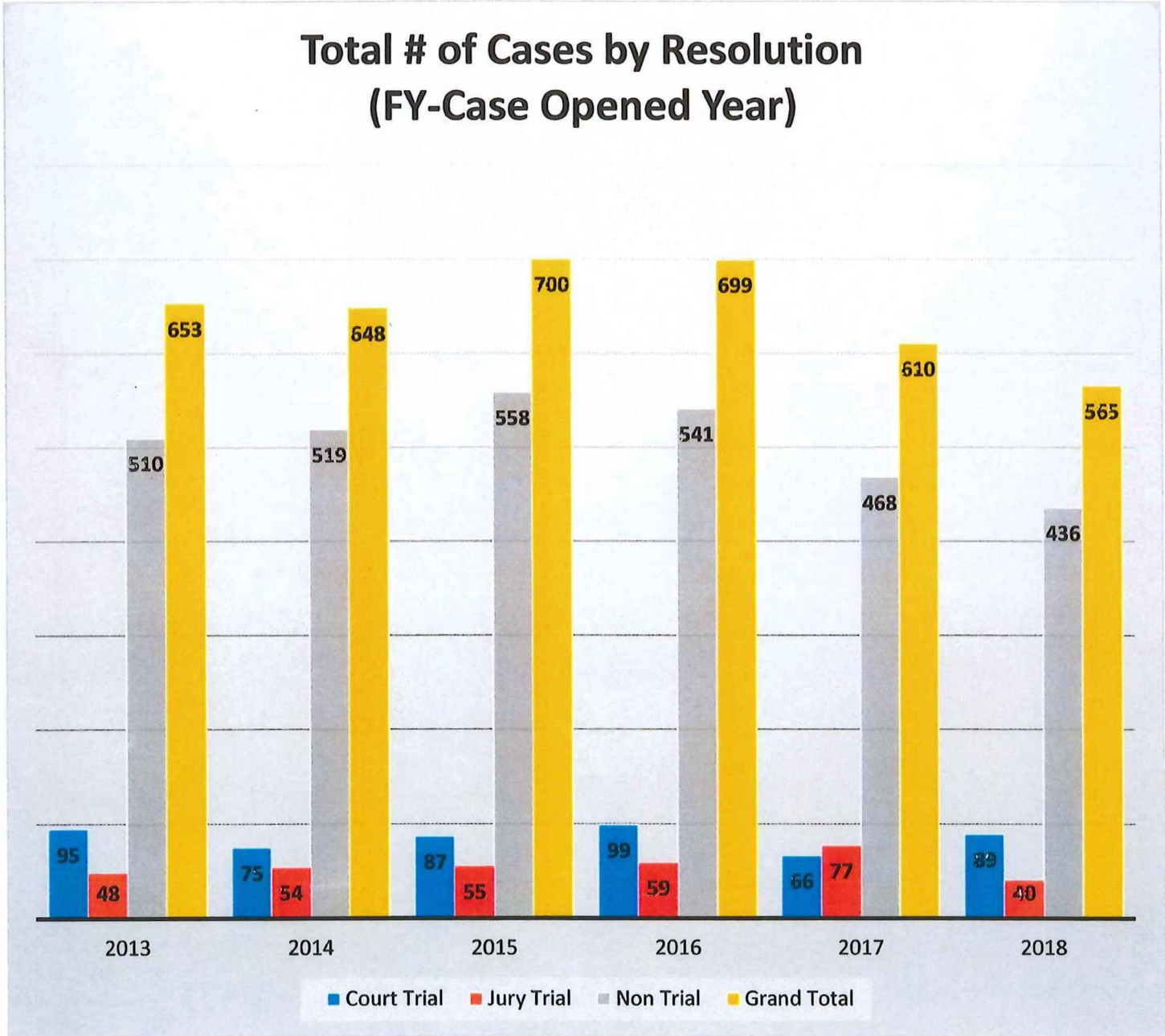
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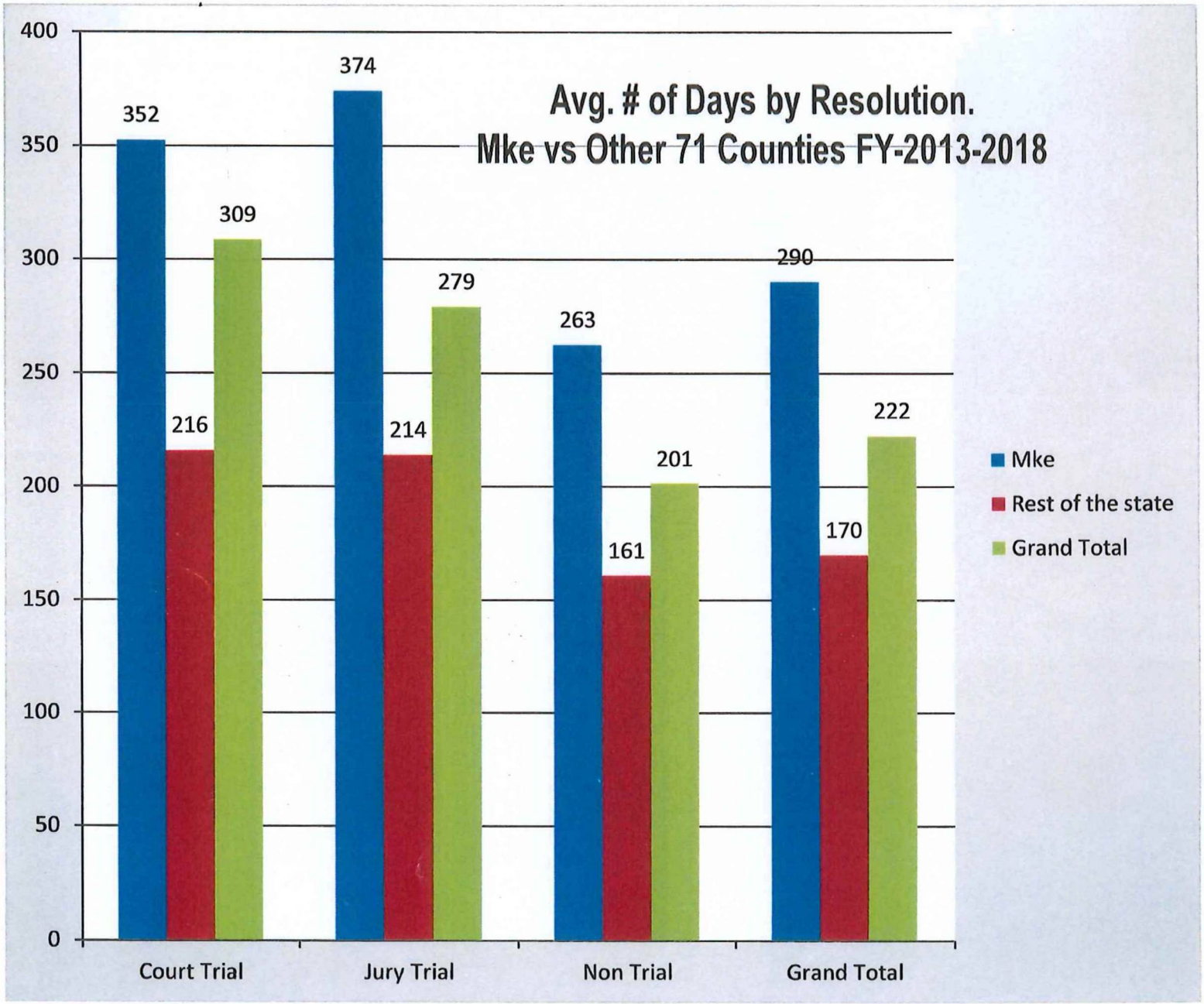
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290
170
222
Court Trial
Jury Trial
Non Trial
Grand Total
Mke
Rest of the state
Grand Total

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Kelli S. Thompson
State Public Defender

Jon Padgham
Deputy State
Public Defender

Speaker's Task Force on Adoption
Wednesday, August 28, 2019
Testimony from Wisconsin State Public Defender

Chair Dittrich & Task Force Members,

Thank you for the invitation to speak to the Task Force this morning. My name is Adam Plotkin, Legislative Liaison for the State Public Defender (SPD). Joining me is Milton Childs, the Local Attorney Manager from the SPD's Milwaukee Juvenile/Mental Health Office. The SPD is happy to be a resource to the Task Force as it considers legislative proposals.

SPD is authorized to provide representation for children who are the subject of a Juvenile in Need of Protection and Services (JIPS), Children in Need of Protection and Services (CHIPS), or who are accused of having committed a delinquent act.

For parents in the family system, we provide representation statewide in Termination of Parental Rights (TPR) proceedings and for parents only in Indian Child Welfare Act (ICWA) cases.

Thanks to the Legislature under Representative Ballweg's leadership, the SPD is just over a year into a pilot program of representing parents in any CHIPS case in 5 counties - Brown, Outagamie, Winnebago, Racine and Kenosha. So far we have made about 1000 appointments for parents in the pilot program under 2017 Act 253.

The goal of providing representation for parents at the CHIPS stage is to increase the chances of success, reduce the number of termination proceedings, and increase the speed and permanency of placement. A similar project in Washington State showed that children reached permanency 11% faster for reunification, 83% faster for guardianship, and 104% faster for adoption. Overall, the average number of days to reach permanency dropped from 344.8 to 251.9. Washington also noted a 44% decrease in the number of termination of parental rights petitions filed. The goal of the CHIPS pilot program in Wisconsin is to study the impact and hope to duplicate the results that Washington and other states have seen.

The statutory intent of Chapter 48 in general is found in s. 48.01, which makes clear that the ultimate goal of the Children's Code is to determine the best interests of the child. The first stated goal is to assist parents in changing any circumstances in the home that might harm the child. The next sentence states that courts should recognize they have the authority not to reunite the child with their family. In sum, while making appropriate allowance for either temporary or permanent removal of the child, the assumption is that the best interests of the child should first be to preserve the unity of the family.

Adoption is something that by its own nature comes out of loss. Recent research on adoption and its effects on kids show that everyone is better off--the children, adoptive and biological parents--if you remember that adoption doesn't happen in a bubble. The relationship between birth parent and child are forever changed, and the relationship between adoptive parents and their children are different, too.

My name is Milton Childs. I have had the pleasure of working with and representing parents in TPR cases for over 12 years. I currently work in Milwaukee County. But I started with the SPD in the Sheboygan County Office. I then worked in Racine County for a couple of years. I've represented parents in all three counties and I can say that there were more similarities than differences in the parents. One, they love their children. They may show their love differently than the way many of us perceive what love is and perceive what a traditional relationship should look like between a parent and a child. Second, many of the parents did not have great parents and did not come from great families. Many of my clients were in the system when there were children; they were CHIPS children. Many did not have great parents or adults as role models, so they tried to do their best. Many are trying to overcome many obstacles: substance abuse issues, mental health issues, victims of domestic violence and other trauma, and cognitive limitations, just to name a few. Most of my clients were minorities, they were poor, having no resources and no support system.

Based on my experience, speeding up the TPR process will not solve the problem. First, there seems to be a perception that voluntary TPRs do not happen. Actually, they happen quite frequently. In many of those cases, the child is either with a family member or the birth parent knows and has a relationship with the foster parent. This is a big reason for you to consider open adoptions. Many successful adoptions occur when the birth parent is able to remain involved in the child's life; especially for those children that are removed at an older age and have lived with their parent for a portion of their life. Additionally, many adoptive children, especially as they reach adolescence, seek out their birth parents as they struggle with their identity. Open adoptions would increase the number of voluntary terminations. Therefore, speeding up the adoption process is not the solution. When a child is removed from their home, trauma occurs. Whether it's a good home or bad home; whether the parent is a good parent or bad parent, any removal of a child from their home causes trauma. When a child is placed in two or three foster homes, this causes trauma. Many children, especially older children do not want to be adopted, they just want "mama to get help so that we can come home and be a family" (the words of one of my client's daughters). Some parents finally get it and are finally getting things together. Then a TPR petition is filed. As we consider what is best for the child, we should consider giving the parents an opportunity and additional time, with appropriate services and resources. Then there are children who are no longer wanted by their adoptive parents. Unfortunately, there are a growing number of children, many of whom look like me, that are placed outside of their community as a young child. But as they reach adolescence and begin to act out like many typical teenagers, they re-enter the system as either a CHIPS child or a delinquent child. Speeding up the process does not equal faster permanency.

Based on our experience, here are suggestions that the SPD believes would have an impact on both the efficiency and permanency of the TPR process.

1. Effective date for 2017 Act 256

   Act 256 made changes to the timeline related to filing a TPR petition based on a continuing need of protection and services. At the time, SPD noted that the proposed changes would rush the process by shortening the time frame to terminate parental rights with the end result of increased terminations and more children placed into the foster care system.

   One unintended consequence of Act 256 was a lack of clarity on effective date. Some counties are starting the time frame after the effective date of Act 256 (which we argue is the more appropriate way of implementing the law) while some counties are looking back in time.

The lack of an effective date has resulted in a number of appeals filed while the termination proceeding is still pending. It has been suggested in prior hearings of this Task Force that clarity on the effective date would help to address short term permanency issues related to Act 256.

2. Increased access to services and representation at the CHIPS stage

The biggest barrier to success at the CHIPS stage include access to substance abuse and mental health treatment as well as consistent access to legal representation statewide. As discussed earlier, access to counsel significantly increases permanency and successful resolution on a faster timeline.

3. Delays in providing discovery

Related to the lack of counsel at the CHIPS stage, by the time an SPD attorney is involved at the TPR stage there are often thousands of pages of discovery to review which creates a significant delay in moving forward with the case. Streamlining the provision of discovery and ensuring that depositions, interrogatories, and requests for admission are granted in a timely manner would have a significant impact on moving the case forward.

4. Permanency Counselors

There has been prior discussion about the use of permanency counselors. I have had a chance to work with permanency counselors and I have seen this model work successfully in some cases. A good permanency counselor can assist with the creation of a relationship between the birth parent and foster parent early on, and in some cases successfully co-parent the child. I had one case where the child had behavior issues and when the child's behavior was really out-of-control, the foster parent would call the child's mother. She would talk to the child and was able to calm the child down. The child was not able to stay with the mother due to obstacles that the parent was going through, but the parent was still able to stay connected to the child. Unfortunately, the current system creates an adversarial relationship between the birth parent and foster parent from the time of removal and normally the relationship never improves. This again supports the concept of open adoptions.

5. Open Adoptions

We believe that open adoptions would increase the number of voluntary terminations. One way we could address the reality of these relationships is to have a statutory mechanism for children to have some relationship with their parents post-termination. Without support, adoptive children often seek out their birth parents as they struggle with their identity during adolescence. To pretend that contact doesn't happen is to ignore reality. Knowing that there might be a possible way to have contact with their children post-termination may also increase the number of voluntary terminations because parents right now have a choice of all or nothing when facing potential termination.

We also wanted to take a moment to offer comments on some other ideas that have been suggested for the Task Force's consideration.

1. Elimination of Jury Trials for Termination of Parental Rights Proceedings

   The idea of eliminating jury trials in TPR proceedings has come up at several hearings. The SPD does not agree that this will result in a significant increase in time to disposition and will likely result in more involuntary TPR's and appeals.

   I have included two charts with our testimony. The first shows the number of cases handled by the SPD broken down by disposition type in the last 5 years. As you'll see in the most recent year for example, out of 565 appointments, 40 were concluded by jury trial. Just for clarity, our data reflects when a case is actually decided by which type.

   The second chart shows the average number of days per disposition type also broken down showing Milwaukee alone, the other 71 counties, and statewide. The most telling statistic is to compare the average number of days to disposition statewide based on disposition type. It took 309 days to reach disposition when trying a case to the court, 279 days when trying it to a jury.

   We believe that what is at stake in a TPR case justifies the highest and one of the most treasured rights in the justice system - right to a trial by jury. Often called the "civil death penalty," a TPR proceeding uses the power of the state to end a parent's right to custody of their child. The data indicate that removing jury trials is a drastic step to take given the limited scope of the impact they have on the system now. TPR proceedings should carry the same ability for a respondent to request a jury trial as a defendant in a criminal misdemeanor case.

2. Access to Medical History

   Previous meetings of the Task Force have included discussions on finding a way to allow adults who were adopted access to genetic information for the purposes of medical history without revealing the names of birth parents if they do not wish to be disclosed. While the SPD would not encounter this issue in the course of our practice, we can appreciate the interest in having access to this information. In a way, it is related to the idea of allowing open adoptions. In fact, an open adoption process would allow for easier access to this type of information in some circumstances.

3. Drug Addicted Grounds

   In following previous testimony, there have also been discussions about creating a grounds for drug addiction. SPD would urge caution when considering that concept. First, as we get more research and evidence, we know more quantitatively what we have known anecdotally for some time - that the justice system has become the least efficient and most expensive way to deal with issues that should be treated, for instance, as a public health issue. Substance abuse issues that lead to JIPS, CHIPS, and TPR proceedings don't just affect the addict or individual with mental health issues, but the children as well. In our experience, the timeline requirements in the CHIPS and TPR process imposed by statute and the federal Adoption and Safe Families Act (ASFA) are often incompatible. In order to show progress sufficient not to face a TPR petition based on continuing CHIPS ground, a parent with mental health or substance abuse issues often has to complete a treatment program with a waiting list that doesn't allow them to even begin before

other timelines come into play. And ultimately substance abuse often fits into one of the 15 already established grounds to initiate a CHIPS petition.

Thank you again for the opportunity to present to the committee. We welcome the opportunity to provide input as you move forward with your work.

Submitted by:
Adam Plotkin, SPD Legislative Liaison
608-264-8572
plotkina@opd.wi.gov

Representative Steve Doyle
Assembly District 94
P.O. Box 8952
Madison, Wisconsin 53708

Representative Patrick Snyder
Assembly District 85
P.O. Box 8953
Madison, Wisconsin 53708

RE: Legislature Study Committee on Adoptions

Dear Representative Doyle and Representative Schneider:

Let me start with the required disclaimer. I address the most recent proposed legislative changes in my individual capacity hoping that my extensive experience in this arena may be of assistance to the legislature. I wholeheartedly support one of the primary objectives of the Study Committee; more timely permanence for our children in the child welfare system. I also wholeheartedly support the self-evident proposition parents of children in that system must be treated fairly with due regard for the fundamental liberty interests at stake. I do not speak on behalf of the Wisconsin judiciary as a whole or any entity sanctioned by the Wisconsin judiciary. I acknowledge that some, perhaps most, judges would agree with the sentiments expressed; some, perhaps many, would disagree. I am sorry that I was unable to attend the public hearings on these proposals as I would have preferred to do. However, there was remarkably short notice of the hearings and I was occupied with my obligations here.

I write to the two of you as I have had the most contact with you regarding to the recent study committee and the one that completed its task approximately eighteen months ago. I have copied some people who have interests in these issues. Use this correspondence in any manner you deem appropriate; sharing with those you deem appropriate. I will be happy to answer any questions anyone may have regarding this correspondence.

I address what I perceive to be the most critical proposals relating to the goal of attaining timely permanence for our children.

15 OUT OF 22 MONTHS

I firmly support the proposition that long term placement in out of home care should, in and of itself, be a ground for involuntary termination of parental rights. The timely permanence clock should start running on the day the child is initially removed from the home. However, there are three critical deficiencies in the proposal as drafted.

The first concern is the failure to include relative placements in the proposal. While it is true that often when children are in long term relative placements the family—rationally and reasonably---chooses not to pursue adoption for obvious reasons; that is certainly not always the case. When relative caregivers want and need the permanence of adoption, the State should not be foreclosed from pursuing that goal through this ground.

Second, this proposal needs to incorporate a requirement that the child/ren be found to be in need of the protection and services of the court and placed in out of home care pursuant to orders containing the termination of parental rights notice required by law. There are two compelling reasons for this proposed additional element. First, a parent's parental rights can't be terminated without a finding of unfitness---a Chips determination.[1] Any attempt to use this ground without that determination would be unconstitutional.[2] Secondly, fundamental fairness requires that a parent be put on effective and timely notice their parental rights are at risk before the State moves terminate this most fundamental of rights.

Lastly, the ground needs to incorporate a requirement that a finding was not made in any intervening permanency review hearing that the agency failed to make reasonable efforts to achieve a permanency goal of safe reunification, guardianship transfer, or permanent placement with a fit and willing relative. If a court has determined the government has failed to diligently pursue a court ordered alternative to termination and adoption that then served the best interests of the child, the government should not be allowed to "short cut" the path to termination.

I view this proposal as one of the most pivotal to achieving more timely permanence. Based upon prior experience, I am not optimistic the right to a jury trial in termination---one of the most significant impediments to timely permanence---will be ended. This ground, again if amended as I propose, would effectively end the right to a jury in these circumstances as the grounds phase of the TPR process would invariably be resolved by summary judgment---reserving the parent's right to contest the disposition of the matter.

As I draft this letter, I listened to the Department's representatives' testimony. I do not believe their concerns that the bill—if amended as I propose---would somehow deprive a parent of the

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[1] The duplicative requirement in Wisconsin that unfitness be proved twice---through a Chips finding and then at a TPR proceeding---has been a burr under my saddle for the 30+ years I have been doing this work. This ground, if properly drafted and enacted, would alleviate that problem at least as to this ground and be an incredible assist to achieving timely permanence.

[2] In instances of children born out of wedlock, the Chips proceeding is often the first notice to a non-custodial parent the child in in out of home care and the 15 month time clock has started.

protections of 48.417 (2), exceptions to the mandated TPR filing requirement. Filing would not be required on this ground, or any other ground, if the child was in the care of a relative who did not believe adoption was in the best interests of their child or family; if reasonable efforts had not been made---which is specifically addressed by my proposed changes; there were ICWA/WICWA violations; or if for other reasons, termination is not in the best interests of the child---which may be particularly impactful as to recovering substance affected parents. Nothing in this bill negates the impact of that statute.

This change will not come without cost. It should be anticipated that the number of trials of Chips cases will increase---perhaps dramatically. As a parent will no longer be entitled to a second showing of unfitness, parents and defense lawyers will be more likely to vigorously litigate the Chips process. In like measure, the permanency review/hearing process is likely to become a far more critical, comprehensive and contested process than presently. In truth, however, that is how the process should work. The government should be required to continuously show they are making sincere efforts to assist the parent in resolving safety issues and effectuating safe return (or permanent placement with relatives). Parents (and their lawyers, when applicable) should be vigorously contesting that issue when the government is not doing so.

I vehemently urge the legislature to pass and governor to sign this legislation---but only if these changes are made.

DRUG AFFECTED BIRTH

I vehemently oppose this legislation.[3] There are probably twenty or more reasons I oppose it, but in summary it is unnecessary and oppressive.

Not every mom of a drug affected child needs drug treatment. Encouraging such parents to address "the issue" is certainly good policy. Leveraging every such parent into drug treatment for fear of losing the rights to their child—***particularly when treatment within 90 days of birth may not be available to them***---is oppressive. The potential for disgustingly disparate treatment of parents based upon class is overwhelming and offends any reasonable sense of fairness. I think it is beyond rational dispute the most effective approach to recovery is a comprehensive and supportive approach; not threats and recrimination.

Do I support the proposition there should be a short cut to permanency as to parents who serially produce drug affected children---absolutely.[4] It already exists. 48.415 (10), Prior Involuntary

[3] Full disclosure. I believe you both are aware my daughter coordinates the family drug treatment court in Milwaukee.

[4] However, you have both heard my account of one of the most courageous people I know---Theresa---who after giving birth to several drug affected children and being told by an "unnamed judge" at the temporary physical custody hearing she would "never get sober and never get her daughter back", she did both and has provided safe, loving care for Mariah for five or more years.

Termination of Parental Rights, provides that very short cut to alternative permanence in those circumstances.

Repeating, I oppose the legislation for those primary reasons and many unstated others. I will urge any and all who may seek my input at any stage in the legislative process of that position.

ENDING TPR JURY TRIAL RIGHT

I support this proposal and have supported it all of the multiple times it has been proposed throughout the course of my career. We are one of only four or five states according a jury right in these cases. It is a statutorily accorded right, not a constitutionally accorded right and the legislature is perfectly at liberty to end this right.

The assertion of the right to a jury, in all jurisdictions, but perhaps particularly in high volume jurisdictions, is an extreme impediment to timely permanence. I routinely had 4-5 and sometimes more cases set for jury on a given Monday. Assuming two resolved by consent or stipulation to grounds, I could try one and had to adjourn often 2 or more. Of those adjourned cases, by the time they reached the top of the pile, it was often 6-9 months after the time the law expected the grounds phase would be resolved---and disposition would still have to be addressed. Court trials can be much more efficiently and timely scheduled and resolved.

Far more importantly, defenses in termination of parental rights actions are seldom purely factual defenses----I did not do it. They more frequently are mixed fact and law defenses—the agency did not make reasonable efforts to provide the services the court ordered them to provide; the mother interfered with my ability to establish a relationship with the child; I did not know I had fathered the child. Juries are quite often overwhelmed by the facts---often shocking originating facts---and are, as a result, incapable of reasoned consideration of the parents intervening efforts to address safety issues and the nuances of those defenses. A judge is trained to do just that and is a far more impartial and reasoned fact finder.

Initiating Child Welfare Termination in Chips Proceeding

I will not spend as much time on this as it demands. I will observe that the concept of starting a whole new lawsuit when efforts to rehabilitate parenting capacities fail is an insane concept. It necessitates delays related to new attorneys, service issues---new addresses, etc.,---discovery issues, which in my view are completely unnecessary. One continuous legal process from taking a child into custody to alternative permanence when necessary is the common practice in most other jurisdictions and clearly a more efficient process.

The proposal will be far more efficacious if the right to a jury is, in fact, eliminated. A critical issue going forward would be the treatment of defaulted parties in the Chips process. My position would be that a defaulted party in the Chips process---particularly where the issue of paternity has been fully resolved---has forfeit their right to further participation and notice in that legal process as the case moves to the TPR stage.

ABANDONMENT

I address only briefly this proposal. I actually don't have a position on the substantive proposals. However, I do think the legislature should use this opportunity to rectify a very difficult structural problem with the current abandonment statute. Under the most commonly plead provisions of the current statute, abandonment is established by proof of periods of non-contact with the child or those responsible for the care of the child. The statute then provides an affirmative defense of good cause. The effect of that is to not only switch the burden of proof to the respondent parent, but also to lower the required quality of evidence to establish the requisite level of certainty by which good cause must be established. The confusing nature of that switching and lowering effect on juries (assuming we are going to continue to have them) is immeasurable.

This can be rectified, regardless of whether the proposals are enacted, by simply incorporating the "without reasonable cause" language of these proposals into the existing statute. Abandonment is established by non-contact for the requisite period without reasonable cause. The burden does not shift and the required quality of evidence and requisite level of certainty (reasonable certainty by clear, satisfactory and convincing evidence) remains the same. It would be a remarkable improvement to the structure of the statute.

The first three points address the bills that I think were the most critical in my mind. I have limited my comments to those in view of time constraints. There are obviously very important additional proposals which I do not have time to address.

I appreciate your interest in these crucial issues for our children and your consideration of my thoughts. Again, I will be happy to answer any questions you may have in this regard.

Sincerely,

Christopher R. Foley
Circuit Judge

CC: Rep. Robyn Vining, 14th Assembly District, Jeff Pertl, Deputy Sec'y, DCF, Bridget Bauman, CCIP

Assembly Family Law Committee
Public Hearing October 29, 2019
Noon

Thank you for allowing me to offer testimony on behalf of Dane County, its Department of Human Services, and the office of the Corporation Counsel. My name is Eve Dorman, and I am the Legal Director for Permanency Planning in Dane County. I have been with the Corporation Counsel's Office for approximately 16 years. In my role, I along with four other attorneys, prosecute CHIPS and TPR cases. Eighteen months ago, I was named Legal Director, with the expectation that I become more involved in the public policy surrounding child maltreatment.

DCDHS and the Permanency Planning Unit work very closely together to serve our community in a way that ensures child safety, supports legal permanency, and builds on family strengths. We have a strong track record with steadily declining caseloads and more discharges from care than new entries into care. Over the past several years, approximately 45% of our kids reunify, 25% achieve permanency through TPR/adoption (many with relatives) and another 20% achieve permanency through relative guardianship.

Dane County has concerns about several of the proposed bills at issue today. While some of our concerns are specific and concrete, many are about the tough public policy choices that must be made in the legislative process. Our state has taken big strides in recognizing addiction as a brain disease (Tonette Walker's Task Force), in trying to support people struggling with poverty and homelessness (former Gov. Walker's creation of the Inter-Agency Council on Homelessness), and in striving for equitable access to our state's resources. Some of these bills seem to stand in direct contradiction of those efforts.

AB 559 –

Section 1, 2, 15. Creation of Sec. 48.13(15) and 48.415(11). There is no requirement in this bill that the county show any current problems with parenting. It is a waste of county resources to ask them to intervene in families in which there is no evidence that drug exposure and/or AODA use by the parent is actually affecting the care of the child in a negative way. It is punitive toward those who struggle with drug use and addiction, while current research understands addiction as a brain disease. Sec. 48.415(11) introduces "substantial compliance" which creates uncertainty for departments and prosecutors over whether we have a non-frivolous basis to file, which may lead to delay the same way the 9-month predictor used to. Also, the TPR section here is duplicative of the current Continuing Need of Protection or Services ground. Dane County does not support these provisions.

Sections 3, 4, 8, 16-20. Amendment of Sec. 48.31(2) and (4), Sec. 48.415(intro), Secs. 48.422 and 48.424. Elimination of jury trials gives a tremendous amount of power to one decision-maker. Additionally, it does not make sense to eliminate the jury trial for TPRs which affect a fundamental constitutional right, but to allow a jury trial in CHIPS cases that are legally temporary in nature. Our office has handled perhaps 2 CHIPS jury trial in the last 10 or 15 years, but handles 1-3 TPR jury trials each year. If we want to save costs associated with jury trials, eliminate them for CHIPS

cases, and streamline the process to get to CHIPS disposition more quickly, which research shows positively affects outcomes for children. Dane County offers information only on these provisions.

Sections 5, 11, 13, 21. Amendments to Secs. 48.356(1), 48.415(2)(a)(1), 48.415(4), 938.356. These sections amend current law to provide that TPR warnings be given, and the date from which TPR timeframes are commenced, begins with the entry of a TPC order or consent decree. Federal law requires that timeframes for TPR be counted from the date of initial removal from the home, usually TPC, and it makes sense to provide parents with TPR warnings at the time of initial removal. However, we should not be commencing the timeline for TPR under Sec. 48.415(2) until the CHIPS allegations have been proven, the court has actually made a finding of CHIPS, and entered a dispositional order. The current language that the child be placed outside of the home for 6 months under a dispositional or similar order provides the parents with 6 months of notice, starting from the date the court formally orders them to meet conditions for the safe return of their child/ren. Under the proposed amendment, they would only have 3 months to meet conditions for return following the entry of a dispositional order, if statutory timelines for CHIPS proceedings are met. Ninety days is not very long to address serious mental health and addiction issues, particularly in communities that lack ready access to services. If disposition in the CHIPS case is delayed for any reason, it is possible that a TPR could be filed on the basis of the TPC order before parents have ever been told what the conditions for return are, and before the county agency has ever been ordered to provide services. This would likely be unconstitutional. Dane County does not support these provisions

Sections 6, 7 & 23. Timing of PPR Hearings in CHIPS and Juvenile Justice cases. Dane County supports these provisions as a way to front load resources and oversight. Dane County already handles cases this way.

Sections 9 & 10. Add new constructions of abandonment under Sec. 48.415(1) for failing without "reasonable cause" to support the mother during pregnancy and to pay child support. These grounds will disproportionately affect people, especially fathers, of color and/or limited means. There is no definition of "care and support," nor any language that accounts for cases in which the identity of the father may not be immediately known. Several people may then be under an obligation to provide "care and support" for a mother until the child is born and the biological father is positively identified. This creates a legal obligation for people who have none. It is not clear how notification to the alleged father would play out when the parents are no longer in a relationship together. TPR for failure to pay any amount of child support is inconsistent with other statutes that provide that parents may not withhold periods of placement of a child for failure to withhold child support. Why would we allow periods of placement where child support is not paid but allow for TPR, the harshest of all consequences, in the same circumstances? Dane County does not support these provisions.

Section 12 – Parental Incarceration – Dane County supports creating path for children, whose parents who are incarcerated and unavailable to provide a physical home and care, to be adopted. Children cannot be returned to parents in prison. I believe that there should be some provision to terminate rights for parents who may not be incarcerated as of the date of fact-finding or disposition, but end up incarcerated following CHIPS disposition, even if it is for behavior that occurred prior to the CHIPS petition being filed.

Section 14 – Amendment to Sec. 48.415(6)(b) requiring parents to have actually provided care and support to a child to avoid TPR. This is problematic for parents whose access to their child is limited by the other parent or by substitute caregivers. Though case law requires a fact-finder to consider the "totality of circumstances" in the child's life, this provision does not allow for the parent to present context. Dane County does not support this provision.

AB 560 –

Creating Sec. 48.415(2)(b) which provides that grounds exist to TPR if a child has been placed outside a parental home for 15 of the last 22 months with no conditions. This language eliminates the requirement to show that the agency has made reasonable efforts to provide services as ordered by the court and that the parent has failed to meet the conditions for return. Therefore, the agency can just simply delay the case until the child has been in out of home care for 15 months. The parent could have met the conditions for return, but if they do not have their child back in their care, their rights can be terminated. The agency could interfere with the parent's ability to meet conditions, but so long as it has gone on long enough, the parents' rights can be terminated. This is fundamentally unfair, and possibly unconstitutional as applied. Dane County does not support this bill.

AB 561 –

Creating agreements for post-adoption contact. Dane County supports this provision in general. I have concerns about the biological parent or relative not having any say in the selection of the mediator and being obligated to bear half the cost of mediation, which will likely disparately affect parents of color and limited means.

AB 562 – Amendments to several sections expanding the rights of foster parents in change of placement proceedings in CHIPS cases, including granting party status, access to records of the child, allowing the foster parent to request a professional evaluation with an evaluator of the foster parents' choosing, the right to object to an evaluation ordered under Sec. 48.295 and the evaluator selected to conduct such an evaluation. An overarching concern here is that these rights mirror the rights of biological parents who have a fundamental constitutional right to parent. Foster parents are in the legal position of service providers, not parents, and are not entitled to the same authority over a child in out of home care. Granting foster parents these rights is likely to slow down time to permanency as many case decisions will be more contested and litigated more frequently. These provisions may also make proceedings more costly as it is unclear who will bear the cost of additional evaluations, access to records which may need to be copied and/or redacted. Foster parents who have had a child placed with them for 6 months or more already have significant rights to review of an agency decision up to and including access to records and information used to make the decision, and judicial review. *See*, Sec. 48.64(4) Wis. Stat. Dane County does not support this bill

AB 563 - Amendments to Sec. 48.38(5) and (5m) governing access to permanency plans. This bill requires copies of all permanency plans to be shared with foster parents and children over 12. Granting foster parents access to permanency plans is a terribly bad idea. Those plans contain extensive confidential information about treatment progress and failures of biological parents who are working to reunify with their children. Certain information may be governed by HIPAA, which

has stringent restrictions on the release of protected health information. Biological parents should not be required to share their medical, AODA, mental health, trauma, family dynamics and other information with foster parents, and such information is not necessary for foster parents to provide care to the children. Social workers already have the ability to share necessary information with foster parents. Having this information may result in foster parents struggling even more to engage with biological parents in a respectful way that benefits the children in their care. Providing access to children over 12 may support a goal of having children more involved in the cases that affect their lives, but I would have concerns about youth getting this information if they don't have adequate access to adults who can help explain and provide context. Dane County does not support this bill.

AB 564 – Broadens the eligibility of certain children to receive adoption subsidies. Dane County supports this bill that will help get some of our hard-to–place children to permanency more quickly and more effectively.

AB 565 – Amendments that limit the timeframe within which relatives can be considered for placement of a child in out of home care, and the presumption in favor of legal custody being granted to a relative "whenever possible." Dane County does not support these provisions. Federal reimbursement dollars are increasingly conditioned on agency's efforts to incorporate extended family members into caring for children whose parents are struggling. Research shows that if children cannot be safely placed in a parental home, they fare better when placed with family. In line with current research, there should be a presumption that placement with relatives is in a child's best interest, even if it requires a move from a non-relative foster home. There should also not be a time limit on the ability of a relative to come forward. The court is always guided by the child's best interest, and the presumption in favor of relatives can be overcome if appropriate. However, if there is no presumption in favor of relatives, it is likely that relatives, particularly people of color and limited means, will not be seen as "better than" a non-relative placement which is more likely to be white and financially secure. Though relatives are often not in a financial position to take a placement immediately, they may be more able to do so later. Agencies are often in the position of seeking out relatives again later in the life of a case after a non-relative home has refused to care for a child any longer. Relative placements can also save state dollars because they are eligible for subsidized guardianship as a permanency outcome funded by the counties rather than the state. Dane County does not support this bill.

Children's Wisconsin

Kids deserve the best.

TO: **Assembly Committee on Family Law**
FROM: **Laura Goba, Out of Home Care Manager, Children's Wisconsin**
Malorie Peter, Permanency Services Supervisor, Children's Wisconsin
DATE: **Tuesday, October 29, 2019**
RE: **Speaker's Task Force on Adoption Legislation: AB 561, AB 563, AB 564 and AB 566**

Chairwoman Rodriguez and members of the committee: Thank you for holding this hearing regarding legislation aimed at improving the out-of-home care and adoption system and allowing us the opportunity to provide feedback today. Children's Wisconsin (Children's) would like to acknowledge Speaker Vos, Chairwoman Dittrich, Vice Chair Subeck and all of the members of the Speaker's Task Force on Adoption for their work on this important topic.

As you know, Children's Wisconsin (Children's) serves children and families in every county across the state. We have inpatient hospitals in Milwaukee and the Fox Valley. We care for every part of a child's health, from critical care at one of our hospitals, to routine checkups in our primary care clinics. Children's is the largest not-for-profit, community-based agency serving children and families in the state, providing community services to approximately 15,000 children and families annually.

Children's provides home visiting services across the state to support at-risk parents, during a pregnancy through the first five years of the child's life, to reduce the likelihood of child maltreatment and to strengthen family functioning. We operate seven of the 15 child advocacy centers (CACs) across the state to evaluate and care for kids who may have been neglected or abused. In partnership with the Division of Milwaukee Child Protective Services, Children's is responsible for the ongoing case management of approximately half of the youth and families involved in out-of-home care in Milwaukee County. We recruit, license and support foster and adoptive parents, as well as match and place children in safe, loving homes. The majority of these children and youth have some degree of physical, behavioral and emotional needs stemming from the trauma they have experienced in their lives.

As every child welfare agency should be, we are committed to following the ASFA (Adoption & Safe Families Act) timelines. ASFA timelines were established to reduce the amount of time a child lingers in the child welfare system, as well as give our staff and the parents we work with a clear understanding of acting with a sense of urgency to follow these timelines. When a parent is unable, unwilling, or has continually failed to meet the conditions for the child's safe return to the home, it is in the child's best interest to expedite TPR to support a safe and permanent placement alternative.

Children's wants to be able to say to every child going through the adoption process that we did everything we possibly could to return you safely to your family, but sometimes it doesn't work out. Our actions must reflect that belief as kids will ask this question. We need to do everything we can to make sure that kids don't feel like that the child welfare system did everything they could to take them away from their biological family, but instead provided the necessary supports to increase their chances of returning to a safe home. Believing that the interest of the child should be at the forefront of any proposed changes we would like to share the following comments:

Support AB 561

Children's strongly supports creating a court-approved process for providing a framework to dictate the terms for a birth parent or relative to remain in contact with the child and adoptive parents when appropriate and in the best interest of the child, among other considerations. Post-adoption contact agreements must involve both parties agreeing to this type of arrangement as well as receive the court's approval. Based on our experiences with both birth and adoptive families, there are cases where this kind of arrangement would have facilitated an easier and quicker path to adoption. This kind of open, court-sanctioned arrangement can create an even larger support structure for the child. While this process may not be right for every adoption situation, it will facilitate a more open process for those parties that seek one.

Support AB 564

We also strongly support **AB 564** relating to lowering the age threshold and sibling group size to allow more adoptive families to be eligible for adoption assistance. This should help more adoptive families manage the cost of a growing family and recognizes that adoption is a process whereby supporting the child and adoptive family throughout that journey to adulthood is important. Reducing the number of siblings who are eligible for assistance from three to two recognizes the importance that providing supports to keep even the smallest size sibling group together has positive impacts for kids.

Support AB 566

Children's strongly supports the changes outlined in AB 566 which will bring Wisconsin's process in line with most other states. This legislation will create a procedure under which TPR (termination of parental rights) may be initiated by filing a petition within an existing CHIPS (child in need of protection or services) or JIPS (juvenile in need of protection or services) proceeding. Under the current process, a TPR petition needs to be filed separately, resulting in an entirely new case requiring the allocation of additional resources, both for the judicial system and for child welfare agencies. Rather than spend time and resources to educate a new judge on the facts of a child's case and have separate proceedings, AB 566 would allow for a more streamlined process by linking related proceedings and reducing redundancies. Importantly, AB 566 would reduce unnecessary delays for kids and families working towards permanency and support better outcomes for kids in out-of-home care.

Additionally support AB 563

We also would like to express our support for **AB 563** relating to providing permanency plans and comments to foster parents and older children in foster care in advance of a plan review or hearing. Our experience is that when all of the parties including older kids have access to information everyone is better informed resulting in fewer misunderstandings and complications.

Modify AB 559 to address just the elimination of a jury trial in TPR proceedings

While this legislation includes a number of proposed changes related to grounds for TPR and CHIPS, we are uncertain about the implications some of those provisions may have. Children's does support a major component of AB 559: the elimination of the option of a jury trial in a TPR lawsuit. Currently, in order to involuntarily terminate a person's parental rights, a court or jury must determine that statutory grounds exist to terminate rights by establishing grounds on a number of important components. Jury trials in TPR proceedings require significant judicial resources to train and educate jurors on complex TPR statutes, as well as take a longer amount of time, resulting in a delay in moving a child towards permanency. Additionally, jury trials can present a lack of clear expectations due to varying levels of subjectivity and variability in juror interpretation of TPR statutes. In practice, birth parents fare better in

front of experienced judges, as opposed to jury trials, resulting in better outcomes for birth parents and children.

Additional considerations

The Speaker's Task Force heard additional testimony in favor of **increasing supports and removing licensure barriers for relative caregivers**. This is especially important when reviewing family members who are open to caring for older youth. Taking care of the needs of teens in foster care are more costly compared to younger children. We urge you to consider implementing a tiered payment structure for kinship payments based on a child's age, similar to the system in basic foster care.

Child-focused recruitment especially for older youth is critically important and increases the chances of adoption, particularly where states have partnered with the Dave Thomas Foundation's Wendy's Wonderful Kids program. Through a generous grant, Wendy's is seeking states across the country to bring their program to scale statewide. We strongly urge the state to partner with this program to focus resources and proven recruitment strategies to increase kids' chances of adoption. This will help reduce the number of kids, especially those that are more difficult to place who age out of the system without a family to support and guide them to adulthood. This has demonstrated cost savings in reducing child welfare costs in states like Ohio that have implemented the program statewide.

We also support encouraging the courts to TPR before an adoptive resource is identified and removing the adoptability standard in the TPR determination. This will enable easier identification of potential adoptive families. While we understand there is concern about creating "legal orphans", there is no evidence that supports kids who age out of foster care with parental rights intact fare better than those who age out of foster care without those parental rights intact. In practice, by not allowing TPR without that identifiable resource in place at that time, it is more difficult to find families willing to adopt. We believe all kids are adoptable and believe this adoptable standard language in the TPR determination places an undue emphasis on the child.

We urge the Task Force on Adoption and their legislative colleagues to continue this work and would encourage them to further consider changes and prudent investments in these additional areas.

Children's is glad to serve as a resource on this important to topic to help improve care and services for some of our most vulnerable community members. Thank you again to the Speaker's Task Force on Adoption for their work and to this Committee for holding a hearing on these proposals. If you have any questions, comments or concerns after the hearing, please feel free to contact either of us at mpeter@chw.org or lgoba@chw.org or Children's Director of Government Relations, Jodi Bloch at 608-217-9508, jbloch@chw.org .

TO: The Honorable Members of the Assembly Committee on Family Law

FROM: Oriana Carey, Chief Executive Officer

DATE: October 29, 2019

RE: Coalition for Children, Youth & Families Comments on Adoption Proposals

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Thank you for the opportunity to provide input on the adoption legislation before you today. My name is Oriana Carey and I am the Chief Executive Officer of the Coalition for Children, Youth & Families. We would like to extend our gratitude to Representative Dittrich for her capable leadership as the chair of the Speaker's Task Force on Adoption.

The Coalition for Children, Youth & Families, Inc. is a non-profit organization funded in part by grants from the State of Wisconsin Department of Children and Families. We consider ourselves the single source for neutral, objective, and current information about every aspect of foster care and adoption in Wisconsin; a trusted and continuing presence through every stage of a family's adoption or foster care experience. Every year, we respond to over 2,200 calls and email about getting started as a foster or adoptive parent; provide direct one-on-one support to nearly 1,500 individuals via phone calls, emails, and in-person visits; and provide information and resources to over 33,000 website visitors.

As an organization, we believe that every child needs a champion—someone to love them and believe in them no matter what. And we believe that every champion—every caregiver who comes forward to be there for children—needs support along their journey.

It is through this lens that we offer our support for Assembly Bills 562 and 564.

Re: AB 562 regarding foster parents rights

> We believe strongly in providing information, resources, and support services for foster parents beyond simply recruiting them. A child in out-of-home care spends the majority of their time with their foster parent. As a result, that foster parent is the observer and keeper of crucial information about the child. The information they provide is an essential piece of the story. If we are to retain these invaluable caregivers, those we entrust with the daily care and well-being of the children they foster, we need to assure they are empowered to provide advocacy on behalf of the children in their care. The expansion of rights for foster parents as proposed in AB

562 would extend standing to these crucial caregivers to help ensure their voices are being heard and considered.

Re: AB 564 regarding expanded adoption assistance support

Financial concerns continue to be an ongoing source of concern and anxiety for adoptive families—especially when caring for siblings or children and youth with special medical or mental health needs. We have heard from many families that, not only is there a frustratingly long wait time associated with finding supportive mental health services—especially when seeking services from adoption-competent and trauma-informed providers—but that some necessary services or alternative therapies are not covered by Medicaid. As a result, some families are paying high out-of-pocket costs for quality services that their children need in order to heal and thrive. Increased access to resources may provide adoptive families with an extra feeling of certainty and security, knowing that they will have support in meeting the needs of the children whom they love no matter what.

With regard to AB 561, we have heard some questions and concerns from the families whom we serve. It is our opinion that these questions stem from a lack of clarity and understanding of what such legislation would mean and how it may impact their daily lives. As an organization, the Coalition is in support of steps toward helping children and youth have access to and continued communication with their families of origin—especially with regard to connections between siblings. At this time, we will simply state that we look forward to continuing the conversation regarding post-adoption contact legislation.

Thank you for your consideration of these bills and the others before you and for your ongoing support of the children, youth, and families touched by foster care and adoption.

Oneida Nation
Oneida Business Committee
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ONEIDA

ADOPTION BILLS TESTIMONY

Greeting and Introduction:

Attorney Michelle Gordon, proud member of the Oneida Nation and their lead attorney for Indian Child Welfare and Child Support matters. I am here on behalf of the Oneida Nation to provide testimony regarding the 8 proposed adoption bills.

Let me start of with **Assembly Bill 564** regarding the proposed changes to requirements for Adoption Assistance. This is the only one of the 8 Bill that we do not object to and support.

Assembly Bill 559: The Oneida Nation object to 2 of the new grounds for termination of parental rights. Specifically, that of failure to pay child support and that based on parental incarceration.

Failure to pay child support is not always based on a parent shirking their responsibilities as a parent. And clearly this would affect more fathers than anything. Sometimes these fathers are involved in their children's lives and are behind in their support payments. There is unexpected illness or injury or loss of a job that cause them to get behind in their child support payments. That doesn't mean they aren't a good parent or an involved parent. There is no amount placed on this ground, so it could literally be used for someone who is only $100 in arrears on their child support. This gives a lot of deference to the DA or Corp Counsel and with this being very vague, it opens the door for great inconsistency across the State for how this ground is utilized. This should not be a stand alone for a termination of parental rights.

Long term incarceration also should not stand alone as a ground for TPR. We all know that there are a higher percentage of minorities that are incarcerated in our prison system. Including this as a ground will be more damaging to minorities and will increase the racial disparity in this State. Incarceration means one has made bad choices; horrible choices, and to some people that makes them a bad parent. But one can still be incarcerated and love their children, write to their children, talk to their children via phone etc. It does not mean that they don't want to be involved. Yes, it's a ground for CHIPS, unable to care, but should not be used as a basis to sever a parent, particularly a father from his child.

This bill also seeks to start the timeline leading to TPR at the time temporary custody order or consent decree. This is going to be my theme throughout and that is "why are we working so fast and furious to permanently sever families?" At the temporary custody hearing a lot of parents are confused, angry and detoxing and aren't even able to gather what is going on. They still don't have their attorneys to fully represent them and explain to them this CHIPS process, and conditions of return haven't even been provided. Furthermore, a consent decree doesn't

even include the finding that a child is in need of protection and services, so why on earth would we start the timeline for a termination of parental rights at a point when there isn't even a finding that a child is in need of protection and services.

We also disagree with the removal of a jury trial for something as significant as terminating any rights as a parent, and the rights of the child to certain things from the parents such as inheritance.

It is a basic freedom and right of ours to be a parent without undue interference, unless of course there is abuse or neglect. Not because I've missed my child support for the last few months or because I made a bad choice and became incarcerated. And if you want to take that away from a person forever, and take that from a child, then it should be given the highest challenge and that is a right to a jury trial. In this line of work, what we see, is children, even if the parents are not the best, they still want that parent, they still love that parent, because that is mom and dad. TPR is traumatic for everyone involved and should not be done so easily and lightly. How do you anticipate explaining to a child that the dad they love can no longer be their dad just because he didn't pay child support?

Assembly Bill 560: The current law requires a showing that the parents will unlikely be able to meet the conditions for the return of the child home when placed outside of the home 15 of the last 22 months. This bill wants to remove that showing and just say if the child is out of the home for 15 of the last 22 months. Again, why are we in such a hurry to permanently sever families. For you 15 months sounds like a long time. But for someone who has addiction, financial, mental health issues, 15 months is not that long. 15 months for a person given conditions they must meet, sometimes 5 to 10 conditions, that time goes by fast. They must get treatment for their addiction, there goes about 3 months, and while they are working on staying sober, they have the stress of getting safe and suitable and affordable housing. How long are the waiting lists for housing? For the Tribe it is 6 months to a year. And if there is a drug conviction within the last 3 years or a felony conviction within last 5 years or criminal act of violence with last 2 years…you are ineligible for Housing through the Tribe. Then there are parenting classes that last approximately a month, but you have to wait until the new classes start. Domestic Violence Classes, mental health assessments and therapy, which is another 3 to 6 months wait, get a job to provide for your family or apply for social security disability which can take 2 to 3 years to get approved for. The stress causes you to relapse, and now your back at square 1.
What is the point of having conditions for return if your working toward them is not given any credit or consideration of the likelihood that your child would return home? Instead, it's like facing down the barrel of a gun…a timeline that is arbitrary and if I don't get it all done in just 15 months, I will lose my child/children forever.

This is a fast route to TPR and fails to work towards reunification. The Tribe has great concern how this will affect the requirement for the Counties to meet the active efforts required in ICWA and WICWA for Indian families. ICWA and WICWA require active efforts until the point of TPR not a timeline of certain months. There should be more of a focus on how to reunify

families and what the system can do better to help reunify then a focus on streamlining to TPR and adoption.

Lastly on this bill is the definition of foster home. It is not clear if this bill would affect the hundreds of thousands of family caregivers. Many of them are not licensed foster homes. Many of our Tribal children are placed with family caregivers. As worded it does not appear that these caregivers are included.

Assembly Bill 561: This bill allows for a post adoption contract to be approved by the court for parent/relative contact after adoption. The Oneida Nation agrees with this concept as it is similar to Tribal Customary Adoptions. However, more thought regarding the logistics and process needs to be done and revisions made before going forward. There is concern regarding enforcement of the agreement and the potential for increased litigation when someone may not follow through with the agreement. What if circumstances for the parties have changed and there needs to be a revision and the parties can't agree. Now the disagreement is headed to a hearing before the court. This will create further time constraints in the court system. And what is the impact on the children if biological parents and adoptive parents are litigating these issues?

Assembly Bill 562: This bill is particularly troublesome; the proposal to make foster parents and groups homes a party to the CHIPS action. When I interned for my master's in social work degree, I helped to assist in training new foster parents. One of the key points we always made sure they understood, is that becoming a foster parent is temporary; that children will come in and out of your life, but that isn't a bad thing; that they were a temporary safe home while the parents did what they needed to do for the reunification of the family.

While I don't disagree with allowing them to have a voice, which is our current law, they should not rise to the status of party, on an equal playing field with the biological parents, because they are not equal. While foster parents may feel they have a vest interest as they are the one's caring for the child/children.... but that is what they signed up for and understood when doing so it was temporary. They should not now be given the right to participate as a full party to the action. This seems to stack the cards against biological parents.

Tribes are even more concerned as this seems to move towards the foster parents being able to make an argument regarding bonding as a best interests factor. This stand in the face of ICWA and its regulations. There is nothing in the draft bill that states this does not apply to those cases involving Indian children.

When training foster parents we also talk regarding building a rapport with the biological parent, explaining how beneficial it is to the children to see all the adults involved in their decision making getting along. This however has a large risk of creating ill feelings between foster parents and biological parents; it creates the potential for foster parents to not understand their role as temporary but rather to fight to keep the children long-term or permanently, which is no their role. The potential that a foster parent could interfere in some way now with the reunification of the family; well it is detrimental to the children. Children can sense the

animosity, they hear conversations and it's just not healthy for the children to live in a litigious world. Instead they should see they temporary home they are living in fostering that child's relationship with their parents.

A foster parent, as defined in Chapter 48 provides care and maintenance for a child. An adoptive parent legally takes another's child and brings it up as one's own. A foster parent is to care for, not be involved in the legalities of the CHIPS case. Providing them with a voice, allowing them to speak as per our current law yes, but to provide them with counsel, the ability to call experts, the ability to have the child tested and examined..no. Why are making this more difficult for the child?

Assembly Bill 563: This bill allows for foster parents and children over 12 to receive a copy of the permanency plan. As with my prior testimony I think this is highly inappropriate for foster parents. Of most concern is the biological parents right to confidentiality and privacy. This would be such a violation. Again, because foster parents are temporary caregivers, their need to know the extreme details that go into a permanency plan is inappropriate. For those of you who aren't familiar with a perm plan, it provides great detail as to the parent's history, such as their won upbringing and perhaps abuse; their criminal history, their mental health, and treatment status. It gives so much personal detail that the foster parents do not need to be privy to. We don't want foster parents to become predisposed based on what they read and then just no longer want to work with a biological parent. This could damage a good working relationship.
As for those 12 and older, this just can't be in their best interests. A copy already goes to their attorney who can fully explain and discuss the pertinent parts of the plan. Information contained in this document may be information the child did no already know. It could be harmful to that child to find out certain things. These children come from trauma, we as a system need not traumatize them more.

Assembly Bill 565: This bill is the most upsetting to the Oneida Nation. It goes against everything that Native people believe, and it goes against the basic principles of ICWA and its Regulations and WICWA.
We believe there is nothing more sacred then your family. No one can connect you to who you are, where you come from like your family can. Just put yourself in a small child's shoes or even and adolescents' shoes. If you were removed from home, would you rather be placed with strangers or with family. Even if 6 months or 9 months has passed by and you couldn't return to the care of your parent, in the end while you may have bonded to this family over this short period of time, wouldn't you want to be with family, who could teach you about the family you come from that you belong to. Sometimes it is just hard to explain how important the value of family, clan and culture is. The European way isn't the same as our way.
That is why ICWA is there, to create placement preferences that align with our values of family first, even if that family doesn't become available until 1 year later. This bill stands in the face of those federally mandated placement preferences. In addition, ICWA requires active efforts to seek family throughout the proceedings until tpr. This goes against ICWA and WICWA. There is nothing in the proposed language that states that it does not apply to Indian children. This appears to be an attempt to get around the requirements of both ICWA and WICWA.
Frankly, it should not apply to any child. The Federal government has created the Families First Initiative, which requires counties to look for family members for purpose of placement. Why,

because the Federal Government is finally seeing what we as Native American people have been saying all along, that families create that base, that haven, that sense of belonging. So, looking for a child's family members are what is in the child's best interest. This proposed bill stands in the face of that Federal Initiative.
Sometimes families can't take children right away, they must take care of certain things before they can take the children. Understand that many times its not just 1 child that needs a home. It is a group of siblings of 4, 5 or 6 children that need a home. And only so many of them are able to share a room. We've had family members that just needed time to find different housing to accommodate all the children. This can't always be done in a matter of some arbitrary number of 4 months to accomplish. We've had family members have to work on changing their shift at work to accommodate the needs of the children. What you may not realize is that many of the children that come into care have more needs then an average child. They must be brought to therapy appointments, more than the average number of medical appointments, they must get caught up on dental appointments and eye appointments. Sometimes people just aren't sure they can take on the financial burden and need time. Why on earth would you say to a family member it is no longer in the child's best interests to be with you because you couldn't get it together within 4 months. That is a disservice to the family and an even bigger disservice to that child.

Assembly Bill 566: This bill allows for a TPR to be filed within a CHIPS or JIPS proceeding instead of filing a separate action for TPR. If any of you know this system, you would know this just isn't a good idea. There is the potential for a great deal of confusion, and it should be one or the other. Many counties have one DA or Corp. Counsel that handles CHIPS and others that handle the TPR and guardianship actions. This just seems as if it would create confusion as to who is going to handle what and when.

My biggest concern with this is the potential of having the same judge who has heard everything on this case also be hearing the TPR. That is not due process as it is not a new neutral and unbiased judge hearing the facts for the first time. The Judge will be predisposed to how the parent has conducted themselves in the courtroom, and all the reports read and discussed. It would not be an independent review of the situation. This seem inherently unfair to the parents.

Lastly, it seems inappropriate to include JIPS as a JIPS action is primarily based on a child's behavior. There should not be discussion of a TPR based on a child's behavior.

That completes my comments on the proposed Adoption Bills. Let me just end with this. It seems as if these Bills are on a fast track to go through. Much more thought and reworking of these Bills should be done. Many of the suggestions would do more harm than good to the family and to the child. Make sure that the Bills remain in compliant with ICWA. Make sure your priority in passing these Bills is for what is best for the child and his or her family, not the foster parent or those who may want to adopt in the future. We should be lobbying for the child not the adoptive parent. In the end, a child wants his or her family; those that share their name, the way they look, that share their culture and beliefs. Our ultimate goal should be improving how we work towards reunifying families, not making new ones.

Yaw^ko.

Good morning committee members. My name is Dr. Quincey L. Daniels. My wife and I have served as foster care parents in La Crosse County and Marathon County for the past 14 years. We have served the needs of over 15 children during this time frame.

I am here to support the Assembly Bill 560 the ACT to create 48.415 (2) (b) the statutes relating to: Termination of parental rights if a child has been placed outside the home for 15 of the last 22 months.

In our time serving the children of La Crosse county and Marathon counties, we have seen some of the results of having children in the system for years while the family members were trying to meet the criteria to have their child or children placed back in their homes.

In our experiences, it is important for families to have support, however when they are not able to make the necessary changes to meet the criteria, their children languish in the system for years.

There are foster parents right now who would like to adopt children within the foster care system who have supported the parents and the local counties with the goals of reunification, however when this fails to happen, the results are usually negative for the children concerned.

One example is a child we had in our home for 9 months, reunification was the goal and the parents had minimal interaction, but eventually did enough to be reunited with the mother who still had some challenges to overcome. We voiced our opinion regarding this was a bad decision only to be informed that with meeting the minimum standards she earned the right to try again. The results were bad. The child was neglected again, sent to a relative down in Mississippi and was beaten

there to return to Dane county where she has been in the foster care system since.

We currently have a young child who has been in our home for 16 months and was in different foster care homes prior to that. The parents are not exactly making the efforts for reunification, so we are waiting for the possibility of adopting this child. We don't want to see children in the system for years when caring adults can do much to help children become productive members of society.

By passing this bill, we would effectively bring much needed steps to improve the lives of children and improve the foster care system within the state of Wisconsin.

Thank you for your time.

Dr. Quincey L. Daniels

disabilityrights WISCONSIN
Protection and advocacy for people with disabilities.

Date: October 29, 2019

Re: Comments on Speakers Task Force on Adoption Bills - *Informational*

To: Chair Jessie Rodriguez and Members of the Assembly Committee on Family Law

From: Phyllis Greenberger, Lead Advocacy Specialist

Disability Rights Wisconsin appreciates the opportunity to provide these informational comments to the Assembly Committee on Family Law and we thank you for your consideration of our recommendations. Disability Rights Wisconsin is the Protection and Advocacy Agency for the State of Wisconsin, and our charge is to protect the rights of children and adults with disabilities in Wisconsin.

We thank the members of the Speakers Task Force on Adoption for their work to identify policy recommendations with the hope of benefiting many Wisconsin children and families. As advocates for parents and children with disabilities, assessing these policy changes may be very complex as we evaluate the impact on parents who have a disability and may experience disability related discrimination, and the needs of children, including those with disabilities, for permanence and a supportive family.

Given the complexity of the system and policy proposals you are considering today, DRW is concerned about the speed of the process with a hearing today and potentially going to the floor with these proposals next week. We support a slower process that will allow policy makers to carefully consider the input from stakeholders and from the legislative service bureaus. We are concerned that some of the proposals before you today could result in unintended consequences for parents with disabilities and their children, as well as for children with disabilities in the child welfare system.

Background

DRW submitted comments to the Task Force regarding protecting the rights of parents with disabilities, how to provide better supports for families of children with disabilities to help eliminate the potential of abuse and neglect and additional measures that can be taken to ensure that children with disabilities are receiving appropriate supports and services in their homes, foster homes or adoptive homes. *A copy of those comments is also attached for your reference.*

As we consider the impact of the changes you are considering on parents with disabilities, it is vital that policy makers also consider options to fund and expand prevention and preservation services, and provide services to families while the children are maintained in the home. Research has shown that home services are most effective, particularly for parents with disabilities.

MADISON	MILWAUKEE	RICE LAKE	
131 W. Wilson St. Suite 700 Madison, WI 53703	6737 West Washington St. Suite 3230 Milwaukee, WI 53214	217 West Knapp St. Rice Lake, WI 54868	disabilityrightswi.org
608 267-0214 608 267-0368 FAX	414 773-4646 414 773-4647 FAX	715 736-1232 715 736-1252 FAX	800 928-8778 consumers & family

These recommendations noted in our August testimony were especially important for families and could be helpful to guide Wisconsin policy makers:

1. There are numerous models in other states that acknowledge, support and protect the needs and rights of families where the parents or children have disabilities. Wisconsin has also developed some flagship programs that could be expanded.
2. Develop Family Resource Centers that will help families learn of resources and navigate the complex service system.
3. Provide means for parents to seek diagnoses for their children and offer screening for eligibility for services.
4. Provide support and training for parents and foster families to understand and support children with difficult diagnoses. Increase the capacity of those resources to improve access.
5. A collaborative agreement between DCF, DHS and DPI could identify children with disabilities and families in need of greater support services and information.
6. Foster and adoptive parents should be eligible for the same support resources, such as respite and child care, as natural parents.
7. Consider legislation to require safety services and foster care agencies to refer any child with a disability to their county disability services to conduct a functional screen for Wisconsin Medicaid Waiver programs such as Children's Long-Term Support Waiver, Children's Community Options, Comprehensive Community Services, and WRAP / Coordinated Services Teams (CST).

BACKGROUND

Parents with Disabilities

Any changes to the termination of parental rights laws and procedures need to take into account the impact on, and the rights of, parents with disabilities. Parents with disabilities face many obstacles and challenges in the child protective system. There is a significant need to improve the services provided to parents with disabilities and their children. The problems faced include failure to provide reasonable accommodations, lack of resources and services, lack of ongoing services, and stigma and bias against people with disabilities that influence official actions and decisions.

According to the National Council on Disability's 2012 Report, *Rocking the Cradle,* (https://www.ncd.gov/publications/2012/Sep272012), parents with disabilities are at greater risk for termination of parental rights: "Removal rates where parents have a psychiatric disability have been found to be as high as 70 percent to 80 percent; where the parent has an intellectual disability, 40 percent to 80 percent. In families where the parental disability is physical, 13 percent have reported discriminatory treatment in custody cases. Parents who are deaf or blind report extremely high rates of child removal and loss of parental rights."

Many parents with significant disabilities have raised their families successfully, yet they may be inappropriately stigmatized because of misguided presumptions about their parenting abilities. People with disabilities, especially those with intellectual and mental health disabilities, continue to

be stigmatized and unfairly judged. Sometimes parents with these disabilities have their children taken from them even before they leave the hospital. They are assumed to be incompetent parents by people who know little or nothing about the individuals involved or their disabilities.

Children with Disabilities

Children with disabilities represent one-third of children in the child welfare system, according to this 2016 report by the Department of Children and Families (DCF): https://dcf.wisconsin.gov/files/cwportal/reports/pdf/act365.pdf. Children with disabilities are over-represented in the child welfare system compared to the general population and are more likely to be involved in an out of home placement. In 2016, DCF reported that 12% of children in child welfare have a disability, but the Department of Public Instruction (DPI) and the Department of Health Services (DHS) showed an additional 25% of children had disabilities. Families of these children struggle to meet the needs of their children without necessary supports and services and often have never been directed to the appropriate supports and services in their communities.

Comments on Adoption Task Force Bills

In reviewing these bills, DRW has assessed the impact these proposals will have on parents who have disabilities, families of children with disabilities who are at risk of child welfare intervention, children with disabilities in out of home placements, and children with disabilities adopted through the public system.

AB-559 – Grounds for Chips

- DRW is concerned about the elimination of jury trial for parents who face termination of their parental rights. Parents who are at risk of losing their children should have the opportunity for a jury of their peers. We understand that policy makers are concerned with the challenge of educating jury members about such a complex system. However, if judges are the ultimate decision makers, judges will need training regarding parents with disabilities and accommodations under the American with Disabilities Act (ADA) to be able to participate fully in the proceeding. This should address the applicability of the ADA to TPR proceedings, and the duty of child welfare agencies and dependency courts to provide reasonable accommodations to parents with disabilities.

- DRW is concerned about how the additional grounds for TPR may affect parents with disabilities. People with mental illness represents a disproportionate amount of people in jails and prisons. Their incarceration can be a direct result of a mental health crisis or untreated mental illness, and the lack of access to treatment and prevention services. As a result, it is likely that parents with disabilities would be over-represented in the numbers of parents losing their right due to incarceration. We also recognize that the proposal indicates that this would apply if a parent is incarcerated for a substantial period of a child's youth, and that permanence is important to the child whose parent is incarcerated for years. By investing in treatment, support and prevention on the front end, there is the potential to reduce the number of parents with mental illness and other disabilities in the criminal justice system.

- If a failure to provide court ordered payments for child support is considered abandonment, would this have a disproportionate impact on some fathers with disabilities? This is a concern given the barriers to employment experienced by many individuals with disabilities and Wisconsin's history of limited opportunities for competitive employment for people with disabilities.

AB -560- Terminating Parental Rights

- DRW recommends the removal of the language "non-secured residential care center for children and youth" from the current bill. Some parents of children with disabilities have had to use the CHIPS/JIPS petition option to have their child placed in residential treatment for mental health services. Seeking residential treatment services for their child with a significant disability should not put them at risk for termination of parental rights.
- Parents of children with disabilities are often faced with the need to get additional services from the State and County to help their child. This can include the family initiating a petition under the CHIPS/JIPS process to get the needed services. Any changes to the law for TPR should include an exception for parents that initiate this process with their county.
- Minnesota has created a separate child welfare code for families of children with mental illness and developmental disabilities who need to use their state system to provide additional services. Wisconsin should consider these options for families of children with disabilities thus protecting them from the requirements of the TPR process. The following is a link to the Minnesota Statute: https://www.revisor.mn.gov/statutes/cite/260D.01 Any consideration of such a change should be done carefully with stakeholder input including parents and disability advocates, given the complexity of the system.

AB-566 Terminating Parental Rights

- The Adoption Task Force chair recommended (in the Task Force report) that the Legislature require a parent to be represented by counsel in a CHIPS or JIPS proceeding, unless he or she waives counsels. Representation by council at the CHIPS/JIPS proceeding would provide better protections for both parents and children with disabilities.
- The bill requires the combination of the TPR with the CHIPS and would allow a right to counsel which is truly not an expansion of right to counsel in a CHIPS proceeding, as representation is already provided for a TPR.
- Combining the CHIPS/JIPS petition and TPR process may result in quicker termination which is rarely good for kids and could easily be used to discriminate against parents with disabilities and parents who are struggling to get the appropriate supports and services for their child with a disability.
- AB-566 raises the same concerns as AB-560 regarding the need to include an exception for parents that initiate the CHIPS/ JIPS process with their county to get services for their child.

AB-564 – Adoption Assistance

- While the statute takes into account many functional and behavioral conditions to calculate adoption assistance, it does not specifically address diagnosed disability. The addition of a disability as diagnosed by a medical professional could be added as an additional determination of adoption assistance.

- DRW recommends developing an amendment that adds a requirement for DCF to refer child to determine whether they qualify for Medicaid waivers and publicly administered mental health programs that could provide additional supports for families. Children should be screened for this at the time of the consideration of adoption assistance. This could include Children's Long-Term Support (CLTS), Children's Community Options Program (CCOP), Comprehensive Community Services (CCS), Coordinated Service Team (CST) and other wraparound services.

AB-565 - Placement of a child with a relative under the Children's Code or the Juvenile Justice Code

- Potential concern: If a child has a significant disability, the family may need a longer period to be able to have the child placed in their home and accommodate their needs. For example, if a child has a physical disability, the relative may need to move to accessible housing, or have home modifications in place.
- A possible amendment could be added to extend the timeframe for families who need additional time to prepare for placement of a child with disability.

Thank you for your consideration of these informational comments and your work to address the needs of Wisconsin families and children. Disability Rights Wisconsin would welcome the opportunity to discuss our comments on these proposals, and recommendations to support parents with disabilities, as well as children with significant disabilities in the child welfare system.

Please feel free to contact Barbara Beckert, Milwaukee Office Director, at Barbara.Beckert@drwi.org or 414-292-2724 with any questions or to schedule a time to meet with staff from Disability Rights Wisconsin.

disabilityrights WISCONSIN
Protection and advocacy for people with disabilities.

August 28, 2019

To: Representative Dittrich, Chair of the Speaker's Task Force on Adoption and Representative Subeck, Vice-Chair of the Speaker's Task Force on Adoption and Committee Members

From: Disability Rights Wisconsin, Barbara Beckert, Milwaukee Office Director, 414-292-2724

Disability Rights Wisconsin appreciates the opportunity to provide input to the Speaker's Task Force on Adoption and we thank you for your consideration of our recommendations. Disability Rights Wisconsin is the Protection and Advocacy Agency for the State of Wisconsin, and our charge is to protect the rights of children and adults with disabilities in Wisconsin. Our testimony will address the needs of parents who have disabilities, families of children with disabilities who are at risk of child welfare intervention, children with disabilities in out of home placements, and children adopted through the public system. In addition, this testimony provides information and offers recommendations to address barriers in the current child welfare system. Many of the recommendations could be of benefit to all parents with disabilities, families of children with disabilities, foster families, and adoptive families.

Parents with Disabilities

Any changes to the termination of parental rights laws and procedures need to take into account the impact on, and the rights of, parents with disabilities. Parents with disabilities face many obstacles and challenges in the child protective system. There is a significant need to improve the services provided to parents with disabilities and their children. The problems faced include failure to provide reasonable accommodations, lack of resources and services, lack of ongoing services, and stigma and bias against people with disabilities that influence official actions and decisions.

Many parents with significant disabilities have raised their families successfully, yet they may be inappropriately stigmatized because of misguided presumptions about their parenting abilities. People with disabilities, especially those with intellectual and mental health disabilities, continue to be stigmatized and unfairly judged. Sometimes parents with these disabilities have their children taken from them even before they leave the hospital. They are assumed to be incompetent parents by people who know little or nothing about the individuals involved or their disabilities.

Some deaf parents have also experienced disability related discrimination that has put them at risk of losing their parental rights. A November 2008 article in the Milwaukee Journal Sentinel (Court Leaves Deaf Parents in the Dark http://archive.jsonline.com/watchdog/watchdogreports/34965539.html) documents the communication roadblocks experienced by deaf parents, and further notes that court guidelines distributed to judges by the state Supreme Court were disregarded or ignored.

The fear of being judged because of their disabilities can cause people with disabilities not to seek help with parenting issues. Parents' disabilities are used against them by courts when deciding custody issues. Wisconsin has very limited capacity to offer preventative services and supports to assist people with disabilities to be better parents and cope with the problems they experience.

Once parents with disabilities are in the system, there is a lack of accommodations provided to them. Parenting programs often do not understand the unique problems and challenges of parents with disabilities. They are

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not prepared to offer various accommodations, such as the need is ASL interpreters or one-on-one assistance. Parents are sometimes subjected to court orders that their disabilities would never allow them to meet, such as following complicated instructions or reading lengthy documents. Even when parents with disabilities have met all the conditions set forth by the courts, DRW still sometimes hears that termination actions have continued against them.

There is a need for supported parenting services to help some parents with disabilities succeed. These services need to be available not just for a limited time but long term. In the past, these services were more widely available through Wisconsin counties. As the counties' role in providing disability services has changed and diminished, many of the county funded services to support parents with disabilities have disappeared. In Milwaukee County, for example, agencies that used to provide these services, such as Life Navigators, Lutheran Social Services, and MCFI, no longer do so. Services have been disappearing, yet the need continues to grow.

Recommendations:

Parents with intellectual disabilities have their parental rights terminated at rates as high as 50-80%. Wisconsin has an opportunity to develop a plan to better support struggling families who have a parent with a disability, and ultimately reduce the high rate of termination of parental rights and the accompanying trauma for children and parents. Other states have been successful with these efforts; for example, Vermont initiated a program that reduced the rate of termination of parental rights for those in the program to less than 2%.[1]

The following are examples of other states' programs, previous Wisconsin practices, possible future Wisconsin programs, and model legislation:

1. Vermont provides Disability Awareness Training to caseworkers in the child protective system, using skilled assessors with disability experience to do parenting skills assessments, hiring peer navigators who were either experienced parents with disabilities themselves or parents of children with disabilities who guide families to create plans, find resources and fill out paperwork.

2. Vermont provides Communication Support Specialists to persons with intellectual disabilities in legal and court settings. Also, Vermont offers ongoing supports to parents with intellectual disabilities to help them care for their children safely at home. The support continues as long as the need persists. Appropriate parenting skills training is also a critical necessity.

3. Wisconsin has some excellent programs that provide parenting services to help parents with disabilities succeed. We recommend using these programs as models and developing additional capacity. Examples of current programs are:

    a. Mental Health America of Wisconsin–*Strong Families Health Homes* program provides in-home services and parenting and wellness education to parents & pregnant women with mental health and/or substance use challenges. For a more detailed description, follow this link: http://www.mhawisconsin.org/menu-of-services.aspx

    b. Easter Seals--*Our Safe Babies Healthy Families* program. To participate in this program, parents must have a risk factor which includes depression or other psychiatric care or history of

[1] *When Parents Have Disabilities: An Array of Supports*, Susan Yuan, Ph.D., University of Vermont

substance abuse. For a more detailed description, follow this link: http://www.easterseals.com/wi-se/our-programs/childrens-services/safe-babies-healthy-families.html

c. Brown County--*Positive Parenting Brown County* provides intensive, supportive services for families in which one or both parents have an intellectual disability. For a more detailed description, follow this link: http://www.aspiroinc.org/positive-parenting.html

d. Catholic Charities–*Supported Parenting Program* serves "client families with developmental disabilities in Waukesha County, who have children from birth to age 7 or through first grade, whichever comes last." It includes home visitation, assessment and education. It assesses needs of the family, develops appropriate parenting goals, and connects families to others for socialization and supportive interaction. For a more detailed description, follow this link: https://www.ccmke.org/Catholic-Charities/Get-Help/Supported-Parenting-Services.htm

4. Wisconsin could adopt a parent peer mentoring program. Wisconsin is developing certification for Parent Peer Specialists, and they could be a resource to support parents who have a mental illness, substance use disorder or co-occurring needs. Parent Peer Mentors could also be a covered Medicaid service through Wisconsin programs already available to parents with disabilities, such as Comprehensive Community Services (CCS), Children's Long-Term Support Waiver (CLTS), Family Care and IRIS. The Vermont Family 360 Project includes use of peer navigators to support parents with disabilities and assist with system navigation and they can serve as a supportive peer. For a more detailed description, follow this link: https://humanservices.vermont.gov/departments/ahs-fs-folder/peer-navigators/vermont-family-360-support-project

5. Preventive and reunification services could be improved to better provide for the needs of parents with disabilities.

6. The Bazelon Center for Mental Health Law has proposed model legislation (attached) for supporting parents with psychiatric disabilities. We would suggest similar legislation in Wisconsin to assist parents with all types of disabilities.[2] Follow link for more information: http://www.bazelon.org/wp-content/uploads/2017/04/Supporting-Parents-with-Psychiatric-Disabilities.pdf

Parents of Children with Disabilities

Children with disabilities represent one-third of children in the child welfare system, according to the 2016 report by the Department of Children and Families (DCF).[3] Follow link for more information: https://dcf.wisconsin.gov/files/cwportal/reports/pdf/act365.pdf

Children with disabilities are over-represented in the child welfare system compared to the general population and are more likely to be involved in an out of home placement. In 2016, DCF reported that 12% of children in child welfare have a disability, but the Department of Public Instruction (DPI) and the Department of Health

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[2] *Supporting Parents with Psychiatric Disabilities: A Model Reunification Statute,* Developed by: Jeniece Scott, J.D. Key Contributions by: Jennifer Mathis, Esq. & Ira Burnim, Esq. of the Bazelon Center for Mental Health Law.

[3] *Report on Children with Disabilities Served by the Child Welfare System*, Wisconsin Department of Children and Families, December 30, 2016

Services (DHS) showed an additional 25% of children had disabilities. Families of these children struggle to meet the needs of their children without necessary supports and services.

In 2016, DCF released a report, *Children with Disabilities Served by the Child Welfare System*. This report, as required by the 2015 Wisconsin ACT 365, was created to identify and address areas in which there were needs for improvement with practices used to investigate suspected or threatened child abuse or neglect of a child with a disability.

The report identified several risk factors for families of children with disabilities:

- Lack of services or supports to fully meet the child's needs, thus increasing demands and stress on parents.
- Inadequate supports to alleviate the demands on parents and to other caregivers while ensuring a safe environment
- The financial burden and stress due to the cost of meeting the child's needs.
- Increase of social isolation for the child or family due to lack of respite care or in-home supports.
- Heightened dependence on paid caregivers or informal childcare creating the potential for abuse

The possibility of an out of home placement grows with each risk factor, and the disability related support needs are often unidentified, leaving the family at high risk of removal of the child and eventual termination of parental rights.

Recommendations:

1. Adopt the recommendations proposed in the state budget to create Family Resource Centers, which would include Family Navigators and Benefits Specialists for children with disabilities and complex medical needs. Families would be able to have support to navigate these complicated systems, including Children's Long-Term Support Waivers, Children's Community Options Program, and Comprehensive Community Services.
2. Expand Medicaid programs such as Comprehensive Community Services (CCS), Children's Long-Term Support Waiver (CLTS), Family Care and IRIS to include parent mentoring, family navigation services, and parent education as covered services to help prevent out of home placements.
3. Consider legislation that would require safety services to refer any child with a disability to the county disability services to conduct a functional screen for Wisconsin Medicaid Waiver programs such as Children's Long-Term Support Waiver, Children's Community Options, and Comprehensive Community Services.

Children with Disabilities in Out of Home Care and Public Adoption

Children in the child welfare system are considered "special needs" based on the following criteria, which also may align with a disability-related condition that impacts the child's functioning:

- Impact of Trauma
- Life Functioning including physical, mental, and dental health
- Social Skills
- Functioning at childcare or school setting
- Behavioral and emotional needs
- Risk Behaviors

A child currently in the system must have a total of five or more needs in the moderate or intensive areas for the adoptive family to receive assistance. Adoption assistance is a payment to the adoptive family that cannot exceed $2,000 a month. The child is also eligible to receive Medicaid until the age of 18 for medical care. Often children with disabilities have significant needs that go above the monetary payment and above what services are provided through the child welfare system. There may be concerns that there are duplicative services or the overall assumption that kids in the child welfare system receive all the necessary supports and services while in out of home care and then through adoption assistance.

In recent conversations with Milwaukee County Disability Services, the administrator shared that many children in the child welfare system have never been screened for essential programs like the Children's Long-Term Support Waiver, Children's Community Options, and Comprehensive Community Services. Milwaukee County Disability Services has taken the step to reach out to Child Welfare to begin discussions on how to enroll children with disabilities who are in out of home care in the CLTS and CCOP programs, and they have started to identify the current barriers in the Medicaid system to this collaboration.

Last year DRW worked with a foster family and the child's biological parent to try and access additional services that could be made available through the Medicaid wavier--Children's Long-Term Support Wavier. This extra support for either the biological parent upon reunification or the possible adoptive family was imperative for this child with extreme behaviors related to the child's diagnosis of autism. The foster parent attempted several times to apply for these services and was turned away by the County since she was not the guardian. The foster care agency also did not initiate such a referral. The County required the referral needed to come from the parent even though the child had been in out of home care for almost a year. The biological parent tried to assist, but it was difficult given the current situation. Even with DRW's intervention, the referral proved challenging to complete. In this case, the child was removed from the current placement due to the foster parent needing additional supports, and we are not aware whether the child was eligible for additional supports.

Without much needed supports, any foster or adoptive family would struggle to meet the child's needs. In this case, DRW believes that the lack of supports caused a disruption in the child's care and a move to yet another out of home placement, causing additional trauma for the child.

In the 2016 report by DCF, child welfare workers around the state were asked to complete a survey; they identified barriers for children with disabilities as lack of enough disability-related resources for children and families, variation in availability of resources across the state, and lack of knowledge by the child welfare workers on how to access available resources. The state must do a better job at preparing child welfare

workers to meet the needs of families of children placed in out of home care and children looking for permanency through adoption.

Recruitment of adoptive parents for children with disabilities should not only include the potential parents' willingness but their ability to support their children. Adoptive parents need to have full disclosure about a child's disability, which leads to permanency stability. Adoptive parents who received all the needed information about the child reported greater satisfaction and stability in parenting their child. Parents also require greater post-adoptions services and supports, and adoption subsidies are not always enough.

Recommendations:

1. Collaboration between DCF, DHS, and DPI is needed to identify children in the child welfare system who have disabilities. these departments should coordinate care and resources between all parties. This requirement would support not only foster families but potential adoptive families.
2. Consider legislation to require a foster care agency to refer any child with a disability to the county disability services to conduct a functional screen for Wisconsin Medicaid Waiver programs such as Children's Long-Term Support Waiver, Children's Community Options, Comprehensive Community Services, and WRAP / Coordinated Services Teams (CST). The requirement would be similar to the requirement that all children under the age of three in the child welfare system are required to refer children to Birth to Three.
3. Adoptive parents of a child with a disability and/or complex medical needs should receive not only adoption assistance but resources for respite care, parent education on child-specific needs, support groups, benefits counselling for the child and family, and mental health supports. Follow link for additional information: https://cascw.umn.edu/wp-content/uploads/2013/12/Spring2013_360_web-FINAL.pdf
4. Review the current adoption assistance rate structure to see if it is providing adequate resources for families who are adopting children with disabilities.
5. Consider the Institute for Human Services Competencies for Child Welfare caseworkers to provide effective child welfare services for children with special needs. These competencies were developed to help identify and serve children with a variety of disabilities in the welfare system. Follow the link for more information: https://ici.umn.edu/products/impact/191/prof6.html

Disability Rights Wisconsin would be interested in discussing any potential recommendations that the Task Force is considering or to answer any questions regarding the information we have provided. DRW's brief includes several links and attachments of the materials discussed and others that may be of interest to the Task Force.

Please feel free to contact Barbara Beckert, Milwaukee Office Director, at Barbara.Beckert@drwi.org or 414-292-2724 with any questions or to schedule a time to meet with staff from Disability Rights Wisconsin.

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MEMORANDUM

TO: Honorable Members of the Assembly Committee on Family Law

FROM: Sarah Diedrick-Kasdorf, Deputy Director of Government Affairs

DATE: October 29, 2019

SUBJECT: Bills from the Speaker's Task Force on Adoption

Thank you for the opportunity to comment on the legislation brought forward by the Speaker's Task Force on Adoption. Changes affecting Wis. Stats. Ch. 48 and Ch. 948 tend to be complicated on a number of levels; a change in one area could have unintended consequences elsewhere. The Wisconsin Counties Association (WCA) has asked several of our county partners to review this legislation and provide feedback. That process is still ongoing. However, concerns have been raised to date with regard to some of the bills that this memo will attempt to highlight. It is our hope that the process for passing these bills slows down, allowing all affected parties the appropriate time to review the legislation, and discuss the ramifications of implementation in detail. WCA is happy to recommend county corporation counsel and human services directors to participate in discussions related to the eight bills currently before the committee.

<u>Assembly Bill 559: grounds for finding a child in need of protection or services or for terminating parental rights, right to a jury trial in a termination of parental rights proceeding, and permanency plan reviews. WCA opposes this bill.</u>

Concerns raised:

- Requiring all permanency plan hearings to be in front of the juvenile court could overload the juvenile courts and can be detrimental to families.
- Reviews in front of the panel are actually more in-depth with more discussion and information sharing than in front of the judge.
- Elimination of jury trials in TPR cases, but not CHIPS cases, seems to be inconsistent. Attorneys may advise their clients to hold a jury trial in CHIPS cases as the opportunity would no longer exist at TPR.
- The drug-affected infants ground may be duplicitous to the other CHIPS provisions. There is existing case law stating that being drug-addicted does not automatically terminate a parent's rights.

Assembly Bill 560: termination of parental rights if a child has been placed outside the home for 15 of the last 22 months. WCA is monitoring this bill.

Concerns raised:

- Allowing a straight time limit is fundamentally unfair. There is no requirement that an agency provide reasonable efforts.
- This change will create a flurry of filings by parents when they get close to the 15-month mark; the filings will be for the sole purpose of avoiding this ground. It will create extra work for county corporation counsel/district attorneys.
- This proposal received mixed reviews.

Assembly Bill 561: post-adoption contact agreements. WCA is monitoring this bill.

Concerns raised:

- This proposal received mixed reviews.
- Agreements between birth and adoptive parents can be helpful in some circumstances but harmful in others. There could be unintended consequences with this change.
- Many parents may seek an agreement because they believe it may look bad if they do not seek one.
- Terminated parents could potentially argue that if they understood the agreement they would not have voluntarily terminated their rights. The judge will have to be upfront and clear that a violation of this agreement will not allow for the TPR to be void.
- If these agreements are going to be brought into court to be enforced, what role will the county departments play and/or the corporation counsel/district attorneys? The departments will no longer be in touch with the families, yet they are to get notice of the proceedings. I can see judges ordering the departments to investigate and make recommendations to the court.
- Could lead to unnecessary litigation and destabilize the children.

Assembly Bill 562: the rights of a foster parent or other physical custodian of a child on removal of the child from the person's home. WCA opposes this bill.

Concerns raised:

- Section 6 of the bill provides foster parents the right to be heard and represented by counsel, seemingly at county expense. WCA is strongly opposed to these increased costs.
- It seems counties will also be on the hook for expert costs as well.

- This bill gives foster parents too many rights to impact a child and his/her change in placement. Foster parents should not be afforded the same rights as parents. Foster parents are a placement provider.
- Foster parents should not be privy to the confidential information that may be used to make a decision about placement. Parents should be allowed confidentiality. Foster parents should not have the right to **all** records related to the child (as opposed to just those relevant to the proceeding).
- Foster parents care about the children in their care and may have useful information to share regarding the change in placement and the treatment plan for the child, but they should not have the ability to dictate that plan on the same level as the parent.
- Children should not have to be subject to further/additional examination because the foster parents want their expert to evaluate them.
- The new rights afforded foster parents will prolong cases, especially those moving toward reunification.
- When counties are aligned with foster parents, the counties already do the heavy lifting for them. This could become a huge issue if a county believes a child should be removed from a foster placement.

Assembly Bill 563: providing permanency plan and comments to foster parents and foster children over the age of 12 in advance of a permanency plan review or hearing. WCA is monitoring this bill.

Concerns raised:

- Children over the age of 12 have a right to their information; however, with the current permanency plan requirements, parent information that is not appropriate for the child may be in the permanency plan. A more appropriate solution would be for an adult to share what information is appropriate with a child over the age of 12 versus the child reading the information as it is written in the permanency plan.
- Foster parents should not be privy to confidential information about the biological parents.
- Ongoing case managers already provide foster parents with the information they need. Foster parents could use this information to further drive a wedge between the parties.

Assembly Bill 564: eligibility for adoption assistance. WCA supports this bill.

No concerns were raised with regard to this bill. WCA supports this legislation.

Assembly Bill 565: placement of a child with a relative under the Children's Code or the Juvenile Justice Code. WCA is monitoring this bill.

To date, we have not received concerns with regard to this bill.

Assembly Bill 566: the procedure in a CHIPS or JIPS proceeding for an involuntary termination of parental rights. WCA is monitoring this bill.

Concerns raised:

- This bill has raised a lot of questions with regard to how the proposed changes would work in practice.
- If the case types are combined, how does that work for parental representation – allowed for TPR cases by the SPD but not CHIPS cases.
- Will foster parents have the right to counsel at county expense under this bill (see AB 562)?

Please let us know how we can be of assistance as conversations occur with regard to these bills.

Thank you for your consideration.

wafca
partnering to improve lives

TO: The Honorable Members of the Assembly Committee on Family Law

FROM: Kathy Markeland, Executive Director

DATE: October 29, 2019

RE: **WAFCA Comments on Adoption Task Force Proposals**

Thank you for the opportunity to provide testimony in response to the package of proposals advanced following the convening of the Speaker's Task Force on Adoption.

WAFCA is a statewide association that represents nearly fifty child and family serving agencies and advocates for the more than 250,000 individuals and families that they impact each year. Our members' services include family, group and individual counseling; substance use treatment; crisis intervention; outpatient mental health therapy; and foster care and adoption programs, among others. Many of our member agencies license foster homes, including treatment foster homes, and facilitate both public and private adoptions.

We are grateful for the time and effort invested by members of the Speaker's Task Force on Adoption this session. The regional listening sessions provided an opportunity for a wide range of stakeholders to share their perspectives regarding the elements of Wisconsin's foster care and adoption system that are working and where there are opportunities for improvement. As members of this committee well know, the family law arena is complex and issues surrounding foster care, parental rights and adoption are no exception. As was emphasized throughout the work of the Foster Care Task Force and the Adoption Task Force, the ultimate focus of all parties must be on the best interest of the child. The laws surrounding the processes and guiding decision-making pivot around that focal point, but sometimes in practice the laws fail to fully accommodate equitable voice for all parties with a perspective on the child's best interest or allow procedural actions that delay a child's progression toward permanence. People of good will are going to differ on the specific processes and tools that contribute to the best outcome, but it's incumbent on us all to continue to grapple with these questions, grant special attention to inequities and disparities in our systems and stay committed to continually improving our processes so all Wisconsin's children find their way to the safety of a permanent home.

With regard to the specific proposals before the Committee today, our WAFCA members are still in the process of analyzing some of the details and look forward to learning more through the discussion at the

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hearing today and then sharing additional comments and questions with the bill authors once we complete our review. Today I am sharing our initial thoughts regarding six of the proposals.

AB 559 covers a range of provisions, including establishing new grounds for CHIPS and termination of parental rights. While we share the sense of urgency regarding the increase in prenatal drug exposure, we are concerned that the addition of "drug affected" as a grounds for CHIPS and TPR could have the unintended effect of discouraging women from seeking appropriate medical care. In addition, Wisconsin's substance use treatment resources are not keeping pace with the addiction crisis and establishing new timelines for accessing treatment may result in an untenable situation for women who want to parent and want to work toward recovery.

In the most recent biennial budget, policymakers approved funding to support children placed with their parent in family residential substance use treatment facilities. This new initiative is part of Wisconsin's effort to implement policy changes made possible by the enactment of the federal Family First Prevention Services Act. We anticipate that this new funding coupled with upcoming changes to Wisconsin's Medicaid system to allow MA payment for residentially-based substance use treatment services will expand the number of providers offering residential treatment services to women, and we need time to grow the additional treatment capacity.

AB 561 establishes a mechanism for developing a court approved postadoption contact agreement. We support the establishment of a formalized open adoption process in Wisconsin, an option that is available in most other states. We know that connecting children with their history and family increases their ability to form a strong sense of identity. We believe that AB 561 is a step in the right direction and welcome the opportunity to work with Representative Dittrich and other stakeholders who support the open adoption concept to strengthen this proposal.

WAFCA supports **AB 564**, which expands access to adoption assistance. Adoption assistance is a critical element of our adoption system that enables a family to provide an appropriate level of care for a child with special needs who is joining their forever family. Adoption assistance recognizes that adoption is not an event, but a life-long journey and the program supports a family seeking help as new challenges may emerge. The expansion of the qualifying criteria for adoption assistance will help more children move to permanence.

We see AB 563 and AB 562 as efforts to address the real concern expressed by some of Wisconsin's foster parents regarding respect for their voice within the child welfare system. Opening up your home and your heart to a child is a unique calling. The system works diligently to recruit and train foster parents who understand their role as a resource to support a child toward permanence, which most often means reunification with family. As a result, foster parents often end up providing care and nurturance to the child, and also engage with and nurture the family. They are a fundamental part of the team and are expected to serve critical roles within the team; however, their voices often go unheard during legal proceedings, and information that is shared with the rest of the team is often withheld from them. When foster parents experience situations where they are not fully included as members of a

child's team and are not given information to help them understand the plans for the child in their home, it can appear that the system does not value them as partners.

AB 563 seeks to address an inconsistency in practice in the state right now with regard to providing the permanency plan to caregivers. Group home and residential providers are required to maintain the permanency plan on file for children in their care. It is viewed as an important component of the child's records to help them as care providers. We understand that there is variable practice across the state in providing permanency plans to foster parents and youth. We think it is reasonable to set a consistent expectation. Foster parents and youth should be engaged in the permanency plan development and they should have access to information about the plan. We would appreciate the opportunity to work with Representatives Murphy and Considine and other stakeholders to refine AB 563 to ensure that foster parents and youth have access to the important information contained within the permanency plan to enable them to contribute to the permanency hearing.

While appreciating the spirit in which **AB 562** is offered, we have a number of questions regarding the impacts of this proposal. First, based on our consultation with member group homes, it is unclear why group homes have been included in this bill. The role of group homes differs from the role of foster parents in our system. AB 562 would expand the rights of a congregate care provider in a manner that would be inconsistent with their caregiver role. Second, our members are concerned that the bill as drafted could compel foster home licensing agencies to pay for counsel or other expert witnesses in an action initiated by foster parents. Supporting representation for foster parents in these circumstances would be cost prohibitive and result in an untenable situation if the licensing agency and the foster parent disagree about the change of placement recommendation. We look forward to learning more about AB 562 during the hearing today and to engaging with the author to address our questions.

Finally, we support **AB 566** as a reasonable step to streamline court proceedings. We understand that there are concerns about the impact of this proposal in light of other proposals offered as part of the Adoption Task Force package. Our support for this proposal is predicated on the belief that this portion of the court process could be improved to better serve the interest of the child without undermining the ability of parents to be fairly represented within the process. With this in mind, we would support the addition of funding to appoint counsel for all parents in CHIPs proceedings. 2017 WI Act 253 established a pilot, but we believe the appointment of counsel should be extended to all parents in order to best serve the interest of the child as intended by AB 566 and the other proposals advanced by the Adoption Task Force.

Thank you, again, for the opportunity to offer comments before the Committee today. We appreciate the ongoing commitment of the Speaker and the members of the Assembly to engage the complex issues surrounding foster care and adoption in our state. We are hopeful that additional engagement of stakeholders around the specifics of these proposals and others that have not yet been brought forward by the Task Force, such as increasing funding for post-adoption support, will result in better outcomes for the children and families of Wisconsin touched by the foster care and adoption systems in our state.

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Governor Tony Evers
Secretary Emilie Amundson

Secretary's Office

TO: Chair Rodriguez and Members of the Assembly Committee on Family Law

FROM: Jeff Pertl, Deputy Secretary
Fredi-Ellen Bove, Policy Initiatives Advisor
Danielle Karnopp, Chief, Adoptions and Interstate Services Section

DATE: October 29, 2019

SUBJECT: 2019 Assembly Bills 559, 560, 561, 562, 563, 564, 565, and 566

Thank you for the opportunity to provide testimony on Assembly Bills 559, 560, 561, 562, 563, 564, 565, and 566. The Department of Children and Families is testifying in support of AB 564 and in opposition to AB 559, 560, 561, 562, 563, 565, and 566.

The Department of Children and Families is committed to the goal that **all** Wisconsin children and youth are safe and loved members of thriving families and communities. To support this goal, the Wisconsin child welfare system is guided by the following key principles as highlighted in the Department's testimony before the Speaker's Task Force on Adoption. These principles are also embodied in the new federal child welfare law, the Family First Prevention Services Act, which Wisconsin must implement by October 2021:

- **Prevention:** Child welfare increasingly focuses on prevention efforts and keeping children in their homes when possible.
- **Reunification:** The primary goal is to reunify a child with his/her birth family whenever it is safe to do so.
- **Permanence**: The child welfare system aims to transition children in out-of-home care (OHC) safely and quickly back with their family, whenever possible, or to another permanent home.
- **Relatives:** As familiar, caring adults relatives play an important part in children's lives as caregivers or ongoing supports and should be used as out-of-home placements whenever possible.

It is through the lens of these principles that the Department reviewed the eight bills before the Committee today.

The Department recognizes and expresses appreciation for the time and effort that the Speaker's Task Force on Adoption devoted to conducting public hearings throughout the state. The Department also thanks and values the individuals who provided oral or written testimony to the Task Force, many of whom shared personal and emotional experiences. Because these bills address complex legal and programmatic issues, our comments seek to bring to the attention of the Committee the broader ramifications and tradeoffs presented in the bills so that the Committee can consider the impacts on all affected parties and stakeholders as it develops statutory changes in this policy area.

In Support

The Department supports AB 564, which expands eligibility for Adoption Assistance. Adoption Assistance is an important tool that helps adoptive parents access the services and supports to meet their child's needs by providing Medicaid eligibility to the adoptive child and monthly payments to the adoptive parents. Wisconsin's current eligibility for Adoption Assistance is more restrictive than many other states. Funding is needed to support the expansion of Adoption Assistance eligibility as directed in the bill. For this reason, an appropriate level of funding should be added to AB 564.

In Opposition

The Department opposes AB 559, 560, 561, 562, 563, 565, and 566. In general, these bills run counter to the principle of supporting and strengthening birth families so that they can safely maintain or reunify with their children whenever possible. Some of the bills run counter to the principle of engaging relatives as caregivers and supports in a child's life.

All of these bills address complex legal, programmatic, and emotional issues that carry significant ramifications for a wide range of individuals. As currently drafted, the bills present legal, policy, and implementation challenges. We have heard concerns from a range of stakeholders about these bills, just as you will hear, and have taken stakeholder views into account as we shaped the Department's position. Following are the Department's concerns on the specific bills.

AB 559 alters the current legal framework for termination of parental rights (TPR) and children in need of protection or services (CHIPS) in a number of very significant and concerning ways.

(1) AB 559 eliminates the right to a TPR jury trial. The right to parent is one of the most treasured and fundamental rights. The Department views that birth parents should have all possible legal protections before the decision to terminate parental rights is made.

(2) AB 559 establishes prenatal drug exposure as grounds for CHIPS and TPR. A very concerning consequence of this provision is that it will deter pregnant women with substance use disorder from seeking substance misuse treatment and prenatal care for fear of losing custody of their child; lack of pre-natal care increases the risk of negative health outcomes to both the baby and mother. While substance use disorder (SUD) treatment programs have been expanding in the state, treatment capacity is still not sufficient to enable all parents with substance use disorder to enroll within 90 days of the birth or OHC placement of their child, as required by the bill to avoid an involuntary TPR. Unlike the HOPE legislative packages supported by the legislature, AB 559 is not based on an understanding and recognition of addiction as a chronic disease that requires treatment and support rather than punitive measures. In addition, proceeding with involuntary TPR based solely on a physician's determination that a child is drug-affected with no other indication of abuse, neglect or unfitness conflicts with the U.S. and Wisconsin Constitutions, which do not allow terminating a parent's fundamental rights without an individualized determination of unfitness.

    Wisconsin's current statutes already establish a process for addressing the safety of drug-affected babies. Consistent with federal law, Wisconsin statutes require a hospital or health professional to report to the child welfare agency newborn babies who test positive for controlled substances. The child welfare agency must complete an assessment on all such referrals to determine if the baby is safe, and if not, put in place a safety plan, and if necessary, remove the baby and any other children from the home. Wisconsin child welfare agencies utilize a robust framework for assessing child safety in a comprehensive manner for all types of possible child maltreatment reports, including cases involving drug positive infants. It is important to note that prenatal substance use is not the only factor taken into account in determining a child's safety.

(3) AB 559 establishes parental incarceration for a substantial period of the child's minority as a ground for TPR. Parental incarceration is already a factor that may be considered in a TPR; the Department opposes allowing parental incarceration to be the sole factor in a TPR decision as proposed in AB 559. This provision runs counter to state and

federal policy to seek to maintain children safely with their families whenever possible. Due to the racial disproportionality of Wisconsin's incarcerated population, this provision has a disproportionately harmful impact on parents of color. The bill includes vague terms and direction, such as allowing a court to consider whether the parent has a history of repeated incarceration, which could lead to inconsistent application and raise constitutional concerns and appellate issues that may delay permanency for children.

(4) AB 559 revises abandonment grounds for TPR to include failure to provide care and support for a child or failure to pay child support without reasonable cause. Current law already allows a court to consider whether a parent has "neglected or refused to provide care or support for a child" or whether a person who is or may be the father of the child has expressed an interest or concern for the care and support of the mother during pregnancy as a basis to terminate parental rights for failure to assume parental responsibility. However, this provision erodes the rights of fathers by raising the threshold that demonstrates a father has provided care and support. The provision will have a disproportionate effect on parents in poverty. In addition, it does not define key terms, such as what constitutes "reasonable cause" for failure to pay child support or if a failure to pay a single child support payment is grounds for TPR. This lack of clarity in a new ground for termination of parental rights will likely result in appeals and therefore delays in permanency for children.

The next bill, AB 560, allows the termination of parental rights (TPR) if a child has been placed outside the home for 15 of the last 22 months. The Department opposes this bill because it eliminates the current requirements on the child welfare agency to prove under this TPR ground that it made reasonable efforts, based on the parent's level of cooperation, to provide court-ordered-services to facilitate reunification. AB 560 allows a TPR to proceed based solely on the child's time in OHC with no demonstration of efforts to provide supports and services to strengthen the parent's capacity to care for and be reunified with the child. Additionally, because the bill allows a TPR regardless of whether a parent complies with court ordered conditions, it may deter parents from voluntarily placing their children in OHC or seeking a CHIPS order for OHC in order to obtain needed services for their children. Also, the bill appears to allow a TPR based on an order that places a child in OHC for delinquency, truancy or for running away from home, without any showing of parental unfitness, and therefore presents constitutional issues.

AB 561 establishes a legally-enforceable post-adoption agreement. The Department supports the concept of "open adoptions" when it is safe and freely supported by both the birth and adoptive parents. The Department supports the current practice of maintaining open adoption agreements as ongoing voluntary agreements that can be updated to reflect changes in circumstances of the families and the child without formal mediation or court approval. The Department views that a legally-enforceable post-adoption agreement, as proposed in AB 561, imposes an unreasonable burden on the adoptive parents, particularly if the adoptive parent seeks changes in the agreement due to a change in the adoptive family's or birth family's circumstances or the child's needs. The adoptive parent may need to initiate court action to secure a change in the agreement, imposing time, cost, and effort on the adoptive parent, and delaying needed changes. The bill treats adoptive parents differently than all other parents by limiting the adoptive parents' authority to make decisions about how and with whom their children spend time. Adoptive parents have the same legal status as all other parents, and they should be accorded the same legal authority as other parents to make decisions in the best interest of their children.

AB 562 establishes foster parents and group homes as parties in change of placement proceedings. Foster parents already have the right to receive notice of a change of placement, request a hearing regarding a change of placement, and to provide information and be heard by the judge at a change of placement hearing. We recognize and value foster parents for their critical role in opening their homes and hearts to care for children. However, giving foster parents party status is problematic for a number of reasons, as detailed below.

(1) Change of placements are often initiated by the child welfare agency due to concerns related to the safety and/or child functioning in the foster home. It is not reasonable or appropriate to require the child welfare agency to enter into litigation with a foster family when a child needs to move to a home that is safe or can adequately meet the child's needs. Granting foster parents party status opens the door to increased adversarial litigation, which lengthens the time to permanency for a child. Children's interests already have an independent voice in court through their guardian ad litems, who are attorneys appointed to the case to gather relevant information from an array of sources, make independent and objective recommendations to the court, and to represent the child's best interest. Further, the judge is the most appropriate individual to determine the scope of access to the judicial process, and under current law judges already allow

greater participation by foster parents if it does not delay the process and is in the child's best interest.

(2) The bill provides foster parents the right to be represented by counsel. Because not all birth parents are currently represented by counsel in change of placement proceedings, the bill places birth parents at a disadvantage in cases where a foster parent is represented by counsel and could result in a court receiving uneven information from the parties about placement decisions.

(3) The bill recognizes a group homeowner as being party to a case, similar to foster parents. Group homes are congregate care facilities and independent businesses. It is a conflict of interest for a business owner, who generates revenue by continued placement of a child in the facility, to be provided legal standing to advocate against a change of placement which the child welfare agency recommends in the child's best interest.

(4) The bill allows for the automatic release of private medical and mental health records to all parties, regardless of their relevance to the proceeding. It is important to maintain confidentiality in child welfare cases because families struggle with extremely sensitive issues. There is no basis to give foster parents this level of access to information, and it is contrary to privacy rights and the child's welfare. Current law already requires a process that provides foster parents with information pertaining to the child's needs and caring for the child. Again, the judge is the most appropriate individual to determine access to other classified information, and under current law may release additional information to foster parents when appropriate.

The next bill, AB 563, requires that the permanency plan be provided to foster parents and foster children 12 years and older. This bill raises concerns because a permanency plan can include confidential and sensitive information about the birth parent(s) that is not needed for a foster parent to care for the child and may be traumatic for a young teen. To the extent that certain information in the permanency plan is protected by state confidentiality statutes, child welfare workers will incur workload to complete the appropriate redactions in each permanency plan.

The next bill, AB 565, modifies the law regarding placement with relatives, including limiting the time a relative has to request placement. Consistent with state and federal policy, including policy under the new federal Family First Prevention Services Act, when a child cannot remain safely at home, the child welfare system seeks to place the child with a relative, whenever possible, rather than an unfamiliar foster parent. For children, the best outcome is to be placed with a relative to preserve family connections and minimize the trauma of not being in their home. There are valid reasons why it may take time for a relative to decide to take placement. Considerations include the time needed by child welfare workers to contact and discuss placements with multiple relatives who may be interested and capable. Further, complex family dynamics must be considered, and potential relative caregivers may view that initial placement with the relative is not supportive of the birth parents' reunification efforts.
Additionally, this bill appears to conflict with federal funding requirements that require child welfare agencies and courts to consider giving preference to a relative over a non-related caregiver when determining a child's placement. It also appears to conflict with the federal Indian Child Welfare Act (ICWA) requirements that require child welfare agencies and the courts to follow tribal preferences for out-of-home placements, which place priority on placement with relatives. For these reasons, the Department opposes limiting the timeframe during which a relative may indicate his or her willingness to take placement of a child.

The Department opposes AB 566, which allows initiation of a TPR proceeding by motion in a CHIPS or JIPS proceeding. Because not all parents have a right to an attorney during a CHIPS proceeding, concerns regarding the due process rights of the birth parent arise if a TPR proceeding is initiated at the CHIPS stage of a case. In addition, it is problematic to allow the initiation of a TPR proceedings in a delinquency or Juvenile in Need of Protection or Services (JIPS) proceeding since delinquency and JIPS cases pertain to youth behavior that does not necessarily reflect abuse or neglect by the parent.

It is also important to note that these bills have legal and programmatic linkages, with the result that passage of several or all of the bills create further concerns for due process, parent rights, support for reunification, and relative placements. For example, under AB 562, a foster parent with legal standing could contest a change of placement in the first six months, even before court disposition specifying the terms of return occurs. The litigation could be protracted and exceed the child's fifteenth month in OHC, at which point the birth parent may be subject to an involuntary TPR under AB 560.

Conclusion

Thank you for the opportunity to testify on these bills. As highlighted in our testimony and in the testimony you will hear from others, these bills address complex legal and programmatic issues with profound consequences to a range of children, families, and stakeholders. As currently drafted, each bill has potentially adverse consequences for at least some key stakeholders. For these reasons, we view that it is appropriate for any legislation in this area to be developed in a careful manner with sufficient time to allow full and thoughtful consideration to the range of views and impacts and an understanding of the tradeoffs of possible statutory changes. The Department is pleased to engage with the Committee and others in further discussions, including exploring possible modifications to the bills. We would be pleased to respond to any questions.

Meta House – List of Resources for Family Law Committee

"Addiction is a primary, **chronic disease of brain** reward, motivation, memory and related circuitry. Dysfunction in these circuits leads to characteristic biological, psychological, social, and spiritual manifestations. This is reflected in an individual pathologically pursuing reward and/or relief by substance use and other behaviors."
http://www.asam.org/docs/publicy-policystatements/1definition_of_addiction_short_411.pdf?sfvrsn=0

"All pregnant women and their families affected by substance use disorders should have **access** to affordable prevention and treatment services and interventions delivered with special attention to confidentiality, legal and human rights; women should not be excluded from accessing health care because of their substance use. Treatment, especially residential programs, for postpartum women should **incorporate consideration for the infant and siblings**."
Substance Abuse and Mental Health Services Administration. (2016). *A collaborative approach to the treatment of pregnant women with opioid use disorders*. HHS Publication No. (SMA) 16-4978. Rockville, MD: Substance Abuse and Mental Health Services Administration. Retrieved from https://store.samhsa.gov/system/files/sma16-4978.pdf

Parents with substance use disorders often have a **history of trauma**, with 60%–90% of treatment participants experiencing one or more traumatic events (sexual, physical, emotional abuse). Early traumatic events, such as exposure to family violence and physical abuse, can lead to a greater risk of developing posttraumatic stress disorder, which has been shown to significantly increase the likelihood of a SUD. Families affected by substance use disorders who are involved in the child welfare system need a **system of care** that recognizes the impact of trauma on their functioning and recovery.
See Dube, S. R., Felitti, V. J., Dong, M., Chapman, D. P., Giles, W. H., & Anda, R. F. (2003). *Childhood abuse, neglect and household dysfunction and the risk of illicit drug use: The Adverse Childhood Experience Study.* Pediatrics, 111(3), 564–572. doi:10.1542/peds.111.3.564; Greeson, J. K., Briggs, E. C., Kisiel, C. L., Layne, C. M., Ake, G. S., Ko, S. J., & Fairbank, J. A. (2011). *Complex trauma and mental health in children and adolescents placed in foster care*: Findings from the National Child Traumatic Stress Network. Child Welfare, 90(6), 91–108.

Women who participated in programs that included a "high" level of family and children's services were **twice as likely to reunify** with their children as those who participated in programs with a "low" level of these services.
Grella, C. E., Hser, Y. I., & Huang, Y. C. (2006). Mothers in substance abuse treatment: Differences in characteristics based on involvement with child welfare services. *Child Abuse & Neglect*, 30(1), 55–73. doi:10.1016/j.chiabu.2005.07.005

Retention and completion of **comprehensive substance use treatment** have been found to be the **strongest predictors of reunification** with children for parents with substance use disorders
Green, B. L., Rockhill, A., & Furrer, C. (2007). Does substance abuse treatment make a difference for child welfare case outcomes? A statewide longitudinal analysis. *Children and Youth Services Review*, 29(4), 460–473. doi:10.1016/j.childyouth.2006.08.006

Research shows that the parent/child relationship **cannot be separate from SUD treatment** – and that treatment should involve the child to help prevent future SUD in the child.

Ghertner et al., 2018; Radel et al., 2018) Ghertner, R., Baldwin, M., Crouse, G., Radel, L., & Waters, A. (2018). ASPE research brief: The relationship between substance use indicators and child welfare caseloads. Retrieved from https://aspe.hhs.gov/system/files/pdf/258831/SubstanceUseCWCaseloads.pdf

Children of parents with SUD need services too! Children of parents with substance use disorders tend to:

- Stay in the foster care system longer than children of parents without SUD
- Have a lower likelihood of successful reunification
- Have behavioral challenges
- Struggle in school
- Show developmental delays
- Lack medical care or immunizations

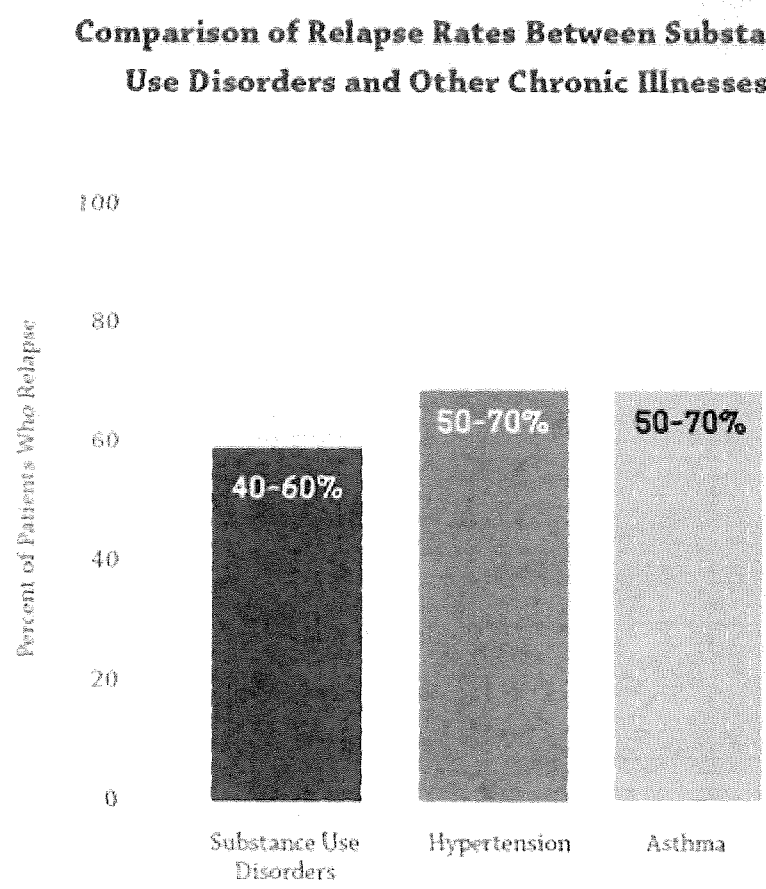
Breshears, E.M., Yeh, S. & Young, N.K. (2009). Understanding substance abuse and facilitating recovery: A guide for child welfare workers. U.S. Department of Health and Human Services. Rockville, MD: Substance Abuse and Mental Health Services Administration. Retrieved from https://ncsacw.samhsa.gov/files/Understanding-Substance-Abuse.pdf

Solis, J. M., Shadur, J. M., Burns, A. R., & Hussong, A. M. (2012). Understanding the diverse needs of children whose parents abuse substances. Current Drug Abuse Reviews, 5(2), 135–147. doi:10.2174/1874473711205020135

Family First Legislation information:
http://www.ncsl.org/research/human-services/family-first-updates-and-new-legislation.aspx
https://preventionservices.abtsites.com/

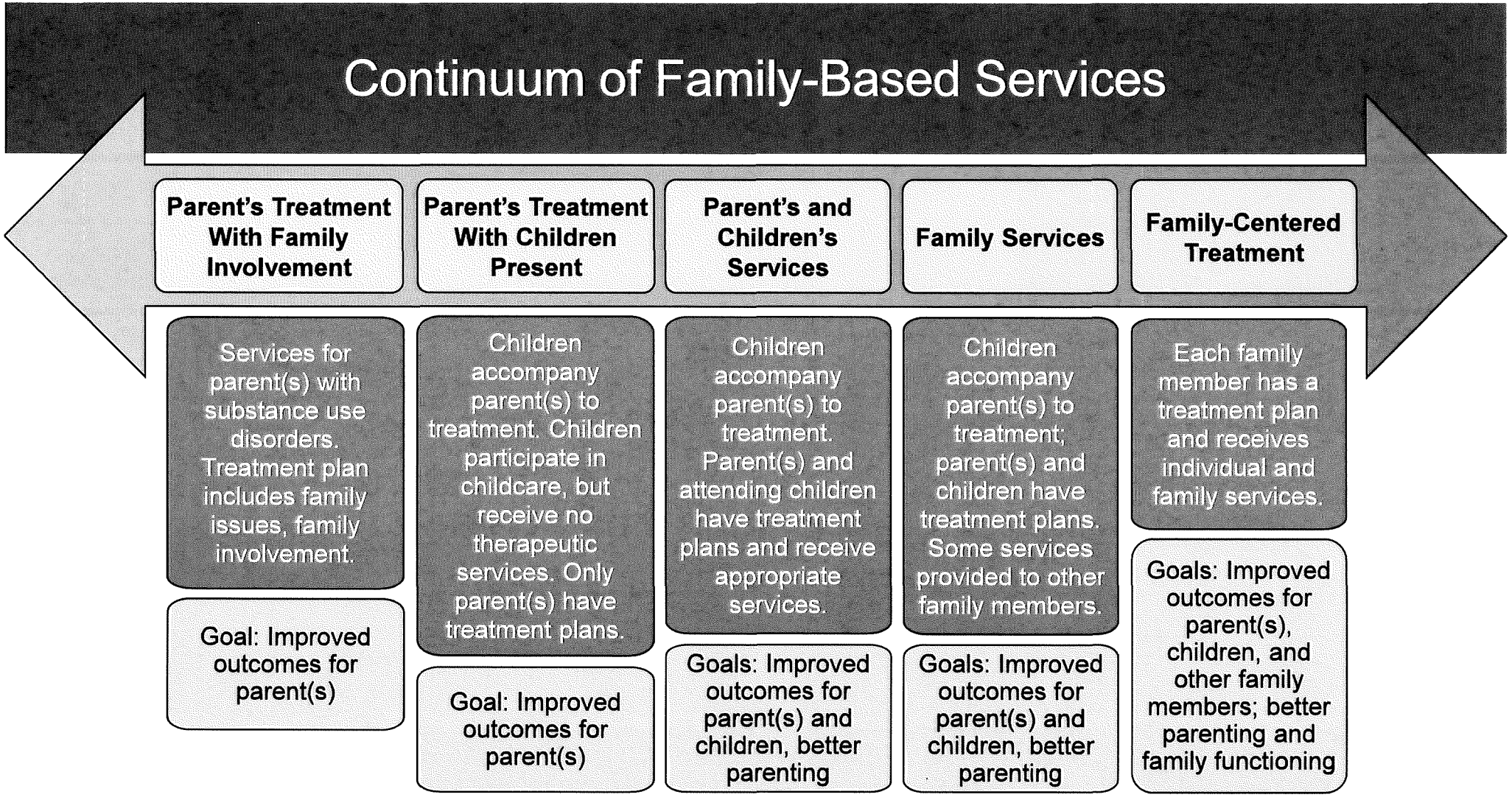
An example of a State (North Carolina) that has implemented CARA/CAPTA Plans of Safe Care as required by federal legislation:
https://www.ncdhhs.gov/divisions/mental-health-developmental-disabilities-and-substance-abuse/infant-plan-safe-care

Relapse Rates for Chronic Conditions



(McLellan et al., 2000)

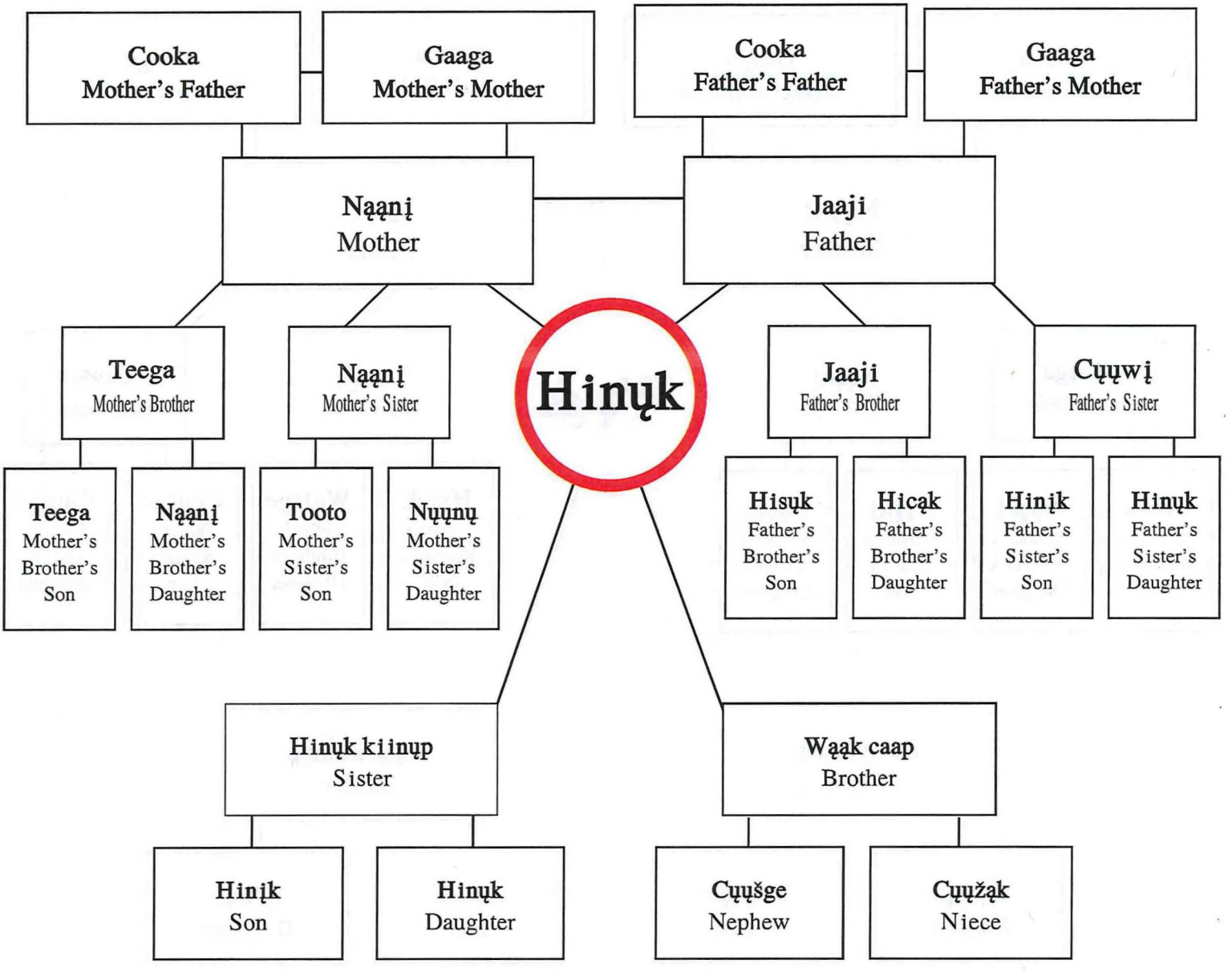
Continuum of Family-Based Services



(Werner et al., 2007; Substance Abuse and Mental Health Services Administration, 2009)

Hoocąk Hit'e Aare

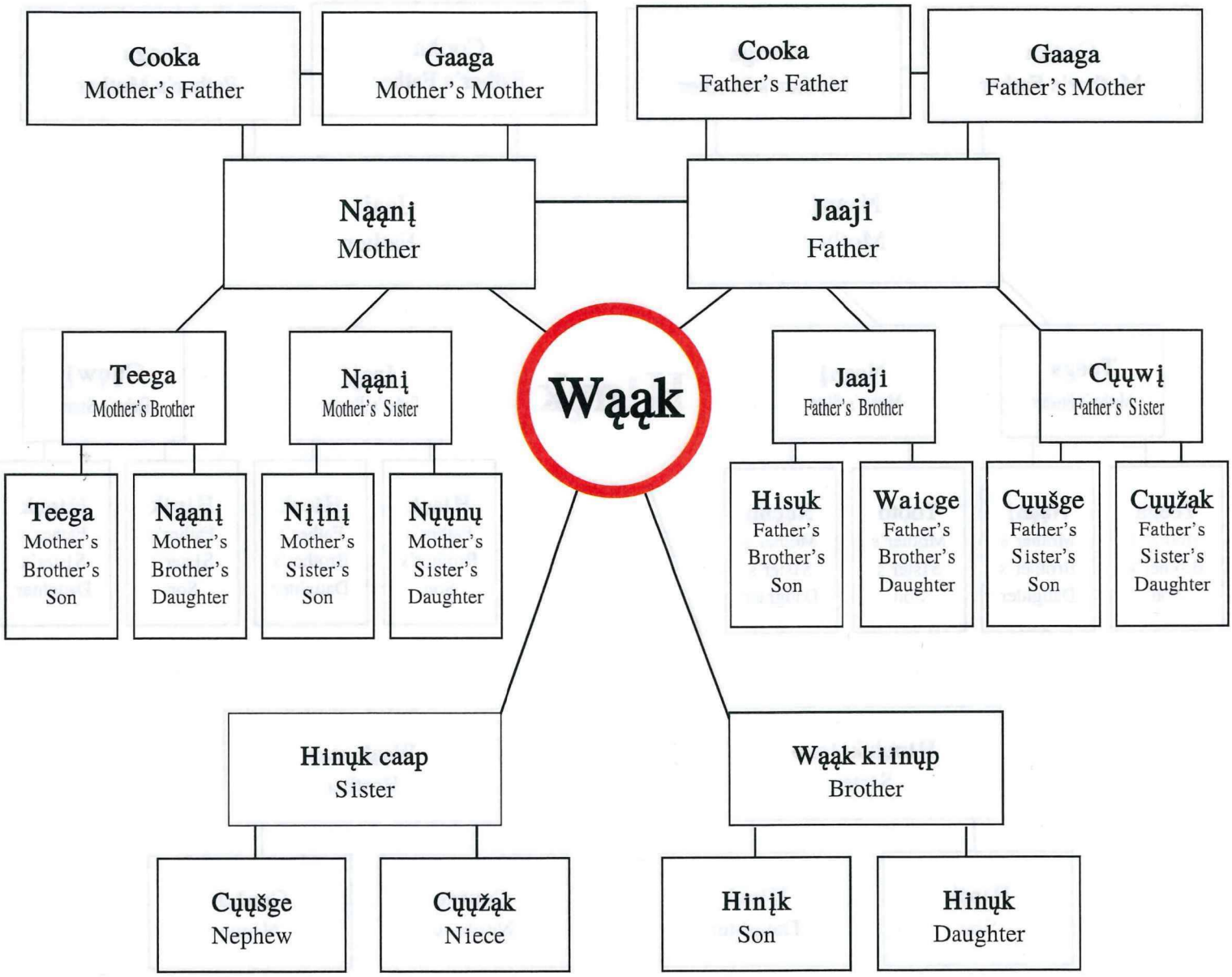
Female's kinships



This diagram indicates how a female will address her immediate family.
**It would be helpful to the learner to insert a name of a relative in each appropriate square.

Hoocąk Hit'e Aare

Male's kinships



This diagram indicates how a male will address his immediate family.
**It would be helpful to the learner to insert a name of a relative in each appropriate square.

JON PLUMER

STATE REPRESENTATIVE • 42nd ASSEMBLY DISTRICT

Assembly Bill 562

Chair Rodriguez and members,

Thank you for the allowing me the opportunity to come before you today to discuss AB 562, which is aimed at the right of expanding the rights of foster parents or other physical custodians at it relates to their rights in a "change-in-placement" proceeding. As you know, this bill was crafted as a result of the work done by the Speaker's Task Force on Adoption.

When a child or juvenile is subject to a CHIPS or JIPS order, the following entities may request that a court change the child's or juvenile's placement: (1) any person or agency responsible for implementing the order; (2) the district attorney or corporation counsel; (3) the child or juvenile; (4) the child or juvenile's legal counsel or guardian ad litem; or (5) the child or juvenile's parent, guardian, or legal custodian.

Under current law, if a change of placement request would remove a child or juvenile from a foster home or other placement with a physical custodian, current law provides that the foster parent or physical custodian must be given the right to be heard at any hearing on the request and the right to make a written or oral statement during the hearing or to submit a written statement prior to the hearing. However, current law provides that a foster parent or physical custodian does not become a party to the proceeding solely on the basis of receiving such notice and the right to be heard. The same is true of any request made by a district attorney or corporation counsel to change a child's placement after a parent's rights have been terminated. Further, the entity requesting the change in placement must state what new, relevant information initiated the request or why the current placement has failed to meet the intended objectives in the initial placement plan.

Separately, current law provides that any decision or order issued by an agency that affects the head of a foster home or group home, the head of the home of a relative other than a parent in which a child is placed, or the child may be appealed to DCF under fair hearing procedures. If a child has been placed in a foster home, group home, or in the home of a relative other than a parent for six months or more, the agency must give the head of the home written notice of its intent to remove the child, stating the reasons for the removal. If a hearing on a decision or change of the child's placement is held, the head of the home is entitled to be represented at the hearing, to examine all documents and records to be used at the hearing, to bring witnesses, to establish pertinent facts and circumstances, and to question or refute any testimony or evidence, including by cross-examining adverse witnesses.

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AB 562 would ensure that if the child has been placed for six months or more in the same out of home setting, the respective foster parent or physical custodian is not only be given the right to be heard, but also be ensured the right to be represented by counsel, to request an examination or assessment of the child by a medical or mental health professional, to present evidence, to confront and cross-examine witnesses, and to make alternative placement recommendations.

This bill seeks to put the foster parents in the same position to participate in the process to ensure the best placement of the child regardless as to who initiatives the proceedings. During the hearings held around the state, the task force members heard time and time again of instances where the current court processes were being used and manipulated for intentions other than the best interest of the child. AB 562 would close a loophole and allow foster parents or physical custodians a chance to present an updated report on the child's wellbeing and stability and provide evidence as a way to challenge the claims being made for an alternate placement. In this way, the court would have the full picture and truly be able to make an informed decision in the best interest of the child.

Alberta Darling
Wisconsin State Senator
Co-Chair, Joint Committee on Finance

Testimony before the Assembly Committee on Family Law

Assembly Bill 562

Tuesday, October 29, 2019

Thank you Chair Rodriguez and committee members for taking the time to hear Assembly Bill 562. This important bill will empower foster parents to continue providing high quality care and support for the youth in their homes.

In Wisconsin, we have approximately 8,000 children living in out-of-home care. According to the Department of Children and Familes' 2017 Out-of-Home Care Report, 47.2% of these kids are served by foster homes. Foster parents provide an essential service to our state by opening their homes to kids who need a safe and supportive environment. Assembly Bill 562 will give foster parents standing in change in placement proceedings.

On average, children in out-of-home care go through 2.5 placements in Wisconsin. Change in placements are very traumatic for kids, particularly considering foster youth typically have experienced multiple adverse childhood experiences before the initial removal from their home. According to the Department of Public Instruction (DPI), 34% of 17-18 year olds in the child welfare system have experienced 5 or more schools changes. Per the same report by DPI, students lose 4-6 months of academic progress with each school change.

Under current law, foster parents are not party to a proceeding for a change in placement. Assembly Bill 562 expands the rights of foster parents by enabling them to become a party in a change in placement proceeding or appeal for a child who has been living with them for at least six months. After six months, kids can develop real attachments and stability with their foster parents. Assembly Bill 562 will empower foster parents in the event that a youth who has been with them for a substantial amount of time is subject to a change in placement.

I hope to count on your support for this reform.