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(FORM UPDATED: 08/11/2010)

**WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS**

2003-04

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on ... Children and Families (AC-CF)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (May 2012)

Absent: (1) Representative Jeskewitz.

Moved by Representative Ladwig, seconded by Representative Vukmir that **Assembly Substitute Amendment 1** be recommended for introduction.

Ayes: (7) Representatives Kestell, Ladwig, Albers, Vukmir, Sinicki, Miller and Toles.

Noes: (0) None.

Absent: (1) Representative Jeskewitz.

INTRODUCTION OF ASSEMBLY SUBSTITUTE AMENDMENT 1
RECOMMENDED, Ayes 7, Noes 0

Moved by Representative Ladwig, seconded by Representative Albers that **Assembly Substitute Amendment 1** be recommended for adoption.

Ayes: (7) Representatives Kestell, Ladwig, Albers, Vukmir, Sinicki, Miller and Toles.

Noes: (0) None.

Absent: (1) Representative Jeskewitz.

ASSEMBLY SUBSTITUTE AMENDMENT 1 ADOPTION RECOMMENDED,
Ayes 7, Noes 0

Moved by Representative Albers, seconded by Representative Vukmir that **Assembly Bill 201** be recommended for passage as amended.

Ayes: (5) Representatives Kestell, Ladwig, Albers, Vukmir and Toles.

Noes: (2) Representatives Sinicki and Miller.

Absent: (1) Representative Jeskewitz.

PASSAGE AS AMENDED RECOMMENDED, Ayes 5, Noes 2

David Matzen
Committee Clerk

Vote Record Committee on Children and Families

Date: 2-19-04
 Moved by: Ladwig Seconded by: Vukmir
 AB 201 SB _____ Clearinghouse Rule _____
 AJR _____ SJR _____ Appointment _____
 AR _____ SR _____ Other _____

A/S Amdt
 A/S Amdt _____ to A/S Amdt _____
 A/S Sub Amdt 1
 A/S Amdt _____ to A/S Sub Amdt _____
 A/S Amdt _____ to A/S Amdt _____ to A/S Sub Amdt _____

Be recommended for:
 Passage Adoption Confirmation Concurrence Indefinite Postponement
 Introduction Rejection Tabling Nonconcurrence

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Representative Steve Kestell, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Bonnie Ladwig	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Sheryl Albers	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Suzanne Jeskewitz	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Representative Leah Vukmir	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Christine Sinicki	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Mark Miller	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Barbara Toles	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Totals:	<u>7</u>	<u>0</u>	<u>1</u>	<u> </u>

Motion Carried Motion Failed

Vote Record Committee on Children and Families

Date: 2-19-04

Moved by: Albers Ladwig Seconded by: albers

AB 201 SB _____ Clearinghouse Rule _____
 AJR _____ SJR _____ Appointment _____
 AR _____ SR _____ Other _____

A/S Amdt _____
 A/S Amdt _____ to A/S Amdt _____
 A/S Sub Amdt 1
 A/S Amdt _____ to A/S Sub Amdt _____
 A/S Amdt _____ to A/S Amdt _____ to A/S Sub Amdt _____

Be recommended for:
 Passage Adoption Confirmation Concurrence Indefinite Postponement
 Introduction Rejection Tabling Nonconcurrence

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Representative Steve Kestell, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Bonnie Ladwig	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Sheryl Albers	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Suzanne Jeskewitz	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Representative Leah Vukmir	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Christine Sinicki	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Mark Miller	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Barbara Toles	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Totals:	<u>7</u>	<u>0</u>	<u>1</u>	<u> </u>

Motion Carried

Motion Failed

Vote Record Committee on Children and Families

Date: 2-19-04

Moved by: Albers Seconded by: Vukmir

AB 201 SB _____ Clearinghouse Rule _____
 AJR _____ SJR _____ Appointment _____
 AR _____ SR _____ Other _____

A/S Amdt _____
 A/S Amdt _____ to A/S Amdt _____
 A/S Sub Amdt _____
 A/S Amdt _____ to A/S Sub Amdt _____
 A/S Amdt _____ to A/S Amdt _____ to A/S Sub Amdt _____

Final vote

Be recommended for: AS amended
 Passage Adoption Confirmation Concurrence Indefinite Postponement
 Introduction Rejection Tabling Nonconcurrence

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Representative Steve Kestell, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Bonnie Ladwig	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Sheryl Albers	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Suzanne Jeskewitz	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Representative Leah Vukmir	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Christine Sinicki	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Mark Miller	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Barbara Toles	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Totals:	<u>5</u>	<u>2</u>	<u>1</u>	_____

Motion Carried Motion Failed





WISCONSIN LEGISLATIVE COUNCIL

RELATIVE CAREGIVERS MINUTES

Room 225 Northwest, State Capitol
Madison, Wisconsin

January 24, 2003
10:00 a.m. - 3:00 p.m.

[The following is a summary of the January 24, 2003 meeting of the Special Committee on Relative Caregivers. The file copy of this summary has appended to it a copy of each document prepared for or submitted to the committee during the meeting. A digital recording of the meeting is available on our Web site at <http://www.legis.state.wi.us/lc/2002studies.htm>.]

Call to Order and Roll Call

Co-Chair Kestell called the meeting to order. The roll was called and it was determined that a quorum was present.

COMMITTEE MEMBERS PRESENT: Sen. Gwendolynne Moore, Co-Chair; Rep. Steve Kestell, Co-Chair; Reps. Shirley Krug and Al Ott; and Public Members Rosemary Albrecht, Shirin Cabraal, Ramona Gonzalez, Dyann Hafner, Gerald Huber, Dave Kratz, Leslie McAllister, and Carol Medaris.

COUNCIL STAFF PRESENT: Anne Sappenfield, Senior Staff Attorney; Philip Cardis, Staff Attorney; and Kelly Mautz, Support Staff.

***ATTENTION:** This was the final meeting of the Special Committee on Relative Caregivers. Committee members are requested to send any corrections regarding these Minutes to the Legislative Council staff. After the incorporation of any corrections, these Minutes will be considered approved by the committee.

Approval of the Minutes of the December 4, 2002 Meeting of the Special Committee

Representative Krug moved, seconded by Ms. Albrecht, that the minutes of the December 4, 2002 meeting be approved. The motion passed by unanimous consent.

Discussion of Committee Assignment

Anne Sappenfield began by discussing WLC: 0105/1, relating to eligibility for kinship care payments. Ms. Sappenfield noted that on lines 10 and 11 on the first page of the draft, "and that the placement with the kinship care relative is in the best interests of the child" should be deleted. There was consensus among committee members to delete that language.

Ms. Medaris raised a concern that the draft may be read as requiring the Department of Health and Family Services (DHFS) or a county department to find that a child is either a child or a juvenile in need of protection or services (CHIPS or JIPS) or that the child has been living with the relative for two years or longer in order for the relative to be eligible for kinship care payments. Ms. Sappenfield responded that the draft requires DHFS or the county department to find that the child meets the eligibility element of needing to be placed with the relative if the child is CHIPS or JIPS or has been living with the relative for two years or longer, but that the draft does not preclude a finding that the child needs to be placed with the relative if DHFS or the county department otherwise determines that the child needs to be placed with the relative. Ms. Cabraal asked whether a provision could be added to state that the child must be found to need placement with the relative if other factors are present that show that the child needs to be placed with the relative. Representative Krug objected to such a modification and stated that it would be repetitive. Ms. Medaris suggested adding all of the current factors in DHFS's administrative rules that are considered to determine whether a child needs to be placed with a relative to the bill draft. Representative Krug responded that she would be concerned that the bill could be modified by the Legislature before it is enacted and that the eligibility criteria could be narrowed in the process.

Judge Gonzalez moved, seconded by Representative Krug, that WLC: 0105/1 be approved, as amended. The motion was approved by a vote of Ayes, 9 (Reps. Kestell, Krug and Ott; Sen. Moore; and Public Members Albrecht, Gonzalez, Hafner, Huber, and Kratz); and Noes, 3 (Public Members Cabraal, McAllister, and Medaris).

The committee then discussed WLC: 0106/1, relating to liability of kinship care relatives for child care subsidy copayment. Ms. Sappenfield explained that she believed the bill draft was too narrow and should permit the Department of Workforce Development to also make an exception to the copayment requirement by rule. There was consensus among committee members to add the following provision:

49.155 (5) (d) An individual who the department specifies, by rule, is not liable for a copayment.

Representative Ott moved, seconded by Representative Krug, that WLC: 0106/1 be approved, as amended. The motion was approved by unanimous consent.

Ms. Sappenfield then discussed WLC: 0108/1, relating to appeal of denial of kinship care payments based on conviction record.

Ms. Hafner said that she believes this bill draft will result in increased costs to counties. Mr. Huber said that he supports the draft because it will result in uniformity across the state in how conviction records are treated for purposes of kinship care payment eligibility.

Co-Chair Moore moved, seconded by Representative Ott, that WLC: 0108/1 be approved. The motion was approved by a vote of Ayes, 12 (Reps. Kestell, Krug, and Ott; Sen. Moore; and Public Members Albrecht, Cabraal, Gonzalez, Hafner, Huber, Kratz, McAllister, and Medaris); and Noes, 0.

The committee next considered WLC: 0109/1, relating to continuation of kinship care and long-term kinship care payments following notice of discontinuation of payments.

Philip Cardis noted that, after discussing the draft with staff of DHFS, he was concerned that in the case of a relative whose payments are discontinued due to the child leaving the home, the date the payments are being discontinued may be prior to the date of the notice. Ms. Medaris suggested, and committee members agreed, to replace the first sentence of the text in both SECTIONS 1 and 2 of the draft with the following:

If a recipient requests a hearing within 10 days after the date of notice that his or her payments under par. (am) are being discontinued or before the date that his or her payments under par. (am) are being discontinued, whichever is later, those payments may not be discontinued until a decision is rendered after the hearing but payments made pending the hearing decision may be recovered by the department if the contested action or failure to act is upheld.

Representative Krug moved, seconded by Ms. Albrecht, that WLC: 0109/1 be approved, as amended. The motion was approved by a vote of Ayes, 12 (Reps. Kestell, Krug, and Ott; Sen. Moore; and Public Members Albrecht, Cabraal, Gonzalez, Hafner, Huber, Kratz, McAllister, and Medaris); and Noes, 0.

Mr. Cardis next described WLC: 0113/1, relating to notice of discontinuation of kinship care payments.

Judge Gonzalez moved, seconded by Mr. Huber, that WLC: 0113/1 be approved. The motion was approved by a vote of Ayes, 12 (Reps. Kestell, Krug, and Ott; Sen. Moore; and Public Members Albrecht, Cabraal, Gonzalez, Hafner, Huber, Kratz, McAllister, and Medaris); and Noes, 0.

Mr. Cardis then described WLC: 0110/1, relating to conviction records of applicants for kinship care payments.

Mr. Cardis noted that the "not" on page 1, line 11 should be removed.

Representative Krug moved, seconded by Representative Ott, that WLC: 0110/1 be approved, as amended. The motion was approved by unanimous consent.

Next, Mr. Cardis gave a brief description of WLC: 0111/1, relating to issuing foster home licenses to relative caregivers.

Ms. Hafner stated that Dane County strongly opposes requiring county departments to license relative caregivers as foster parents. She said that counties need foster parents who will care for more children than just children to whom they are related and that foster care is a great expense for counties. Mr. Huber said that a large portion of county funding is spent on foster care placements.

The committee agreed to withdraw WLC: 0111/1.

Mr. Cardis then began discussing WLC: 0112/1, relating to denial or termination of kinship care payments on the basis of an arrest.

Ms. Hafner said that she was opposed to this draft because information concerning prior arrests can be relevant to determining whether a home is an appropriate place for children to live. Judge Gonzalez said that she supported the draft and that arrests could be considered in determining whether placement with the kinship care relative is in the best interests of the child.

Ms. Medaris said that provisions of the draft that reference arrest where only convictions are referenced under current law should be removed. There was consensus among committee members to so modify the draft.

Representative Krug moved, seconded by Judge Gonzalez, to approve WLC: 0112/1, as amended. The motion was approved by a vote of Ayes, 10 (Reps. Kestell and Krug; Sen. Moore; and Public Members Albrecht, Cabraal, Gonzalez, Hafner, Huber, McAllister, and Medaris); and Noes, 2 (Rep. Ott; and Public Member Kratz).

Ms. Sappenfield then summarized the conclusions of a working group of committee members and staff from DHFS that met on January 9, 2003, to discuss whether kinship care payments should be distributed to relatives from the state instead of through counties. Ms. Sappenfield said that the purpose of the meeting was to determine whether modifying how payments are distributed would decrease the number of children on waiting lists and would save counties money. She said that it appeared that neither of these goals would be met by requiring the state to cut the checks for kinship care payments because the funding for payments is limited and must be budgeted, no matter who is distributing the payments. In addition, distribution of the checks is generally a small part of one county employee's job duties, so counties would not realize a substantial, if any, savings. Ms. Sappenfield also noted that it would be an expense to the state to distribute payments, especially if the change were made before the

Wisconsin Statewide Automated Child Welfare Information System (WiSACWIS) is in place in every county.

Ms. Cabraal noted that she had attended the meeting and disagreed with the conclusions of the group. She said that she was uncomfortable with the current system of taking money from counties that have an excess of funding and shifting it to counties that have waiting lists. Judge Gonzalez said that that practice was distasteful to her as a taxpayer. Ms. Medaris said that she was troubled with statements by DHFS that kinship care funding was adequate for the biennium, but that there still had been waiting lists.

Co-Chair Kestell said that more information was needed to determine the best way to manage kinship care funding. He asked whether it would be a good topic for a Joint Legislative Council study. Co-Chair Moore suggested that the committee include in its recommended legislation a requirement for DHFS to study kinship care funding.

Co-Chair Kestell moved, seconded by Ms. Albrecht, to include the following nonstatutory provision in the final bill draft:

SECTION 1. The department of health and family services shall study methods to manage funding for kinship care payments in order to minimize the need for waiting lists for kinship care payments. The department shall submit a report summarizing the results of the study to the governor, and to the legislature in the manner provided under section 13.172 (2) of the statutes, by June 30, 2004.

The motion was approved by unanimous consent.

Co-Chair Moore presented two bill drafts to the committee. She said that WLC: 0123/1 would create a contingency fund of \$500,000 for use in the case of a shortfall in funding for kinship care payments. She said that this provision was vetoed from 1999 Wisconsin Act 9. She said that WLC: 0124/1 would permit DHFS to request supplemental funding from the Secretary of Administration who could provide that funding with the approval of the Joint Committee on Finance. She said this provision was vetoed from 2001 Wisconsin Act 16. Representative Ott said that he was not comfortable including a proposal for a \$500,000 contingency fund considering that many programs are currently facing budget cuts. Representative Krug questioned the need for legislation to permit DHFS to request additional funding as the agency has requested additional funding in the past. Co-Chair Moore said that the language sends the message to DHFS that the Legislature wants to be informed of any shortfall in funding and wants DHFS to request supplemental funding under that circumstance.

Co-Chair Moore moved, seconded by Ms. Albrecht, that WLC: 0124/1 be approved. The motion was approved by a vote of Ayes, 12 (Reps. Kestell, Krug, and Ott; Sen. Moore; and Public Members Albrecht, Cabraal, Gonzalez, Hafner, Huber, Kratz, McAllister, and Medaris); and Noes, 0.

Ms. Sappenfield then discussed WLC: 0114/1, relating to notice of hearing for appointment of a guardian for a minor.

Representative Krug moved, seconded by Judge Gonzalez, that WLC: 0114/1 be approved. The motion was approved by unanimous consent.

Mr. Cardis then discussed WLC: 0115/1, relating to joint legislative council study on guardianship and legal custody.

Judge Gonzalez moved, seconded by Representative Krug, that WLC: 0115/1 be approved. The motion was approved by unanimous consent.

Next, Ms. Sappenfield briefly described the changes made to WLC: 0053/2.

Ms. Albrecht moved, seconded by Ms. Hafner, to approved WLC: 0053/2, as amended. The motion was approved by unanimous consent.

Representative Krug moved that the bill drafts be rolled into one bill draft for approval of committee members by mail ballot. There was consensus to do so.

Other Business

There was no other business brought before the committee. Co-Chairs Kestell and Moore thanked committee members for their hard work and dedication to the committee.

Adjournment

The meeting was adjourned at 3:00 p.m.

AS:ksm;jal

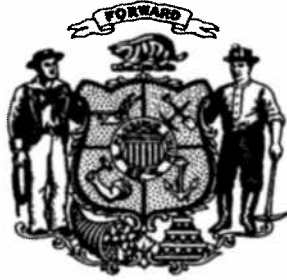


State of Wisconsin
JOINT LEGISLATIVE COUNCIL

Co-Chairs

ALAN LASEE
President, State Senate

STEVE WIECKERT
Representative, State Assembly



LEGISLATIVE COUNCIL STAFF

Terry C. Anderson

Director

Laura D. Rose

Deputy Director

TO: MEMBERS OF THE SPECIAL COMMITTEE ON RELATIVE CAREGIVERS
FROM: Anne Sappenfield, Senior Staff Attorney, and Philip Cardis, Staff Attorney
DATE: February 10, 2003

The following materials are enclosed:

1. The minutes of the January 24, 2003 meeting. Committee members are requested to send any corrections regarding these minutes to Anne Sappenfield or Philip Cardis. After the incorporation of any corrections, these minutes will be considered approved by the committee.
2. WLC: 0127/1, relating to the kinship care program, notice of guardianship proceedings, creating a medical services consent form, and requesting the joint legislative council to study guardianship and legal custody.
3. The mail ballot requesting approval of WLC: 0127/1.

Please complete and sign the mail ballot by **Monday, February 17, 2003**, and return it to the Legislative Council staff in the enclosed stamped, self-addressed envelope, or by fax at 608-266-3830.

Thank you.

AS:PC:ksm;tlu

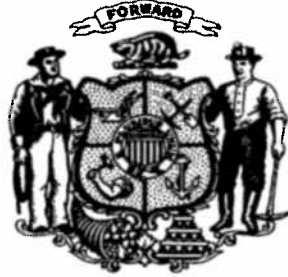
Enclosures



State of Wisconsin
JOINT LEGISLATIVE COUNCIL

Co-Chairs
ALAN LASEE
President, State Senate

STEVE WIECKERT
Representative, State Assembly



LEGISLATIVE COUNCIL STAFF
Terry C. Anderson
Director
Laura D. Rose
Deputy Director

TO: MEMBERS OF THE SPECIAL COMMITTEE ON RELATIVE CAREGIVERS
FROM: Terry C. Anderson, Director *TCA*
RE: Council Consideration of Committee Report
DATE: March 4, 2003

The Joint Legislative Council will be considering the report of the Special Committee on Relative Caregivers on **Wednesday, March 12, 2003, in Room 412 East (the Joint Finance Room), State Capitol, Madison**. The meeting is scheduled to begin at 8:30 a.m. An agenda is enclosed for your reference.

Senator Gwendolynne Moore and Representative Steve Kestell, Committee Co-Chairs, will present the following materials:

1. **Proposed Report to the Legislature, No. 2003-05, Legislation on Relative Caregivers.**
2. **WLC: 0127/1**, relating to the kinship care program, notice of guardianship proceedings, creating a medical services consent form, and requesting the Joint Legislative Council to study guardianship and legal custody.

This meeting of the Joint Legislative Council is to consider the recommendations of several Special Committees, including the Special Committee on Relative Caregivers. Traditionally, the Joint Legislative Council has not taken public testimony at their meetings. You are, of course, welcome to attend to observe the presentation. **We are unable to reimburse Public Members for expenses since it is not a meeting of the Special Committee.** We will notify you of the action taken by the Council on the Special Committee's recommendation.

If you have any questions, please feel free to contact Anne Sappenfield or Philip G. Cardis at this office.

TCA:wu;ksm
Enclosures



**WISCONSIN LEGISLATIVE COUNCIL
PROPOSED REPORT TO THE LEGISLATURE**

Legislation on Relative Caregivers

- WLC: 0127/1, Relating to the Kinship Care Program, Notice of Guardianship Proceedings, Creating a Medical Services Consent Form, and Requesting the Joint Legislative Council to Study Guardianship and Legal Custody

March 4, 2003

RL 2003-05

**LEGISLATION ON
RELATIVE CAREGIVERS**

Prepared by:
Anne Sappenfield, Senior Staff Attorney, and Philip Cardis, Staff Attorney
March 4, 2003

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PART I

KEY PROVISIONS OF LEGISLATION

The proposal recommended by the Special Committee on Relative Caregivers, WLC: 0127/1, accomplishes all of the following:

1. Makes the following changes to current law relating to the kinship care program:
 - Modifies the eligibility criteria so that a child does not need to be a child or juvenile in need of protection or services (CHIPS or JIPS) in order for a kinship care relative to receive payments. In addition, a county department or, in Milwaukee County, the Department of Health and Family Services (DHFS) must find, for purposes of determining eligibility for kinship care payments, that a child needs to be placed with the relative if the child is CHIPS or JIPS or if the child has lived with the relative for two years or longer and the placement is voluntary and appropriate.
 - Limits the arrests that a county department or DHFS may consider in conducting a criminal background check for purposes of kinship care payment eligibility to arrests for which a criminal charge is pending.
 - Requires a county department or DHFS to provide notice of discontinuation of kinship care payments to a relative at least 10 days before the payments are to be discontinued along with notice of the relative's rights to appeal the discontinuation and to receive payments pending a hearing to appeal the discontinuation decision.
 - Provides that a kinship care relative who receives notice that his or her payments are being discontinued may receive payments pending a hearing to appeal the discontinuation decision if the relative requests a hearing within 10 days of the date of the notice or before the payments are to be discontinued, whichever is later.
 - Requires a county department or DHFS to determine that an applicant's conviction record is likely to adversely affect the child or the relative's ability to care for the child in order to deny payments on the basis of a conviction record. This change also applies to conviction records of employees of the relative and adult residents of the relative's home.
 - Requires DHFS to provide applicants who are denied kinship care payments on the basis of a conviction record the right to a fair hearing to appeal the denial.

- Prohibits the Department of Workforce Development (DWD) from requiring relatives to pay a copayment for child care subsidies received on behalf of a child for whom the relative is receiving kinship care payments.
- Permits DHFS to request supplemental funding for the kinship care program if funding for kinship care payments is insufficient.
- Requires DHFS to study methods to manage kinship care funding for kinship care payments in order to minimize the need for waiting lists for payments and to report the results of its study to the Governor and the Legislature by June 30, 2004.

2. Creates a medical services consent form that parents may use to transfer decision-making authority for routine and emergency medical services to an adult with whom a child lives.

3. Requires notice of a hearing to appoint a guardian to be published as a Class 1 notice (i.e., published once) instead of as a Class 3 notice (i.e., published three times), if personal service is not possible.

4. Requests the Joint Legislative Council to study state laws regarding guardianship and legal custody of minors and the rights and responsibilities of guardians and legal custodians.

PART II

COMMITTEE ACTIVITY

A. ASSIGNMENT

The Joint Legislative Council (JLC) established the Special Committee on Relative Caregivers and appointed the co-chairs by a May 22, 2002 mail ballot. The Special Committee was directed to study: (1) current law relating to relative caregivers under the Children's Code and under current law relating to guardianship and kinship care; (2) relatives who care for children under an informal agreement between the child's parent and the relative and whether such relatives should be granted decision-making authority with respect to the child's care; and (3) third-party visitation law and enforcement of third-party visitation orders.

Membership of the Special Committee, appointed by a July 15, 2002 mail ballot, consisted of one Senator, three Representatives, and eight public members. A list of committee members is included as *Appendix 3* to this report.

B. SUMMARY OF MEETINGS

The Special Committee held five meetings at the State Capitol in Madison on the following dates:

August 8, 2002

December 4, 2002

September 3, 2002

January 24, 2003

October 30, 2002

August 8, 2002: The committee heard testimony from several invited speakers. Susan Dreyfus, Administrator, Division of Children and Family Services, DHFS, described how her division addresses the needs of relative caregivers and the kinship care program. Mary Brintnall-Peterson, Professor, University of Wisconsin (UW)-Extension, discussed data relating to relative caregivers based on the most recent census and surveys conducted by the UW-Extension. Gene Hotchkiss, a grandparent who adopted his granddaughter, described obstacles he and his wife encountered in caring for their granddaughter while their daughter maintained legal custody. He advocated for legislation that would give legal custody to a relative with whom a child resides for a specified amount of time. Carol Gapen, an attorney with Stafford Rosenbaum, LLP, who practices children's law described problems relative caregivers face because they do not have standing in many legal proceedings or authority to consent to medical care. Patti Seger, Policy Development Coordinator, Wisconsin Coalition Against Domestic Violence, described issues relating to relative caregivers in families experiencing domestic violence.

September 3, 2002: The committee heard a presentation by Julie Poehlmann, Assistant Professor of Human Development and Family Studies, UW, relating to her research on the relationship between incarcerated mothers, their young children, and the caregivers of the young children. The committee also discussed possibilities for legislation that would

confer authority to relatives caring for children informally to make medical and education decisions for the children in their care.

October 30, 2002: The committee heard presentations from several invited speakers discussing the kinship care program. Susan Dreyfus, DHFS, said DHFS recommends amending current law to require county kinship care programs to inform all court-ordered relative caregivers of the option to be licensed as foster parents because licensed foster parents have access to a number of services including training and support to the home and child. Patricia Delessio, an attorney with Legal Action of Wisconsin, recommended amending state law to allow kinship care payments in cases where the child has lived with the relative since an early age or for a substantial period of time after considering, such as the child's best interests, parental involvement, the relationship that has developed between the relative and the child and the likelihood that the parent will assume responsibility for the child. She also recommended changes to criminal background investigations, notice when payments are terminated, and providing fair hearings when payments are denied due to a conviction record. Micabil Diaz-Martinez, the Legal Director of the American Civil Liberties Union of Wisconsin Foundation, spoke as one of the attorneys currently representing the children of Milwaukee in a class action against DHFS with respect to the foster care system in Milwaukee County. Mr. Diaz-Martinez said that there is a need for more foster parents and kinship care relatives to care for children who are victims of abuse and neglect. The committee also heard from two parents whose children have been cared for by a relative. Following the presentations, the committee had an extensive discussion about WLC: 0013/1 relating to health care agents for parents of a minor. The committee made a number of changes to the draft. The committee also concluded that changes to current law regarding allowing relatives to enroll children in school were unnecessary as current case law generally permits the child to go to school where the child lives.

December 4, 2002: The committee requested staff to prepare bill drafts revising the eligibility criteria for the kinship care program and making modifications to the provisions of the kinship care program statutes relating to criminal background checks and termination of payments. In addition, the committee concluded that the Legislature should further study the issue of how to define the responsibilities and authority of physical custodians, legal custodians, and guardians and committee members asked staff to draft legislation requesting the JLC to establish a committee to study this issue.

January 24, 2003: The committee voted to approve 11 bill drafts, with minor amendments. The committee decided not to consider a bill draft that would require counties to provide relative caregivers the opportunity to become foster parents. Committee members speaking on behalf of counties said that it would be too expensive for counties to make foster care payments to relatives who are not willing to care for additional foster children.

PART III

RECOMMENDATION

This part of the report provides background information on, and a description of, WLC: 0127/1, relating to the kinship care program, notice of guardianship proceedings, creating a medical services consent form, and requesting the joint legislative council to study guardianship and legal custody, as recommended by the Special Committee on Relative Caregivers.

A. KINSHIP CARE PROGRAM

The kinship care program provides a payment of \$215 per month to eligible kinship care relatives who are providing care and maintenance for a child. [s. 48.57 (3m) (am), Stats.] "Kinship care relative" is defined as a stepparent, brother, sister, stepbrother, stepsister, first cousin, nephew, niece, aunt, uncle, or any person of a preceding generation as denoted by the prefix of grand, great, or great-great, whether by blood, marriage or legal adoption, or the spouse of any such person, even if the marriage is terminated by death or divorce. [s. 48.57 (3m) (a) 2., Stats.]

In 1996, the kinship care program was created by Wisconsin Act 289, which also created the Wisconsin Works (W-2) program. That act eliminated the Aid to Families with Dependent Children (AFDC) program, including the portion of the AFDC program that paid AFDC benefits to a nonlegally responsible relative (NLRR) who was providing care for a child. The kinship care program is generally viewed as replacing the AFDC-NLRR program; however, the eligibility criteria vary significantly.

In December 2002, kinship care payments, including long-term kinship care payments, were made on behalf of 8,750 children, including 5,392 children in Milwaukee County.

The program is administered by the county departments of human or social services (county department) or, in Milwaukee County, DHFS. In addition, DHFS may enter into an agreement with the governing body of a federally recognized American Indian tribe or band (tribe) to administer the program within the boundaries of the tribe's reservation. [s. 48.57 (3m) (am), Stats.]

1. Eligibility Criteria

Background

Among other eligibility criteria, in order to qualify for kinship care payments, a county department or DHFS must determine that both of the following conditions are met:

1. There is a need for the child to be placed with the kinship care relative and placement with the kinship care relative is in the best interests of the child.

2. The child meets one or more of the CHIPS or JIPS criteria or would be at risk of meeting one or more of the CHIPS or JIPS criteria if the child were to remain in his or her home.¹

[s. 48.57 (3m) (am) 1. and 2., Stats.]

Description of the Draft

Under the bill draft, a child does not need to be found to be CHIPS or JIPS or at risk of being CHIPS or JIPS in order for a relative to be eligible to receive kinship care payments. However, that factor may be considered in determining whether the child needs to be placed with the kinship care relative. The bill draft also specifies that a county department or DHFS must find that there is a need for the child to be placed with the kinship care relative if the county department or DHFS determines either of the following:

- The child is CHIPS or JIPS or at risk of being CHIPS or JIPS.
- The child has been living with a relative for two years or longer and the county department or DHFS determines that the child's parents have consented to the living arrangement and that the living arrangement is not contrary to the child's health, safety, or welfare.

2. Criminal Background Investigation

Background

In determining eligibility for kinship care payments, a county department or DHFS must conduct a criminal background investigation of all of the following in order to determine whether any have arrests or convictions that could adversely affect the child or the kinship care relative's ability to care for the child:

- The kinship care relative.
- The employees and prospective employees of the relative who have or would have regular contact with the child.
- Any other adult resident of the relative's home.

[s. 48.57 (3m) (am) 4., Stats.]

Kinship care payments must be denied if the kinship care relative has been convicted of any of the following crimes or had any of the following penalties imposed in Wisconsin or under a similar law in another state or under federal law:

¹CHIPS criteria are set forth in s. 48.13, Stats., and include such grounds as abandonment, abuse, or neglect; JIPS criteria are set forth in s. 938.13, Stats., and include such grounds as uncontrollable or runaway juveniles.

- Felony conviction under the Uniform Controlled Substances Act. [ch. 961.]
- Penalties imposed for habitual criminality [s. 939.62]; certain domestic abuse offenses [s. 939.621]; use of a dangerous weapon [s. 939.63]; use of a bulletproof garment while committing a felony [s. 939.64]; concealing identity while committing a crime [s. 939.641]; and hate crime [s. 939.645].
- Convictions of a crime against life and bodily security [ch. 940]; *except* failure by a peace officer to render aid [s. 940.291]; and failure by an individual to aid a victim or report a crime [s. 940.34].
- Conviction of a crime against sexual morality [ch. 944]; *except* solicitation of drinks by an employee from a customer [s. 944.36]; and the following crimes if the violation was 20 or more years prior to the investigation: prostitution [s. 944.30]; patronizing prostitutes [s. 944.31]; and pandering [s. 944.33].
- Convictions of a crime against children [ch. 948]; *except* contributing to truancy [s. 948.45]; receiving property from a child [s. 948.63]; and tattooing a child [s. 948.70].

In addition, a kinship care relative is prohibited from employing anyone who would have regular contact with the child or from permitting any adult to be a resident of his or her home if the employee or adult has been convicted of such crimes or had such penalties imposed. [s. 48.57 (3p) (g), Stats.]

A person who is denied kinship care payments or who is prohibited from employing a person or from permitting an adult to reside in his or her home because the person, employee, or adult resident has been convicted of any of these crimes or had any of these penalties imposed may request a review of the denial or prohibition. The review is conducted by the director of the county department, the person designated by the governing body of the federally recognized tribe, or the person designated by the Secretary of DHFS. A denial of payments on the basis of a conviction or arrest for which payments must be denied may not be reviewed through the fair hearing process.

The review must include consideration of the following factors on a case-by-case basis:

- The length of time between the date of the arrest, conviction, or imposition of the penalty and the date of the review.
- The nature of the violation or penalty and how that violation or penalty affects the ability of the kinship care relative to care for the child.
- Whether making an exception to the denial or prohibition would be in the best interests of the child.

If the reviewer determines that the record does not include any arrests, convictions, or penalties that are likely to adversely affect the child or the relative's ability to care for the child, the reviewer may approve kinship care payments or may permit the relative to employ the person or allow the person to be an adult resident in the home. [s. 48.57 (3p) (h), Stats., and s. HFS 58.08 (2) (a), Wis. Adm. Code.]

Description of the Draft

The bill draft makes several changes to criminal background investigations for the kinship care program.

First, the bill draft limits the arrests that may be considered in conducting a criminal background check for purposes of kinship care payment eligibility to arrests for which a criminal charge is pending.

The bill draft also requires a county department or DHFS to determine that a conviction is likely to adversely affect the child or the relative's ability to care for the child in order to deny payments on the basis of a conviction record. This change also applies to conviction records of employees of the relative and adult residents of the relative's home. Under this change, a finding that a person has a conviction for which payments must be denied under current law must be accompanied by a finding that the conviction will adversely affect the child on the relative's ability to care for the child before payments may be denied.

Finally, the bill draft requires DHFS to provide applicants who are denied kinship care payments on the basis of a conviction record the right to a fair hearing to appeal the denial.

3. Discontinuation of Payments

Background

Under current law, if a county department or DHFS determines that a kinship care relative is no longer eligible to receive kinship care payments, the county department or DHFS must discontinue those payments. In general, if the recipient requests a hearing on the discontinuation within 10 days of the date of the notice that payments will be discontinued, the payments may not be discontinued pending the hearing decision. [s. 48.57 (3m) (d) and (g) 2. and (3n) (d) and (g) 2., Stats.]

Under current administrative rules, the county department or DHFS must provide a kinship care relative with notice that his or her payments are being discontinued. The notice must set forth the relative's right to appeal the discontinuation and right to continued payments pending appeal. [s. HFS 58.08 (1), Wis. Adm. Code.]

Description of the Draft

The bill draft requires a county department or DHFS to notify a kinship care relative that his or her payments will be discontinued at least 10 days in advance. The notice must include notice of the kinship care relative's rights to appeal the discontinuation and to continued payments while the appeal is pending.

Under the bill draft, a kinship care relative must request a hearing within 10 days of the notice date or before the date the payments are to be discontinued, whichever is later, in order to receive payments pending the hearing decision.

4. Copayments for Child Care Subsidies

Background

Under current law, an individual who receives a child care subsidy is liable for a percentage of the cost of the child care specified by the DWD in a printed copayment schedule. Current law specifies, however, that an individual who is under the age of 20 and is attending high school or participating in a course of study for granting a declaration of equivalency to high school graduation may not be determined liable for more than the minimum copayment amount. [s. 49.155 (5), Stats.]

Current administrative rules make the following additional exceptions to the copayment requirement for kinship care relatives:

- Kinship care relatives who are providing care for a child under court order do not have a copayment responsibility for the kinship care child in their care.
- Kinship care relatives who are providing care for a child without a court order are generally responsible for the minimum copayment.

[s. DWD 56.08 (2) (c) and (d), Wis. Adm. Code.]

Description of the Draft

The bill draft provides that kinship care relatives are not responsible for a copayment for child care services received on behalf of a child for whom they are receiving kinship care payments. In addition, the bill draft provides that DWD may exempt others from copayment requirements by rule.

5. Funding

Background

Current law provides that kinship care payments are funded by a sum certain appropriation of federal Temporary Assistance for Needy Families funding. [s. 20.435 (3) (kc), Stats.]

DHFS places applicants on a waiting list and permits county departments and tribes to place applicants on waiting lists if the agency has expended its kinship care benefit allocation for the agency's fiscal year or has established a caseload which will result in the agency expending its allocation by the end of the year and has notified DHFS of the need for a waiting list.

DHFS's administrative rules state that an agency may prioritize applicants on the waiting list according to any of the following criteria, as described in the agency's written policy:

- The lack of stability in the living arrangement if a payment is not made.
- The order in which the applications are received.
- The level of urgency of the child's need, as defined for determining eligibility for payments, described above.
- If the child is under the guardianship of the kinship care applicant.

An applicant may not be placed on a waiting list if a court has ordered that the child be placed with the relative. (Approximately 25% of kinship care cases are court-ordered cases.) [s. HFS 58.12, Wis. Adm. Code.]

Description of the Draft

The bill draft permits DHFS to request the Secretary of Administration to provide supplemental funding for the kinship care program if the amount of funding is insufficient to provide kinship care and long-term kinship care payments to all persons who are eligible to receive those payments. The Joint Committee on Finance must approve any supplemental funding proposed by the Secretary of Administration.

The bill draft also requires DHFS to study methods to manage funding for kinship care payments in order to minimize the need for waiting lists for payments and to report on the results of its study to the appropriate standing committees of the Legislature by June 30, 2004.

B. MEDICAL SERVICES CONSENT FORM

1. Background

Under current law, generally only parents, guardians and legal custodians may consent to a minor's medical care. Testimony to the Special Committee indicated that there are concerns among relatives who care for a child under an informal agreement with the child's parents that they may not legally obtain medical care for the children in their care.

2. Description of the Draft

The bill draft creates a new section in the Children's Code that allows a parent to complete a form that gives an adult with whom a child lives the authority to make medical services decisions for the child on behalf of the parent.

The bill draft includes a medical services consent form. The form must be signed by the parent and by the caregiver. DHFS must prepare the medical services consent form and accompanying information and make the form available, at no charge, on the Internet. The

form must be prepared in English, Spanish, and any other language DHFS determines is spoken by a significant number of state residents.

A valid medical services consent form gives the caregiver the authority to make routine and emergency health care decisions for the named child. A contravening decision by a parent, however, supersedes the caregiver's decision.

The bill draft allows a parent to revoke a medical services consent form. Also, a form is not valid if the child no longer lives with the caregiver.

The bill draft provides immunity from liability for health care providers who act in good faith in complying with a medical services consent form. In addition, a caregiver may not be liable for making a decision in good faith under a valid medical services consent form.

Under the bill draft, a person who falsifies a medical services consent form may be required to pay a forfeiture. A person who attempts to give consent under a forged form with the intent of acting contrary to the child's parent's wishes may be charged with a misdemeanor.

C. NOTICE OF GUARDIANSHIP PROCEEDINGS

1. Background

Under current law, notice of a hearing to appoint a guardian for a minor must be published in a newspaper as a Class 3 notice (i.e., published three times) if personal service is not possible. [s. 880.08 (3) (am) (intro.), Stats.]

2. Description of the Draft

The bill draft requires such notice to be published as a Class 1 notice (i.e., published once).

D. LEGISLATIVE COUNCIL STUDY ON GUARDIANSHIP AND LEGAL CUSTODY

1. Background

The Special Committee heard testimony from invited speakers and comments by committee members that there is ambiguity under current law regarding the rights and responsibilities of guardians and legal custodians and how those rights and responsibilities relate to any residual rights and responsibilities of a child's parents.

2. Description of the Draft

The bill draft includes a request that the JLC study state laws regarding guardianship and legal custody of minors and the rights and responsibilities of guardians and legal custodians.

APPENDIX 1

Committee and Joint Legislative Council Votes

By a mail ballot dated February 10, 2003, the Special Committee voted to recommend WLC: 0127/1 to the JLC for introduction in the 2003-04 Session of the Legislature. The votes on the draft were as follows:

- WLC: 0127/1, relating to the kinship care program, notice of guardianship proceedings, creating a medical services consent form, and requesting the joint legislative council to study guardianship and legal custody: Ayes, 12 (Sen. Moore; Reps. Kestell, Krug, and Ott; and Public Members Albrecht, Cabraal, Gonzalez, Hafner, Huber, Kratz, McAllister, and Medaris); and Noes, 0.

APPENDIX 2

JOINT LEGISLATIVE COUNCIL s. 13.81, Stats.

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This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the cochairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees.

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STUDY ASSIGNMENT: The Committee directed to study: (1) current law relating to relative caregivers under the Children's Code and under current law relating to guardianship and kinship care; (2) relatives who care for children under an informal agreement between the child's parent and the relative and whether such relatives should be granted decision-making authority with respect to the child's care; and (3) third-party visitation law and enforcement of third-party visitation orders.
Established and Co-Chairs appointed by a May 22, 2002 mail ballot; members appointed by a July 15, 2002 mail ballot.

12 MEMBERS: 1 Senator, 3 Representatives, and 8 Public Members.

LEGISLATIVE COUNCIL STAFF: Anne Sappenfield, Senior Staff Attorney, Philip Cardis, Staff Attorney, and Kelly Mautz, Support Staff.

Committee Materials List

February 10, 2003 Mail Ballot

February 10, 2003 Mail Ballot

WLC: 0127/1, relating to the kinship care program, notice of guardianship proceedings, creating a medical services consent form, and requesting the joint legislative council to study guardianship and legal custody.

January 24, 2003 Meeting

WLC: 0053/2, relating to creating a medical services consent form

WLC: 0105/1, relating to eligibility for kinship care payments

WLC: 0106/1, relating to liability of kinship care relatives for child care subsidy copayment

WLC: 0108/1, relating to appeal of denial of kinship care payments based on conviction record

WLC: 0109/1, relating to continuation of kinship care and long-term kinship care payments following notice of discontinuation of payments

WLC: 0110/1, relating to conviction records of applicants for kinship care payments

WLC: 0111/1, relating to issuing foster home licenses to relative caregivers

WLC: 0112/1, relating to denial or termination of kinship care payments on the basis of an arrest

WLC: 0113/1, relating to notice of discontinuation of kinship care payments

WLC: 0114/1, relating to notice of hearing for appointment of a guardian for a minor

WLC: 0115/1, relating to joint legislative council study on guardianship and legal custody

Memorandum from Lin Kenworthy, a concerned grandparent (12-4-02)

December 4, 2002 Meeting

WLC: 0053/1, relating to creating a medical services consent form

Memo No. 5, Adoption Assistance Program (10-22-02; updated 11-26-02)

Memo No. 9, Recommendations to the Special Committee on Relative Caregivers (11-22-02)

Memo No. 10, Comparison of Criminal Background Checks in Kinship Care and Foster Care (11-26-02)

Memo No. 11, Kinship Care in El Paso County, Colorado (11-27-02)

Memorandum from Lin Kenworthy, a concerned grandparent regarding the relative caregiver study committee (11-25-02)

Memorandum from Yvonne Onsager, Fiscal Analyst, Legislative Fiscal Bureau, regarding Kinship Care proposals (11-26-02)

October 30, 2002 Meeting

WLC: 0013/1, relating to health care agents for parents of a minor

Memo No. 4, Determining Residency of a Child Who Lives With a Relative for Purposes of School Attendance (10-21-02)

Memo No. 6, Comparison of Criminal Background Checks in Kinship Care and Foster Care (10-23-02)

Memo No. 7, States' Kinship Care Policies (10-23-02)

Memo No. 8, Recommendations to the Special Committee on Relative Caregivers (10-28-02)

Letter from Susan Dreyfus, Administrator, Division of Children and Family Services, Department of Health and Family Services (9-10-02)

Testimony, Susan Dreyfus, Administrator, Division of Children and Family Services, Department of Health and Family Services

Testimony, Patricia Delessio, Attorney, Legal Action of Wisconsin, Inc.

Testimony, Micabil Diaz-Martinez, Legal Director, American Civil Liberties Union of Wisconsin

September 3, 2002 Meeting

Memo No. 2, Consent to Medical Care and Education (8-23-02)

Memo No. 3, Standing of Third Parties in Custody Actions (8-23-02)

Testimony, Dr. Julie Poehlmann, Assistant Professor, School of Human Ecology, Human Development and Family Studies, University of Wisconsin-Madison

August 8, 2002 Meeting

Staff Brief 02-2, Grandparent and Other Relative Caregivers for Children (8-1-02)

Memo No. 1, Rights of Relatives and Other Third Parties for Visitation of Children (7-30-02)

Testimony, Susan Dreyfus, Administrator, Division of Children and Families, Department of Health and Family Services

Testimony, Mary Brintnall-Peterson, University of Wisconsin-Extension, Grandparents Raising Grandchildren Partnership of Wisconsin (overheads to support testimony)

Testimony, Patti Seger, Policy Development Coordinator, Wisconsin Coalition Against Domestic Violence