

STATE SENATOR KATHY BERNIER
TWENTY-THIRD SENATE DISTRICT



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From: Senator Kathy Bernier
To: The Senate Committee on Human Services, Children and Families
Re: Testimony on Senate Bill 491
Relating to: subsidized guardianship payments.
Date: October 14, 2021

Thank you Chairman Jacque and committee members for allowing me to provide testimony on Senate Bill 491 today. As a member of the Joint Committee on Finance, I worked with Representative Loudenbeck and other committee members to set aside funding to assist counties in paying for the rising costs of subsidized guardianship.

Subsidized guardianship offers a way to improve permanency outcomes for children in foster care. In some cases, when neither re-unification with parents nor termination of parental rights are the best option, a county will choose to pursue subsidized guardianship as a permanency option. Guardians are relatives who are then able to consent for the child's everyday activities. Under subsidized guardianship, a county will use existing funds from their Children and Family Aids allocation to pay guardians a monthly amount based on the Foster Care Rate Setting Policy. This payment continues until a child reaches the age of 18.

When this issue was first brought forward, it was thought to be "cost-neutral." However, since payments continue until a child is 18, the number of subsidized guardian payments has increased in the years since the program was created.

The State of Wisconsin through the Department of Children and Families (DCF) reimburses counties or pays for other permanency options. This cost, which is eating up the county budgets, should also be assumed by the state. The recent biennial budget set aside \$6,900,000 (split between \$4,500,000 GPR and \$2,400,000 FED) in 2021-22 and \$8,000,000 (\$5,200,000 GPR and \$2,800,000 FED) in 2022-23. This bill sets up the framework for that money to be spent.

The work in child welfare being done by our counties is as impactful as it is never-ending. For the past decade, they have had to commit a larger share of their existing resources to cover this ballooning payment. Once this bill is enacted into law and DCF requests the funding set aside from the budget, counties will be able to focus those previously diverted resources into improving their child welfare systems as a whole.

There is an amendment on this bill that we would like to see included. Senate Amendment 1 changes the payment structure to be a reimbursement payment program. Making this change would reduce administrative costs and avoid delays in permanency outcomes.

I'd like to thank Representative Loudenbeck and her staff for her work on this, as well as the work of DCF and the Wisconsin Counties Association. I'd also like to thank the Committee for your time and consideration today.



Amy Loudenbeck

REPRESENTING WISCONSIN'S 31ST ASSEMBLY DISTRICT

Testimony before the Senate Committee on Human Services, Children and Families
Senate Bill 491
Rep. Amy Loudenbeck

Thank you, Chairman Jacque and committee members for your time today and or holding a hearing on Senate Bill 491.

Guardianship is one of three legal permanency options for children placed in out-of-home care, along with reunification and adoption. Subsidized guardianship is a positive permanency option when reunification and adoption are either not possible or not in the best interests of the child.

Under subsidized guardianship, it is possible for a relative, a person who is like-kin, or a foster parent (in certain circumstances) to become the permanent legal guardian and receive a monthly payment. The payment amount is based on the Foster Care Rate Setting Policy. The rate can be the same or less than the final foster care payment for the child, but it cannot be more. Payments generally continue until a child reaches the age of 18 and the child continues to receive medical coverage through Medicaid (Title XIX).

A subsidized guardian is able to consent for the child's every day events such as school activities, health care needs, and family vacations. Though the guardian becomes responsible for the child, family dynamics and relationships may remain intact.

Counties use existing funds provided through the Children and Family Aids allocation to fund subsidized guardianship payments. When the state legislature included subsidized guardianships as a permanency option as part of the 2011-2013 state biennial budget, it was sold as "cost-neutral" to counties. However, the reality is that it is not cost neutral to counties. I will briefly explain why and allow others testifying today to go into greater detail.

Prior to the use of subsidized guardianships, if reunification was not possible, termination of parental rights leading to adoption was the route to permanency, and payments from the Children and Family Aids allocation stopped once a child was adopted. Under subsidized guardianship, payments continue (generally) until the child reaches 18 years of age; therefore, the number of families receiving payments has compounded over time. The changes we made in 2011-2013 were very positive but not adequately funded, which is the reason for this legislation.

Based on data supplied by DCF for the county costs of subsidized guardianship payments through calendar year 2020, LFB estimates the cost for DCF to directly pay the costs of subsidized guardianship would be \$6,900,000 (\$4,500,000 GPR and \$2,400,000 FED) in 2021-22 and \$8,000,000 (\$5,200,000 GPR and \$2,800,000 FED) in 2022-23. That assumes the robust growth in payments and cases we have seen in recent years will continue. The effective date of the changes would be the start of the next calendar year to give DCF and the counties time to adjust and allow for the Children and Family Aids contracts to accurately reflect the changes. Assuming the delayed effective date of January 2022, LFB estimates that the cost for DCF to directly pay the costs of subsidized guardianship would be \$3,700,000 (\$2,400,000 GPR and \$1,300,000 FED) in 2021-22 and \$8,000,000 (\$5,200,000 GPR and \$2,800,000 FED) in 2022-23. This GPR funding (a total of \$7,600,000) was put in the JFC Supplemental account during the 2021-2023 budget process.

It's important to note we've also introduced Senate Amendment 1 to this bill. The amendment makes changes in the payment process, and will reimburse the counties for the subsidized guardianship payments. We made these changes at the request of DCF, to allow the program to continue to work as it is, while ensuring the funding will be available. In making this change, the fiscal estimate for the bill is also changed because the department already has several programs they reimburse counties for, so it's a much easier transition.

Thank you for your time today, I'm happy to answer any questions at this time. I also know we'll be hearing from other stakeholders who will be able to answer specific technical questions, if necessary.



TO: Chair Jacque, Vice-Chair Ballweg, and Honorable Members of the Senate
Committee on Human Services, Children, and Families

FROM: Amanda Merkwae, Legislative Advisor
Wendy Henderson, Administrator, Division of Safety and Permanence

DATE: October 14, 2021

SUBJECT: 2021 Senate Bill 491

Thank you for the opportunity to provide testimony on Senate Bill 491. The Department of Children and Families (DCF) supports SB-491, if Senate Amendment 1 is adopted.

As originally drafted, SB-491 requires the Department of Children and Families alone to provide subsidized guardianship payments. Under current law, a county department of human services or social services (county department) or, in a county having a population of 750,000 or more, the Department of Children and Families, must provide monthly subsidized guardianship payments to the guardian of a child who has been adjudged to be in need of protection or services if certain conditions have been met. The bill, as amended by Senate Amendment 1, would instead require the Department of Children and Families to reimburse counties for subsidized guardianship payments made to guardians.

There are three legal permanency options for children placed in out of home care in a Child in Need of Protection or Services (CHIPS) case: reunification, adoption, and guardianship. In certain situations, a child and their proposed guardian may be eligible for subsidized guardianship, which provides a permanency option for children who otherwise might have languished in foster care; eligible caregivers can become the legal guardian and receive a subsidy. The payment amount is based on the Foster Care Rate Setting Policy. The subsidized guardianship rate can be the same or less than the final foster care payment for the child, but it cannot be more. These payments are to assist the provider with costs of caring for the child. Additionally, under subsidized guardianship the child also continues to receive medical coverage through Title XIX Medicaid.

If a subsidized guardianship is granted by the court, the CHIPS case must be closed, and the child is considered to have found permanence. This can be a very beneficial permanency option as it allows the child to achieve legal permanency without terminating the parental rights of the child's parents while providing financial assistance to the caregiver to assist with caring for that child, creating a healthy shared parenting experience for the child and the family. In some situations, for example cases involving Indian children, establishing permanence without terminating parental rights better aligns with cultural practices than adoption. Ultimately, subsidized guardianship reinforces the idea that it truly takes a village to raise a child.

Currently, counties partially fund subsidized guardianship payments using the Children and Family Aids allocation, with additional funds from county tax levies, federal and state revenue sharing funds, or private donations to the county. Once a subsidized guardianship is established, the county is responsible for those payments until that child reaches 18 years of age, or 21 under special circumstances if the child and guardian remain eligible to continue to qualify for payments during that time.

As a part of the 2021-23 biennial budget, the Joint Committee on Finance placed \$2,400,000 GPR in SFY22 and \$5,200,000 GPR in SFY23 in a program supplements appropriation for subsidized guardianship payments. DCF may request these GPR funds via a s.13.10 request and assumes that these funds are designated for subsidized guardianship reimbursements to counties.

Ultimately, DCF fully supports SB-491, if amended by Senate Amendment 1. To maintain the current process for administering subsidized guardianship on the local level in our state's county-administered child welfare system, DCF recommends that the state fund subsidized guardianships while counties continue to determine eligibility, enter into subsidized guardianship agreements, maintain service, and conduct annual redeterminations for these guardianships. The role of the state would be to maintain guardianship policy, implement reporting and payment logistics, and reimburse counties for the full cost of guardianship payments.

DCF submitted an original fiscal estimate for SB-491 on August 27, 2021. A supplemental fiscal estimate based on Assembly Amendment 1 (identical to Senate Amendment 1) was submitted on October 12, 2021; a copy of the supplemental fiscal estimate for the amendment to the companion bill is attached to this testimony. Thank you for the opportunity to testify about this legislation. We would be happy to answer any questions.

Fiscal Estimate - 2021 Session

Original Updated Corrected Supplemental

LRB Number 21a0765/1	Introduction Number AA1-AB503	
Description subsidized guardianship payments and making an appropriation		
Fiscal Effect		
State:		
<input type="checkbox"/> No State Fiscal Effect <input checked="" type="checkbox"/> Indeterminate <input type="checkbox"/> Increase Existing Appropriations <input type="checkbox"/> Increase Existing Revenues <input checked="" type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget <input type="checkbox"/> Decrease Existing Appropriations <input type="checkbox"/> Decrease Existing Revenues <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Create New Appropriations <input type="checkbox"/> Decrease Costs		
Local:		
<input type="checkbox"/> No Local Government Costs <input type="checkbox"/> Indeterminate 1. <input type="checkbox"/> Increase Costs 3. <input type="checkbox"/> Increase Revenue 5. Types of Local Government Units Affected <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Towns <input type="checkbox"/> Village <input type="checkbox"/> Cities 2. <input checked="" type="checkbox"/> Decrease Costs 4. <input type="checkbox"/> Decrease Revenue <input checked="" type="checkbox"/> Counties <input checked="" type="checkbox"/> Others <u>Tribes</u> <input checked="" type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts		
Fund Sources Affected		
<input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS		
Affected Ch. 20 Appropriations		
Agency/Prepared By DCF/ Sam Matteson (608) 422-6345	Authorized Signature Adam Hartung (608) 422-6346	Date 10/12/2021

Fiscal Estimate Narratives

DCF 10/12/2021

LRB Number	21a0765/1	Introduction Number	AA1-AB503	Estimate Type	Supplemental
Description subsidized guardianship payments and making an appropriation					

Assumptions Used in Arriving at Fiscal Estimate

As amended, this bill requires the Department of Children and Families to reimburse counties for subsidized guardianship payments made to guardians. In effect, this amended bill increases costs for the department by modifying the financial administration of making subsidized guardianship reimbursement payments. Projections for these payments are based on current caseloads and are provided below. The overall fiscal estimate is indeterminate; however, the department may be able to absorb increased costs under this amended bill.

Guardianship is one of three legal permanency options for children placed in out of home care, along with reunification and adoption. In certain situations, a child and their proposed guardian may be eligible for subsidized guardianship (SG), which provides a permanency option for children who otherwise may remain in foster care. Eligible caregivers can become the legal guardian and receive a subsidy. Subsidized guardianship is a positive permanency option when reunification and adoption are either not possible or not in the best interest of the child. Under a subsidized guardianship, the guardian receives a monthly payment.

As a part of the 2021-23 biennial budget, the Joint Committee on Finance placed \$2,400,000 GPR in SFY22 and \$5,200,000 GPR in SFY23 in a program supplements appropriation for subsidized guardianship payments. DCF may request these GPR funds via a s.13.10 request and assumes that these funds are designated for subsidized guardianship reimbursements to counties.

Under current law, counties provide these payments to guardians who are appointed for children previously under the placement and care responsibility of a county. For Milwaukee children, payments are made by DCF through the Division of Milwaukee Child Protective Services (DMCPS). The projections provided in this estimate assumes DCF will incur costs for the administration of the payments and for the reimbursement costs themselves.

Currently, counties partially fund subsidized guardianship payments using the Children and Family Aids allocation, with additional funds from county tax levies, federal and state revenue sharing funds, or private donations to the county. Once a subsidized guardianship is established, the county is responsible for those payments until that child reaches 18 years of age, or 21 under special circumstances if the child and guardian remain eligible to continue to qualify for payments during that time.

This bill substantively changes the administration of subsidized guardianship for the department. Sections 1, 2, and 3 of this bill strike reference to subsidized guardianship from the Children and Family Aids allocation to counties (s. 48.569 (1) (d)) and the Tribal Out of Home Care High Cost Pool (s. 20.437 (1) (kz) and s. 48.48 (8p)) and instead requires DCF to reimburse counties for recurring and non-recurring SG payments provided directly to guardians (Sections 4).

The bill strikes from existing law language related to the allocation of subsidized guardianship funds from the Children and Family Aids allocation in s. 48.569 (1) (d) (Section 3). By striking this language, the portion of the Children and Family Aids allocation that would have funded SG would then be available to fund a greater share other of allowable child welfare expenses.

The bill also strikes from existing law language related to the allocation of subsidized guardianship funds for tribal children in s. 20.437 (1) (kz) and s. 48.48 (8p) (Sections 1 and 2). By striking this language, tribes and counties (with SG agreements with tribal children and guardians) will have a corresponding share of their Tribal Out-of-Home Care High Cost Pool allocation to fund other allowable child welfare expenses.

Instead, this amended bill requires DCF to reimburse county departments for the cost of subsidized guardianship payments, including guardianships of Indian children ordered by tribal courts from s. 20.437 (1) (dd) and (pd). These appropriations (s. 20.437 (1) (dd) and (pd)) also include state foster care payments and adoption assistance payments. DCF is able to manage budget under these appropriations across state foster

care, adoption assistance payments, and, under this bill, subsidized guardianship reimbursements. Projections for these appropriations are re-estimated each biennium and incorporate changes to caseloads and expenses.

This estimate assumes there is no additional transfer of programmatic and/or administrative responsibilities from counties to DCF except to make the reimbursement payments to counties. The responsibilities of county departments remaining under this bill include (but are not limited to): completing initial eligibility determinations; annual eligibility determinations; amendments, suspensions, or terminations of agreements; and assessing and recovering overpayments.

The department projects an increase in the number of (BOS) subsidized guardianship agreements and payments over future years. These projections are consistent with recent upward trends for subsidized guardianship as a positive and preferred permanency option for children and families. For instance, in calendar year 2016, the caseload total for BOS counties was 408 and amounted to approximately \$2.0M in payments. In calendar year 2020, there were 930 SG agreements in place in BOS, totaling \$5.5M in SG payments. DCF expects that the shift to state reimbursement to county departments for subsidized guardianship payments will accelerate the rate at which SG agreements and payments are currently trending until reaching a stable balance of new agreements replacing youth aging out of their SG agreements. Changes in caseloads and/or payments will be re-estimated each biennium under this amended bill.

DCF receives title IV-E reimbursement for subsidized guardianships at rate of approximately 35% of non-trust costs. These dollars contribute to DCF's overall title IV-E budget that funds aids and operations, including Children and Family Aids. The projections below are derived from current caseloads.

Based on current programmatic trends, DCF projects that for the six-month period beginning January 1, 2022 and ending on June 30, 2022 (end of SFY22), there will be a total of 1,159 active SG agreements at a projected cost of \$3.5M. GPR funding provided in the program supplements appropriation for SFY22 amounts to \$2.4M. DCF projects that the title IV-E reimbursement for the SG payments will be \$1.2M for SFY22 (6-month period). These earned title IV-E funds, if appropriated in combination with GPR to fund SG reimbursements, are sufficient for the projected of (\$3.5M) for SG payments in SFY22.

For the 12-month period comprising SFY23, DCF projects there will be a total of 1,333 active SG agreements at a projected cost of \$8.2M. GPR funding provided in the program supplements appropriations for SFY23 amounts to \$5.2M. DCF projects that the title IV-E reimbursement for the SG payments will be \$2.9M in SFY23 (full 12-months). These earned title IV-E funds, if appropriated in combination with GPR to fund SG reimbursements, are sufficient for the projected need of (\$8.2M) for SG payments in SFY23.

In summary, this amended bill increases costs for the department by modifying the financial administration of making subsidized guardianship payments. The overall fiscal estimate is indeterminate; however, the department may be able to absorb increased costs under this amended bill.

Long-Range Fiscal Implications



HO-CHUNK NATION LEGISLATURE
Governing Body of the Ho-Chunk Nation

Written Comments
SB Bills 395, 402, 491, 601
Wisconsin State Senate
Committee on Human Services, Children and Families
October 14, 2021

Thank you, Senator Jacque and the Committee on Human Services, Children and Families, for accepting these written comments from the Ho-Chunk Nation Legislature on a set of bills that will have an impact on tribes, tribal children, and tribal families.

“The fundamental constitutional right to family integrity extends to all family members, both parents and children.” O’Donnell v. Brown, 335 F.Supp.2d 787, 820 (W.D. Mich. 2004), citing Wallis v. Spencer, 202 F.3d 1126, 1136 (9th Cir. 2000). The “right of a child to be raised and nurtured by his parents” is “fundamental. . .” Brokaw v. Mercer County, 235 F.3d 1000, 1019 (7th Cir. 2000).

SB 395 – Responses to reports relating to adults-at-risk and elders

- **Support Bill**

For years, staff at the Ho-Chunk Nation could not understand why the requirement of investigating reports of neglect, abuse, and exploitation of adults-at-risk and elders was never mandatory, as it is for children. Ho-Chunk pays tremendous respect and reverence to our elders. They are proof that even through the most traumatic experiences, we will be resilient and continue the traditions and culture on to future generations.

As such, changing the requirement to complete an investigation after receiving an intake from a “may” to a “shall” is greatly supported by the Ho-Chunk Nation. This is an important step towards ensuring that that tribal elders and adults-at-risk are better protected.

SB 402– Creating foster parent bill of rights

- **Oppose Bill**

The ambiguity of SB-402 presents opportunities for foster parents to be errantly raised to the level of party status and on the same footing as a biological parent. The purpose of foster care is to provide a temporary home to ensure a child’s safety while biological parents are provided support and services to develop the necessary protective parenting capacity needed to ensure their children’s safety. Foster parents play an important role in providing this safety, but the primary goal is and should always be – except in those very rare and statutorily expressed egregious circumstances –



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reunification. To lose sight of this creates imbalance that will circumvent a biological parent's constitutionally protected fundamental right to parent and a child's constitutionally protected fundamental right to be with their parent.

Tribal attorneys are in a unique situation in that many have participated in contested hearings/trials in states where foster parents are granted party status. They have experienced firsthand how this imbalance negatively affects biological parents, but it also creates an imbalance as it pertains to the rights of Indian Tribes and Indian children established by the federal and Wisconsin Indian Child Welfare Act (ICWA/WICWA). For Tribes that do not have the financial ability to fight the cases themselves or find local counsel in states where pro hac vice is too difficult or denied, it creates an insurmountable barrier to protecting their actual party status rights when facing legal attacks by foster parents.

Further, there is serious concern with language that proposes to create a preferred placement upon reentry. This is in direct conflict with ICWA placement preferences (unless the family was initially a preferred ICWA placement- but ICWA placement preferences already provide that potential protection if the family is still available and willing to take placement). ICWA/WICWA's placement preferences apply at reentry, just as they did when the first case opened/first removal occurred. A county social services agency has an ongoing duty up until the date of reunification/closure or termination of parental rights to provide active efforts, which includes seeking family members for placement and/or support. *Again, an ongoing obligation to continually seek out placements that meet ICWA/WICWA's statutory placement preferences through the entirety of the case, and every case thereafter.*

One of the most important parts of ICWA/WICWA is the establishment of standards that require that Indian children be placed in foster care, pre-adoptive, or adoptive placements that reflect the unique values of the Indian child's tribal culture. It is not enough that a non-Indian couple takes a child to a pow wow. Pow wows are, often, simply intertribal social gatherings. They are not necessarily a place in which to fully learn a particular tribe's culture- principally language and tribal roles. These types of learnings are only established through placement within one's tribal family, clan, or other tribal family.

It should never be forgotten when addressing the placement of Indian children, that Wisconsin unanimously voted to create a best interests of an Indian child standard. Wis. Stat. § 48.01(2) clearly sets forth that the best interests of an Indian child is to be placed "in a placement that reflects the unique values of the Indian child's tribal culture and that is best able to assist the Indian child in establishing, developing, and maintaining a political, cultural, and social relationship with the Indian child's tribe and tribal community."

Lastly, there are built in protections within ICWA and WICWA that allow for an adoption to be overturned if it is found that a parent consented to a termination of parental rights, but did so through fraud or duress. This can happen up to two (2) years later. Further, a case can be invalidated if the minimum standards set forth in ICWA are not complied with. That is why Tribes always push for ICWA/WICWA compliance. Simply put, do it right from the beginning and you will not have to redo the whole thing causing additional trauma to a family.

Sometimes other parties think we "don't care about children" because we push for compliance that can result in changes in placement or invalidation of cases. In fact, we love our children that much, which is why we push for compliance. Our children deserve a chance to be



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reunified with their parents. In order for our families to have a chance, the minimum standards must always be complied with.

It is not the Tribes that cause changes of placement and invalidation of cases through ICWA. Failing to comply with ICWA standards is what leads to invalidation of cases.

SB 491 - Subsidized Guardianship Payments

- **Support Bill**

As to the Amendment, the Nation is less concerned with who makes the payments, and more concerned with the need for increased appropriations and infrastructure for these valuable forms of permanency to be utilized more often across the state.

The reason we submit our support for this bill is that by removing the Subsidized Guardianship language from the beginning section, it should free up some money for tribal high-cost pool needs. It is our understanding that the subsidized guardianship monies are skimmed off the top first by the counties. By removing subsidized guardianship from this section, it should return the high-cost pool to what it was meant to be- just a high-cost pool.

However, we would like to take this opportunity to stress the importance of subsidized guardianships, particularly for the Ho-Chunk Nation that has an expansive traditional kinship system. Many Tribes prefer guardianship as the primary permanency option, as opposed to adoption. This is particularly true for the Ho-Chunk Nation. The Ho-Chunk Nation does not support the permanent severance of parental ties, and as such explicitly bans the use of termination of parental rights in tribal court and likewise does not support such in state courts.

Guardianship ensures parents' rights are not severed and leaves the door open for parents to come back once they get back on their feet. This is important because addiction typically prevents reunification within the 15-to-22-month timeframe set forth by the Adoption and Safe Families Act (ASFA). Therefore, this is a helpful tool to support families in reunifying once a parent can overcome their addiction. Due to the historical trauma inflicted upon tribal peoples, there is unfortunately a high rate of addiction within our communities. However, extended family members or tribal members can at times step in and provide the safety, love, and support to not only the children, but to their parents as well. Thus, nurturing the traditionally communal system of raising of a child through extended familial and clan relationships.

Some counties have pushed back on subsidized guardianships because some of those funds come from the county's coffers. Therefore, some of the smaller and poorer counties have claimed in the past to not have the funding to utilize subsidized guardianships when they are needed and appropriate. Whether the funding comes directly from DCF or through appropriations to the counties from DCF, does not matter as much as the need for more funding for these important forms of permanency. This aligns with the goals of the Family First Prevention Services Act, that being to increase and promote familial placements when a child cannot remain safely within their home after preventative services are exhausted.

While one of the main goals of the 2018 federal Family First Prevention Services Act is to ensure children can remain safely in their homes and avoid unnecessary removals, it recognizes that there will at times be a need for necessary removal. In that event, the counties should be looking



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towards identifying kinship/relative caregivers instead of foster homes to which the children have no relation to. If children are appropriately placed with kin in the event of removal, and a case needs to progress to permanency, then subsidized guardianship is the ideal form of permanency.

SB 601 - Duty to participate in an appeal of order terminating parental rights

- **Neutral**

While the Ho-Chunk Nation does not support termination of parental rights, this bill makes sense on its face. We have not seen or heard of this being an actual issue. As such, it certainly does not seem to be a widespread issue that requires any sweeping change. However, while we never support termination of parental rights, we stand mute and will not actively oppose this bill.

Conclusion

We say it every time we present comments, but it is because it holds that much truth and meaning to tribal peoples. As such, our final words are as they should always be:

***There is nothing more important to a tribe than its children.
They are our future,
and they will ultimately be the links to our past.***

And because we have the added topic of adults-at-risk and elders, we would be remiss to not mention again the reverence we have for our elders.

***Equally important to a tribe are its elders.
They bring us the knowledge of our past,
and they will ultimately be what continues to make us resilient into the future.***

Thank you for taking the time to listen to how these bills will impact our tribal community. We would be happy to meet with any legislator to answer questions or elaborate on any information provided herein.



MEMORANDUM

TO: Honorable Members of the Senate Committee on Human Services,
Children and Families

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

DATE: October 14, 2021

SUBJECT: Support for Senate Bill 491 – Subsidized Guardianship Payments

The Wisconsin Counties Association (WCA) supports Senate Bill 491, relating to state payments to counties for subsidized guardianships.

One of WCA's top priorities for the 2021-23 state biennial budget was to transfer responsibility for making subsidized guardianship payments from counties to the state. The 2021-23 state biennial budget provides \$2,400,000 GPR in FY22 and \$5,200,000 GPR in FY23 in the Joint Committee on Finance (JCF) program supplements appropriation to fund subsidized guardianship payments. This was the first step in transferring payment responsibility from counties to the state.

While funding was appropriated, separate legislation needs to be introduced and adopted to effectuate the change. Assembly Bill 503 and Senate Bill 491 have been introduced by Rep. Amy Loudenberg and Sen. Kathy Bernier to do just that.

As drafted, the bill requires the Department of Children and Families (DCF) to make payments directly to guardians. After much discussion between counties, DCF, and the bill authors, Senate Amendment 1 was introduced to instead reimburse counties for subsidized guardianship payments. Counties support the amendment as a means to ensure additional dollars flow into the child welfare system.

Senate Bill 491 does not create new spending. The Legislature already made the decision to invest additional state funding in the subsidized guardianship program during 2021-23 state budget deliberations. The bill does not spend any dollars beyond that to which the Legislature already agreed. Senate Bill 491 simply provides the mechanism through which DCF allocates the already-approved funding to counties.

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October 14, 2021

Attached to this memo please find background materials WCA prepared for our members to share with their legislators next week as part of our County Ambassador Program, or CAP Team, as well as a list of county by county spending on subsidized guardianships since 2016.

WCA respectfully requests your support for Senate Bill 491.

Thank you for considering our comments.



CAP TEAM

WCA County Ambassador Program

SUBSIDIZED GUARDIANSHIP PAYMENTS

One of the Wisconsin Counties Association's top priorities for the 2021-23 state biennial budget was to transfer responsibility for making subsidized guardianship payments from counties to the state. The 2021-23 state biennial budget provides \$2,400,000 GPR in FY22 and \$5,200,000 GPR in FY23 in the Joint Committee on Finance (JCF) program supplements appropriation to fund subsidized guardianship payments. This was the first step in transferring payment responsibility from counties to the state.

While funding was appropriated, separate legislation must be introduced and adopted to effectuate the change. Assembly Bill 503 and Senate Bill 491 have been introduced by Rep. Amy Loudenbeck and Sen. Kathy Bernier.

Background:

Subsidized guardianship offers a way for children in foster care to reach permanence. When termination of parental rights (TPR) and reunification with the child's parents are not the best option, it may be possible for a relative, a person who is like-kin, or a foster parent (in certain circumstances) to become the legal guardian and receive a monthly subsidy. Guardians are able to consent for the child's every day events such as school activities, health care needs, and family vacations. Though the guardian becomes responsible, family dynamics and relationships may remain intact.

Under a subsidized guardianship, the guardian receives a monthly payment. The payment amount is based on the Foster Care Rate Setting Policy. The subsidized guardianship rate can be the same or less than the final foster care payment for the child, but it cannot be more. Requests can be made for amendments/adjustments to the monthly payment amount. Payments continue until a child reaches the age of 18 (unless a full-time student). The child also continues to receive medical coverage through Medicaid (Title XIX).

Child welfare agencies are required to offer subsidized guardianship to all providers who are eligible to receive it.

Counties use existing funds provided through the Children and Family Aids allocation to fund subsidized guardianship payments. When the state legislature included subsidized guardianships as a permanency option as part of the 2011-2013 state biennial budget, it

Subsidized Guardianship Payments
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was sold as “cost-neutral” to counties. However, that is simply not the case. Prior to the use of subsidized guardianships, termination of parental rights, leading to adoption, was the route to permanency. Once a child was adopted, payments from the Children and Family Aids allocation stopped. Under subsidized guardianship, payments continue until the child reaches 18 years of age; therefore, the number of families receiving payments compounds. As a result, dollars that were previously redirected to support the work of child welfare agencies following adoption must now continue as subsidized guardianship payments making this permanency option anything but cost neutral for counties.

As is visible from the chart below, the annual cost of subsidized guardianships continues to rise. Counties anticipate their costs will continue to increase for the next several years before payments level out (when the number of youth entering subsidized guardianship equals the number of youth aging out).

Year	Number of Children Receiving Subsidized Guardianship Payment	Total Subsidized Guardianship Costs
2013	109	\$429,063
2014	219	\$1,005,057
2015	304	\$1,472,983
2016	405	\$1,865,881
2017	492	\$2,551,579
2018	622	\$3,501,338
2019	780	\$4,436,609
2020	930	\$5,511,740

Each year, counties must allocate a larger percentage of their Children and Family Aids allocation toward subsidized guardianship payments.

CURRENT STATUS: The 2021-23 state biennial budget allocated \$2,400,000 GPR in FY22 and \$5,200,000 GPR in FY23 in the Joint Committee on Finance (JCF) program supplements appropriation to fund subsidized guardianship payments. Assembly Bill 503 and Senate Bill 491 have been introduced – the bills require the Department of Children and Families (DCF) to make subsidized guardianship payments on behalf of counties. An amendment, agreed to by DCF and counties, has been introduced that requires DCF to reimburse counties for subsidized guardianship payments, as opposed to direct payments to guardians from the state. A public hearing on Assembly Bill 503 was held on October 13.

REQUESTED ACTION: Support Assembly Bill 503 and Senate Bill 491, along with the amendment modifying the payment structure.

TALKING POINTS:

- Invests additional dollars in the child welfare system.
- The system incentivizes subsidized guardianships over TPR leading to adoption:
 - Attorneys indicate it is easier than seeking a termination of parental rights (TPR)
 - Monthly payments continue
 - State benefits continue for the child e.g., child care and Medicaid
- The Legislature already made the decision to invest additional state funding in the subsidized guardianship program during 2021-23 state budget deliberations. The bills do not spend any dollars beyond that to which the Legislature already agreed.
- The payment model included in the amendment has been agreed to by counties, DCF, and the bill authors.

Contact: Sarah Diedrick-Kasdorf, WCA Deputy Director of Government Affairs
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County	CY2016		CY2017		CY2018		CY2019		CY2020	
	Caseload Count	Payment Amount	Caseload Count	Payment Amount	Caseload Count	Payment Amount	Caseload Count	Payment Amount	Caseload Count	Payment Amount
Adams	0	\$	0	\$	1	\$ 2,015.23	1	\$ 9,864.00	1	\$ 9,864.00
Ashland	4	\$ 10,560.00	4	\$ 10,560.00	4	\$ 10,560.00	4	\$ 10,560.00	4	\$ 9,680.00
Barron	3	\$ 12,097.00	3	\$ 18,263.16	2	\$ 14,460.00	3	\$ 14,825.42	11	\$ 61,244.00
Bayfield	4	\$ 6,056.00	2	\$ 5,568.00	6	\$ 16,986.65	5	\$ 28,364.00	3	\$ 22,656.00
Brown	22	\$ 96,014.69	33	\$ 172,238.22	48	\$ 249,687.21	63	\$ 328,477.63	66	\$ 321,916.36
Buffalo	0	\$	0	\$	4	\$ 5,397.31	4	\$ 22,424.00	3	\$ 12,020.16
Burnett	0	\$	0	\$	2	\$ 1,967.33	2	\$ 14,064.00	4	\$ 20,162.45
Calumet	5	\$ 13,416.00	5	\$ 11,436.00	4	\$ 10,776.00	4	\$ 10,766.00	4	\$ 10,776.00
Chippewa	0	\$	0	\$	0	\$	2	\$ 5,096.57	2	\$ 5,532.77
Clark	0	\$	1	\$ 975.00	1	\$ 6,750.00	1	\$ 3,000.00	0	\$
Columbia	5	\$ 26,268.00	7	\$ 28,139.46	8	\$ 34,882.33	8	\$ 26,221.30	7	\$ 23,554.84
Crawford	1	\$ 7,008.00	8	\$ 16,475.04	8	\$ 33,256.00	8	\$ 33,846.00	7	\$ 29,128.00
Dane	50	\$ 279,344.33	58	\$ 425,444.60	82	\$ 698,906.82	99	\$ 913,889.94	111	\$ 1,073,690.43
DMCPS (Milwaukee)	579	\$ 3,846,478.22	673	\$ 4,736,273.76	676	\$ 5,314,970.17	824	\$ 5,867,706.28	845	\$ 6,690,384.21
Dodge	6	\$ 38,717.89	11	\$ 75,543.43	15	\$ 120,396.82	15	\$ 131,999.64	17	\$ 128,606.24
Douglas	1	\$ 1,832.13	4	\$ 24,574.69	12	\$ 30,456.83	21	\$ 98,433.17	24	\$ 134,374.05
Dunn	10	\$ 73,497.75	7	\$ 63,825.23	9	\$ 54,547.67	12	\$ 80,632.67	10	\$ 79,851.09
Eau Claire	13	\$ 78,496.98	20	\$ 107,992.94	20	\$ 133,786.48	31	\$ 155,337.39	36	\$ 179,938.47
Fond Du Lac	13	\$ 101,872.07	16	\$ 100,495.47	19	\$ 116,832.36	37	\$ 205,050.75	46	\$ 254,427.34
Forest	0	\$	0	\$	0	\$	0	\$	2	\$ 488.00
Grant	0	\$	2	\$ 3,897.60	2	\$ 5,568.00	2	\$ 5,568.00	3	\$ 8,391.33
Green Lake	2	\$ 4,408.00	5	\$ 25,085.85	5	\$ 34,008.00	5	\$ 26,349.13	3	\$ 18,696.00
Iron	0	\$	0	\$	0	\$	1	\$ 1,576.00	1	\$ 4,728.00
Jackson	17	\$ 69,479.07	18	\$ 80,086.40	20	\$ 91,861.87	26	\$ 112,255.19	33	\$ 139,787.72
Jefferson	14	\$ 41,612.26	16	\$ 51,480.90	18	\$ 52,065.75	17	\$ 69,419.61	19	\$ 86,429.54
Juneau	1	\$ 7,092.00	1	\$ 2,878.74	0	\$	0	\$	2	\$ 5,615.49
Kenosha	7	\$ 41,208.00	10	\$ 42,344.45	11	\$ 58,700.29	11	\$ 63,905.29	23	\$ 101,789.20
Kewaunee	0	\$	1	\$ 1,624.00	2	\$ 3,367.10	7	\$ 23,728.97	8	\$ 54,264.14
La Crosse	28	\$ 162,701.31	30	\$ 174,104.98	31	\$ 172,639.90	30	\$ 146,412.65	24	\$ 136,375.64
Langlade	7	\$ 30,718.55	7	\$ 37,470.48	11	\$ 46,258.40	12	\$ 49,245.04	21	\$ 68,538.09
Lincoln	0	\$	0	\$	1	\$ 2,007.13	1	\$ 2,856.00	6	\$ 16,309.95
Manitowoc	9	\$ 47,385.89	11	\$ 63,593.24	12	\$ 67,632.43	12	\$ 67,741.68	13	\$ 70,073.81
Marathon	1	\$ 9,300.12	2	\$ 28,737.12	8	\$ 106,094.23	10	\$ 116,997.08	16	\$ 153,692.16
Marinette	7	\$ 26,072.24	8	\$ 38,933.94	9	\$ 42,248.83	10	\$ 47,804.87	15	\$ 68,786.98
Menominee	2	\$ 1,228.00	2	\$ 10,128.00	2	\$ 7,596.00	2	\$ 9,284.00	2	\$ 844.00
Monroe	4	\$ 29,370.00	6	\$ 35,530.80	6	\$ 45,648.00	4	\$ 36,400.00	4	\$ 38,764.00
Oconto	6	\$ 33,692.41	8	\$ 33,506.45	12	\$ 69,625.94	12	\$ 75,513.00	13	\$ 85,164.26
Oneida	8	\$ 39,744.00	9	\$ 40,243.20	13	\$ 52,871.05	14	\$ 71,742.43	14	\$ 65,131.70
Outagamie	11	\$ 46,835.66	17	\$ 88,586.03	17	\$ 81,442.33	18	\$ 83,364.63	22	\$ 122,166.96
Ozaukee	0	\$	0	\$	1	\$ 3,182.52	1	\$ 6,264.00	1	\$ 4,698.00
Pierce	0	\$	3	\$ 7,805.42	4	\$ 30,813.47	4	\$ 31,331.00	8	\$ 61,708.19
Polk	11	\$ 62,315.80	12	\$ 72,104.00	12	\$ 73,092.00	17	\$ 97,675.07	14	\$ 95,771.94
Portage	20	\$ 97,229.83	21	\$ 98,809.72	22	\$ 124,688.47	19	\$ 121,069.94	17	\$ 105,597.83
Price	2	\$ 6,887.62	1	\$ 149.68	1	\$ 2,784.00	1	\$ 2,784.00	1	\$ 1,856.00
Racine	1	\$ 4,884.00	1	\$ 4,884.00	2	\$ 8,332.00	3	\$ 13,535.90	6	\$ 35,079.49
Richland	0	\$	2	\$ 5,904.00	2	\$ 12,056.00	3	\$ 19,416.00	3	\$ 19,416.00
Rock	0	\$	8	\$ 17,570.27	11	\$ 85,458.55	21	\$ 116,473.13	27	\$ 191,393.60
Saint Croix	0	\$	1	\$ 773.33	1	\$ 2,784.00	8	\$ 8,488.00	9	\$ 41,050.91
Sauk	2	\$ 10,166.26	5	\$ 33,183.12	9	\$ 40,312.96	8	\$ 57,920.22	11	\$ 59,160.18
Sawyer	4	\$ 30,440.00	4	\$ 31,769.81	5	\$ 28,397.43	5	\$ 36,206.59	3	\$ 26,587.00
Shawano	6	\$ 11,385.55	6	\$ 12,051.47	7	\$ 18,341.16	8	\$ 21,124.00	12	\$ 26,821.19
Sheboygan	1	\$ 5,704.00	9	\$ 26,939.84	21	\$ 87,144.02	29	\$ 136,169.17	40	\$ 223,157.72
Taylor	3	\$ 26,748.00	4	\$ 32,198.00	3	\$ 25,931.00	4	\$ 41,734.23	4	\$ 28,500.00
Trempealeau	0	\$	1	\$ 4,491.00	2	\$ 7,878.70	4	\$ 7,753.00	2	\$ 13,200.00
Vernon	0	\$	2	\$ 27,378.00	2	\$ 35,304.00	4	\$ 38,170.84	12	\$ 83,512.53
Vilas	15	\$ 87,785.00	17	\$ 84,972.12	16	\$ 99,864.90	16	\$ 94,478.73	21	\$ 127,853.20
Walworth	17	\$ 60,103.27	22	\$ 99,339.64	21	\$ 136,329.00	21	\$ 114,548.59	18	\$ 104,304.00
Washburn	9	\$ 29,111.23	12	\$ 42,209.28	13	\$ 53,699.27	13	\$ 62,724.00	12	\$ 60,204.00
Washington	4	\$ 11,129.00	5	\$ 28,629.26	8	\$ 38,694.50	24	\$ 95,804.46	25	\$ 142,630.81
Waukesha	18	\$ 110,111.97	17	\$ 90,626.67	20	\$ 99,131.89	24	\$ 127,788.47	30	\$ 149,829.69

Waupaca	5	\$ 27,370.29	2	\$ 7,061.32	2	\$ 4,518.57	4	\$ 6,668.00	4	\$ 32,736.00
Waushara	1	\$ 5,350.52	1	\$ 5,736.00	2	\$ 8,023.87	2	\$ 8,592.00	2	\$ 1,292.48
Winnebago	7	\$ 26,033.71	10	\$ 59,592.50	13	\$ 59,526.97	18	\$ 94,285.47	18	\$ 105,299.57
Wood	21	\$ 54,523.53	23	\$ 124,029.25	24	\$ 114,630.48	26	\$ 121,112.71	30	\$ 142,421.83
Grand Total	987	\$ 5,849,286.15	1194	\$ 7,473,644.88	1325	\$ 9,001,590.19	1625	\$ 10,451,839.85	1775	\$ 12,142,123.94

w/o Milwaukee

2019 780 \$ 4,436,609

2020 930 \$ 5,511,740



Jackson County Talking Points in support of Assembly Bill 503 and Senate Bill 491

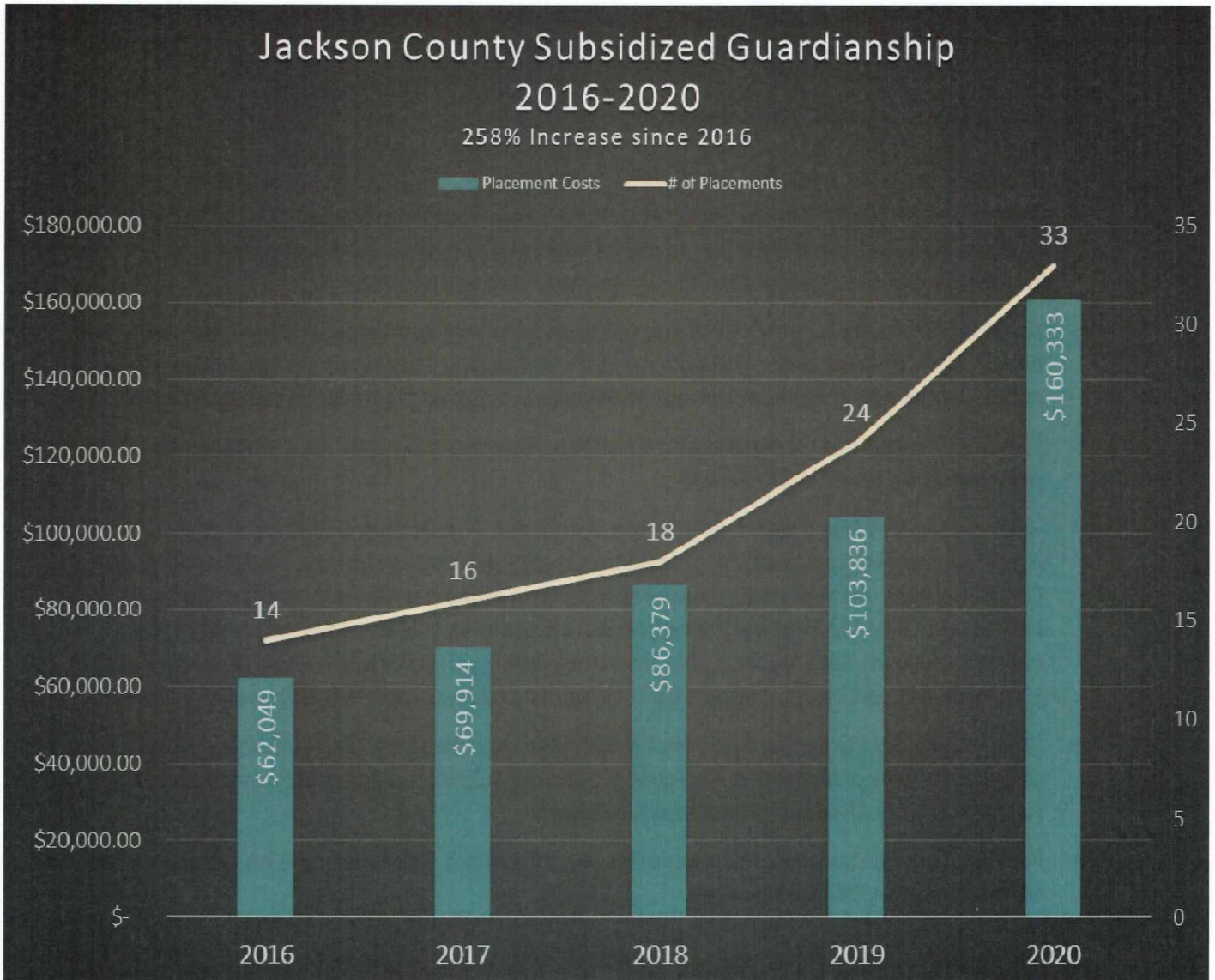
Jackson County Department of Health and Human Services (DHHS) and the Children and Families Services (CFS) Division within DHHS in conjunction with WCHSA, is requesting that **Assembly Bill 503 and Senate Bill 491**, proposal to transfer payment responsibility from the Counties for subsidized guardianships to the State of Wisconsin.

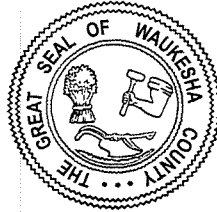
Rationale for this support is listed below:

- At the end of 2020, there were a total of 33 Subsidized Guardianships in Jackson County that the CFS Division is funding, many of which will continue to be in care for years. This is a higher number than many larger counties across the State.
- AS of October 2021, over half of the children in Subsidized Guardianships are under the age of 10. It is likely there will be a need for continued fiscal support until they reach 18 or 19, if they are enrolled in school and are expected to graduate from high school.
- Funding not utilized for Subsidized Guardianships could be used for family supports and prevention or reunification efforts.
- Jackson County has a significant Native American Population. Currently Native Americans make up about 7% of Jackson County population but over 50% of Subsidized Guardianships. In order to preserve the Indian Family per WICWA and per Cultural beliefs, termination of parental rights cannot occur as this not only terminates the parent/child relationship, but also the tribal relationship with the child. If these cases were not WICWA cases, Jackson County would proceed with TPR/adoption.
- Jackson County agrees strongly that subsidized guardianships are needed to help preserve family placements. The cost of funding subsidized guardianships is causing Jackson County significant financial hardship.
- Funding for reimbursement to counties for Subsidized Guardianships has already been allocated in the 2021-23 Budget



- In Jackson County, cost for Subsidized Guardianship continues to increase. The annual cost to support Subsidized Guardianships was over \$160,00 in 2020.
- This is a 258% increase from 2016 to 2020. (See chart below)





Waukesha County

Department of Health and Human Services

October 14, 2021

2021 Senate Bill 491

Senate Committee on Human Services, Children and Families

Testimony of Elizabeth Aldred

Waukesha County Health and Human Services Director

Thank you, Chairman Jacque and committee members, for allowing me to testify today. My name is Elizabeth Aldred and I am the Director of the Health and Human Services Department for Waukesha County. Waukesha County supports Senate Bill 491.

Subsidized Guardianship is a way for children in foster care to reach permanence when they are placed with a relative or like-kin. This has become a popular option in these circumstances for several reasons. The current system incentivizes subsidized guardianship by making it a much easier process than TPR, requiring counties to review this option with all qualifying caregivers, allowing the guardian to continue receiving payments from the agency and continue to receive state benefits like Medicaid and child care support. Subsidized guardianship was created in the 2011-2013 budget with the promise of being a cost neutral permanency option for counties. It has not been cost neutral in Waukesha County.

Since 2013, Waukesha County has seen steady growth in the number of families using this option. In 2013, Waukesha County spent \$25,786 on subsidized guardianship and this year we are estimating that we will spend \$195,984. Historically, many of our relative caregivers became adoptive parents for these children/youth and their ongoing subsidy was then covered by the State. However, now that subsidized guardianships are replacing adoptions and occurring more frequently, the result is that the cost to counties has increased dramatically while state adoption assistance has decreased. Since the costs associated with subsidized guardianships come out of the county's Children, Youth and Family Grant, the dollars left in this allocation that can be used for core services to families currently in the system has decreased.

The 2021-23 biennial budget appropriated the funding necessary to pay for the cost of subsidized guardianship but needs a mechanism to deliver this much needed relief to counties. SB 491 is that mechanism. This bill takes the financial burden off the county and shifts it over to the state making use of the funding allocated in the budget.

Thank you for your time and consideration. On behalf of Waukesha County, I respectfully request that you support SB 491. I will be happy to answer any questions you may have.



LA CROSSE COUNTY
Exceptional services. Extraordinary place.

La Crosse County
Human Services Department
300 4th Street North
La Crosse, WI 54601-3228
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lacrossecounty.org

Testimony Supporting Senate Bill 491 Relating to Subsidized Guardianship Payments
Jason Witt, La Crosse County Human Services Director
Committee on Human Services, Children and Families
October 14, 2021

On behalf of La Crosse County I would like to thank the Legislature for allocating funds in the 2021-23 biennial budget to fund subsidized guardianship payments. I am here today to indicate La Crosse County's strong support for Senate Bill 491, which makes the statutory changes necessary to effectuate the funding's intent.

In La Crosse County, it is our experience that for certain children a subsidized guardianship is indeed a good and loving permanency option. It is an option that, depending on the circumstance, can maintain family bonds with the birth parents, honor the wishes of older children who do not wish to be adopted and respect cultural norms of tribal nations. We have found that a subsidized guardianship can be especially beneficial in certain cases involving chronic long-term substance abuse, which our system is unfortunately still awash. Overall, subsidized guardianships are an important option for filling the need for permanency when neither reunification nor adoption are appropriate.

Recent years have seen our cost for subsidized guardianship payments exceed \$125,000 (La Crosse County currently has 23 children under subsidized guardianships). Satisfying these costs has meant diverting dollars from our Children and Family Aids allocation, which otherwise could be used to fund child welfare caseworkers and needed prevention services. Senate Bill 491 would ensure that the subsidized guardianships on which a growing number of Wisconsin's children depend are supported in a way that does not put added stress on county child welfare systems. We strongly support its adoption.



County of Dane
Office of the County Executive

Carrie Springer
Legislative Lobbyist

Date: October 14, 2021

To: Members of the Senate Committee on Human Services, Children and Families

From: Carrie Springer, Dane County Legislative Lobbyist, 608-266-4576

Re: Support for Senate Bill 491

Thank you Chairman Jacque for holding a hearing on Senate Bill 491, a bill to require the Department of Children and Families to provide Subsidized Guardianship payments. We appreciate the time committee members are giving this important issue and the Dane County Human Services team hopes committee members will support Senate Bill 491.

Over the years, Dane County has seen Subsidized Guardianship become a more popular alternative for relative families who do not want to see legal relationships between parents and children severed through Termination of Parental Rights. Many of the relative families who generously come forward to care for their relative children are experiencing financial struggles and Subsidized Guardianships provide a means to support these relative placements. Support from the state will help ensure counties across the state can continue to use this important tool to keep children connected to their families and supported.

Studies have shown that children experience more stability in relative placements and children are able to maintain important connections to other extended family and to their culture. In recent years, fewer children are qualifying for Adoption Assistance, which has contributed to the decision for relatives to pursue Subsidized Guardianship. In addition, under Subsidized Guardianship, relatives can continue to receive childcare assistance, unlike under the Adoption Assistance program. As more and more younger children are experiencing permanency through Subsidized Guardianship, childcare assistance is essential to maintaining household financial stability.

Dane County urges you to support this important bill. Thank you for your consideration of our comments and please don't hesitate to contact me with any questions about the use of Subsidized Guardianships in Dane County.