

☞ **03hr_AC-CF_ab201_pt03**



(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**

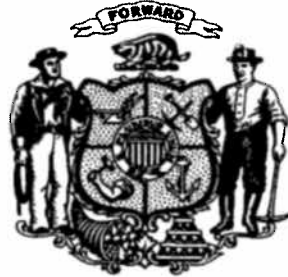
* Contents organized for archiving by: Stefanie Rose (LRB) (May 2012)

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*
DATE: March 31, 2003

Enclosed, for your information, are copies of the following report and bill developed by your committee and introduced by the Joint Legislative Council:

1. Wisconsin Legislative Council Report to the Legislature, RL 2003-05, dated March 28, 2003.
2. **2003 Senate Bill 82 [2003 Assembly Bill 201*]**, relating to kinship care, notice of guardianship proceedings, creating a medical services consent form, requesting the Joint Legislative Council to study guardianship and legal custody, granting rule-making authority, and providing penalties.

You will be informed when the bill is scheduled for a public hearing.

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

TCA:wu;ksm
Enclosures

* Companion bill--not enclosed.



WISCONSIN LEGISLATIVE COUNCIL
REPORT TO THE LEGISLATURE

SPECIAL COMMITTEE ON
RELATIVE CAREGIVERS

March 28, 2003

RL 2003-05

**SPECIAL COMMITTEE ON RELATIVE CAREGIVERS
REPORT TO THE LEGISLATURE**

Prepared by:
Anne Sappenfield, Senior Staff Attorney, and Philip Cardis, Staff Attorney
March 28, 2003

CONTENTS

PART I - KEY PROVISIONS OF COMMITTEE RECOMMENDATIONS..... 3
2003 Assembly Bill 201 and 2003 Senate Bill 82 3

PART II - COMMITTEE ACTIVITY 5
Assignment 5
Summary of Meetings 5

***PART III - RECOMMENDATION INTRODUCED BY THE JOINT LEGISLATIVE
COUNCIL..... 7***
2003 Assembly Bill 201 and 2003 Senate Bill 82 7

APPENDIX 1 - COMMITTEE AND JOINT LEGISLATIVE COUNCIL VOTES 15

APPENDIX 2 - LIST OF JOINT LEGISLATIVE COUNCIL MEMBERS 17

APPENDIX 3 - LIST OF COMMITTEE MEMBERS 19

APPENDIX 4 - COMMITTEE MATERIALS LIST 21

PART I

KEY PROVISIONS OF COMMITTEE RECOMMENDATIONS

The Special Committee on Relative Caregivers recommends the following proposal to the Joint Legislative Council for introduction in the 2003-04 Session of the Legislature. Assembly Bill 201 (and its companion bill Senate Bill 82).

2003 ASSEMBLY BILL 201 AND 2003 SENATE BILL 82, RELATING TO KINSHIP CARE, NOTICE OF GUARDIANSHIP PROCEEDINGS, CREATING A HEALTH SERVICES CONSENT FORM, REQUESTING THE JOINT LEGISLATIVE COUNCIL TO STUDY GUARDIANSHIP AND LEGAL CUSTODY, GRANTING RULE-MAKING AUTHORITY, AND PROVIDING PENALTIES

- 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 before the payments are to be discontinued.
 - ◆ 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.
- Creates a health services consent form that parents may use to transfer decision-making authority for routine and emergency health services to an adult with whom a child lives.
 - 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.
 - 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

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.

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 INTRODUCED BY THE JOINT LEGISLATIVE COUNCIL

This part of the report provides background information on, and a description of, the drafts recommended by the Special Committee on Relative Caregivers for introduction in the 2003-04 Session of the Legislature.

2003 ASSEMBLY BILL 201 AND 2003 SENATE BILL 82, RELATING TO KINSHIP CARE, NOTICE OF GUARDIANSHIP PROCEEDINGS, CREATING A HEALTH SERVICES CONSENT FORM, REQUESTING THE JOINT LEGISLATIVE COUNCIL TO STUDY GUARDIANSHIP AND LEGAL CUSTODY, GRANTING RULE-MAKING AUTHORITY, AND PROVIDING PENALTIES

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.]

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:

a. 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.

b. 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

Under the bill, 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.

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.]

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.

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:

- 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

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

First, the bill 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 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.

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

The bill 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, a kinship care relative must request a hearing before the date the payments are to be discontinued in order to receive payments pending the hearing decision.

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

The bill 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.

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

The bill 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 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.

Health Services Consent Form

Background

Under current law, generally only parents, guardians and legal custodians may consent to a minor's health 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 health care for the children in their care.

Description

The bill 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 health services decisions for the child on behalf of the parent.

The bill includes a health services consent form. The form must be signed by the parent and by the caregiver. DHFS must prepare the health 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 health 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 allows a parent to revoke a health services consent form. Also, a form is not valid if the child no longer lives with the caregiver.

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

Under the bill, a person who falsifies a health services consent form may be required to pay a forfeiture. A person who attempts to give consent under a form that the individual knows has been executed without the voluntary consent of the parent, that the individual knows has been forged or substantially altered without the parent's authorization, or that the individual knows has been revoked with the intent of acting contrary to the child's parent's wishes may be charged with a misdemeanor.

Notice of Guardianship Proceedings

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.]

Description

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

Legislative Council Study on Guardianship and Legal Custody

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.

Description

The bill 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.

Committee and Joint Legislative Council Votes

This Appendix identifies the votes by the Special Committee on Relative Caregivers and the Joint Legislative Council on the proposal that was approved by the Special Committee for recommendation to the Joint Legislative Council for introduction in the 2003-04 Session of the Legislature:

SPECIAL COMMITTEE 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.

JOINT LEGISLATIVE COUNCIL VOTES

At its February 19, 2003 meeting, the Joint Legislative Council voted as follows on the following recommendation of the Special Committee:

Introduction by the Joint Legislative Council of WLC: 0127/1 **PASSED** by a unanimous voice vote. WLC: 01271 was subsequently introduced as 2003 Assembly Bill 201 and 2003 Senate Bill 82.

APPENDIX 2

JOINT LEGISLATIVE COUNCIL

s. 13.81, Stats.

CO-CHAIR

ALAN LASEE
Senate President
2259 Lasee Road
De Pere, WI 54115

CO-CHAIR

STEVE WIECKERT
Representative
1702 S. Irma Street
Appleton, WI 54915

SENATORS

ALBERTA DARLING
1325 West Dean Road
River Hills, WI 53217

GARY R. GEORGE
1100 West Wells Street, #1711
Milwaukee, WI 53233

MARY E. PANZER
Majority Leader
635 Tamarack Drive West
West Bend, WI 53095

RUSSELL DECKER
6803 Lora Lee Lane
Schofield, WI 54476

SHEILA HARSDORF
N6627 County Road E
River Falls, WI 54022

FRED A. RISSER
5008 Risser Road
Madison, WI 53705

MICHAEL G. ELLIS
1752 County Road GG
Neenah, WI 54956

VACANCY

ROBERT WELCH
President Pro Tempore
P.O. Box 523
Redgranite, WI 54970

JON ERPENBACH

Minority Leader
2385 Branch St.
Middleton, WI 53562

REPRESENTATIVES

G. SPENCER COGGS
3732 North 40th Street
Milwaukee, WI 53216

DEAN KAUFERT
1360 Alpine Lane
Neenah, WI 54956

MARLIN D. SCHNEIDER
3820 Southbrook Lane
Wisconsin Rapids, WI 54494

STEVEN M. FOTI
Majority Leader
351 Lisbon Road
Oconomowoc, WI 53066

JIM KREUSER
Minority Leader
3505 14th Place
Kenosha, WI 53144

JOHN TOWNSEND
297 Roosevelt Street
Fond du Lac, WI 54935

STEPHEN J. FREESE
Speaker Pro Tempore
310 East North Street
Dodgeville, WI 53533

MICHAEL LEHMAN
1317 Honeysuckle Road
Hartford, WI 53027

DAVID TRAVIS
5440 Willow Road
Waunakee, WI 53597

JOHN GARD

Speaker
481 Aubin Street
P.O. Box 119
Peshtigo, WI 54157

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.

RELATIVE CAREGIVERS

Representative Steve Kestell, **Co-Chair**
W3829 State Highway 32
Elkhart Lake, WI 53020

Senator Gwendolynne S. Moore, **Co-Chair**
4043 N. 19th Place
Milwaukee, WI 53209

Rosemary Albrecht
115 E Fitzsimmons Road
Oak Creek, WI 53154

Ramona Gonzalez
Judge, La Crosse County Circuit Court
333 Vine Street
La Crosse, WI 54601

Gerald Huber
La Crosse County Human Services

300 North 4th Street
La Crosse, WI 54602

Leslie McAllister
Interfaith Hospitality Network
1127 University Avenue
Madison, WI 53715

Representative Shirley I. Krug
5650 North 91st Street, #3
Milwaukee, WI 53225

Representative Al Ott
P.O. Box 112, W2168 Campground Rd.
Forest Junction, WI 54123

Shirin Cabraal
Legal Action of WI
230 West Wells Street, Room 800
Milwaukee, WI 53212

Dyann Hafner
Dane County Asst. Corp. Counsel
1202 Northport Drive
Room 430
Madison, WI 53704

Dave Kratz
Sheboygan Co. Dept. of Health & Human
Serv.
1011 North 8th Street
Sheboygan, WI 53081

Carol Medaris
WI Council on Children & Families
16 North Carroll Street
Madison, WI 53703

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



Memo:

To: Rep. Kestell and Sen. Moore

From: Rep. Shirley Krug *SKJ*

Re: Legislative Council Memo on Third-Party Custody Actions

Date: May 13, 2003

I recently came across an article pertinent to our Relative Caregivers Leg. Council Committee and asked Anne Sappenfield to do a memo on it (attached).

Having reviewed the information, I think that we should consider having an amendment drafted to the Leg. Council bill and introduced for public notice prior to any committee hearing on the bills.

Please let me know what you think.

cc. Anne Sappenfield
Sen. Roessler



WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director
Laura D. Rose, Deputy Director

TO: REPRESENTATIVE SHIRLEY KRUG
FROM: Anne Sappenfield, Senior Staff Attorney
RE: Third-Party Custody Actions: Comparison of Wisconsin and Minnesota Laws
DATE: April 17, 2003

This memorandum, prepared at your request, discusses current law in Wisconsin and Minnesota relating to awarding legal custody of children to third parties.

CURRENT WISCONSIN LAW

In Wisconsin, third-party custody actions are governed by statute and case law. Under current case law, a third party may bring an action for custody of a child if the third party shows that: (1) the parent is unfit; (2) the parent is unable to care for the child; (3) the parent has abdicated his or her responsibilities for the child; or (4) there are other compelling reasons for awarding custody to a third party.

In *Barstad v. Frazier*, the Wisconsin Supreme Court held that in custody disputes between a parent and a third party (e.g., a relative), a parent is entitled to custody of his or her children unless the parent is either unfit or unable to care for the children. The court reasoned that, although custody is generally regarded as a temporary arrangement, awarding custody to a third party may lead to a complete severance of the ties between the parent and child and thus have the same effect as terminating the parent's rights. The court concluded, therefore, that unless there are compelling reasons, the standards followed in a proceeding to terminate parental rights should also be followed when a court awards custody to a third party.

In that case, the court also held that even a fit and able parent may be denied custody if there are compelling reasons for awarding custody to a third party. The court did not specifically define "compelling reasons," but stated that they include abandonment, persistent neglect of parental responsibilities, extended disruption of parental custody, or other similar extraordinary circumstances that would drastically affect the welfare of the child. The court stated that if a court finds compelling reasons for awarding custody to a third party, it may award custody to the third party if it is in the best interests of the child. [118 Wis. 2d 549, 348 N.W.2d 479, 489 (1984).]

In a subsequent case, the Wisconsin Court of Appeals held that even if a parent is not unfit at the time of the custody proceeding, the court may consider the child's best interests if the parent has abdicated his or her responsibilities for the child. Specifically, the court stated, "once there is that abdication, because the birth-parent either has abandoned the child, or has otherwise acted in a way that is inconsistent with core parental responsibilities, necessitating governmental intervention so that the child is no longer under the birth-parent's control, there is no constitutional hurdle to determining the child's future by what is in his or her best interests." [*In re Caryn A.-G.*, 228 Wis. 2d 658, 599 N.W.2d 90, 93 (1999).]

Section 767.24, Stats., governs custody proceedings and custody determinations in other actions affecting the family (e.g., divorce) in which custody is an issue. Under s. 767.24 (3), Stats., if the interest of any child demands it, and if the court finds that neither party is able to care for the child adequately or that neither party is fit and proper to have the care and custody of the child, the court may declare the child to be in need of protection or services and transfer legal custody to a relative of the child, to a county department of human or social services, or to a licensed child welfare agency.

CURRENT MINNESOTA LAW

In 2002, Minnesota enacted legislation to permit certain third parties to petition for and be awarded custody of children.

Who May Petition for Custody

In Minnesota, a *de facto* custodian or an interested third party may petition for custody of a child.

A "*de facto custodian*" is defined as an individual who has been the primary caretaker for a child if the child has, within the preceding 24 months, resided with the individual without a parent present and with a lack of demonstrated consistent participation by a parent for six months or more, if the child is under three years of age, or one year or more, if the child is three years of age or older.

Minnesota law specifies that "lack of demonstrated consistent participation" by a parent means refusal or neglect to comply with the duties imposed on the parent by the parent-child relationship, including providing necessary food, clothing, shelter, health care, education, creating a nurturing and consistent relationship, and other care and control necessary for the child's physical, mental, or emotional health and development.

An "*interested third party*" is an individual who is not a *de facto* custodian but who can prove at least one of the following:

1. The parent has abandoned, neglected, or otherwise exhibited disregard for the child's well-being to the extent that the child will be harmed by living with the parent.
2. Placement of the child with the individual takes priority over preserving the day-to-day parent-child relationship because of the presence of physical or emotional danger to the child.
3. Other extraordinary circumstances.

Required Showings by Parties

In order to establish that he or she is a *de facto custodian*, an individual must show by clear and convincing evidence that he or she meets the definition of a “*de facto custodian*,” described above, and prove by a preponderance of the evidence that it is in the best interests of the child to be in the custody of the *de facto custodian*.

In addition, the court must determine the parent’s lack of demonstrated consistent participation by considering the following factors:

1. The intent of the parent or parents in placing the child with the *de facto custodian*.
2. The amount of involvement the parent had with the child during the parent’s absence.
3. The facts and circumstances of the parent’s absence.
4. The parent’s refusal to comply with conditions for retaining custody set forth in previous court orders.
5. Whether the parent now seeking custody was previously prevented from doing so as a result of domestic violence.
6. Whether a sibling of the child is already in the petitioner’s care.

In order to establish that he or she is an *interested third party*, an individual must show by clear and convincing evidence that he or she meets the definition of an interested third party and prove by a preponderance of the evidence that it is in the best interests of the child to be in the custody of the interested third party. In addition, the court must consider the factors relating to the parent’s participation, listed above, and also consider the presence of involvement of other interested third parties.

Determining the Best Interests of the Child

If two or more parties seek custody of a child, the court must consider and evaluate all relevant factors in determining the best interests of the child, including the following:

1. The wishes of the party or parties as to custody.
2. The reasonable preference of the child, if the court believes the child is old enough to express preference.
3. The child’s primary caretaker.
4. The intimacy of the relationship between each party and the child.
5. The interaction and interrelationship of the child with a party or parties, siblings, and any other person who may significantly affect the child’s best interests.
6. The child’s adjustment to home, school, and community.

7. The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.

8. The permanence, as a family unit, of the existing or proposed custodial home.

9. The mental and physical health of all individuals involved.

10. The capacity and disposition of the parties to give the child love, affection, and guidance, and to continue educating and raising the child in the child's culture and religion or creed, if any.

11. The child's cultural background.

12. The effect on the child of the actions of an abuser if related to domestic abuse that has occurred between the parents or the parties.

Custody Consent Decrees

In Minnesota, a parent may also transfer legal and physical custody of a child to a relative by a consent decree. "Relative" means an adult who is a stepparent, grandparent, brother, sister, uncle, aunt, or other extended family member of a minor by blood, marriage, or adoption. The court may approve a proposed consent decree if the custody arrangement is in the best interests of the child and all parties to the decree agree to it. Such a consent decree must do all of the following:

1. Transfer legal and physical custody of the child to a relative and state that this confers to the relative the ability to determine the child's residence; make decisions regarding the child's education, religious training, and health care; and obtain information and public services on behalf of the child in the same manner as a parent.

2. Indicate whether the transfer of custody is temporary or permanent.

3. Include an order for child support, an allocation for child care costs, and an order for medical support.

Either a parent or a relative who is party to a consent decree may file a motion to modify or terminate the consent decree at any time. A party who has custody of a child under a consent decree must seek modification of the consent decree before transferring physical or legal custody of the child to anyone.

DISCUSSION

You asked whether the Joint Legislative Council's Special Committee on Relative Caregivers, which met several times between October 2002 and January 2003, considered legislation similar to Minnesota's. The committee did briefly discuss legislation creating *de facto* custodian proceedings. However, the committee did not pursue a proposal.

One of the concerns raised to the committee is that relatives, especially grandparents, are reluctant to bring custody actions for fear of having to portray the child's parent as unfit. Therefore, some individuals advocated for legislation under which a relative who had cared for a child for a

specified amount of time could be awarded custody. The concern with such a proposal is that there may be circumstances under which, even though a child has been living with a third party for an extended period of time, it would be a violation of the parent's rights to award custody to the third party without considering the parent's circumstances.

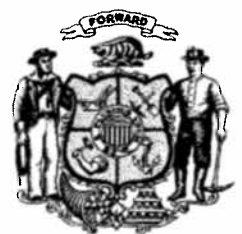
The approach Minnesota's law takes avoids this concern by requiring the third party to demonstrate that the parent is unable or unwilling to care for the child so that the parent's rights are considered. Establishing a procedure similar to Minnesota's would ensure that custody proceedings brought by a third party meet the requirements of current case law. In addition, although third parties would still need to provide information concerning the child's parent, it may be reassuring and helpful to third parties to have clear notice of what the court will consider in a custody proceeding.

If you have any questions, please feel free to contact me directly at the Legislative Council staff offices.

AS:tl;ksm;rv



WISCONSIN STATE LEGISLATURE



1126 Alrita Court #4
Madison, WI 53713

Representative Steve Kestell, Chair
State Capitol
17 West, P.O. Box 8952
Madison, WI 53708

June 18, 2003

Dear Representative Kestell,

I am writing to express my support for AB 201. Several provisions in this bill will benefit Wisconsin children and I subsequently hope that you vote in favor.

Key provisions in AB 201 that would benefit children and families include (1) improvement of the kinship care notice of appeal rights; (2) removal of working kinship care relatives liability for child care co-payments; (3) providing for a medical consent form for use when a parent is absent; and (4) change of hearing notices when guardians are appointed.

Kinship care relatives perform a very valuable service to children and families in Wisconsin and to the state. As of December 2002, there were 8,750 children living with relatives and receiving kinship care benefits because their parents were unable or unwilling to care for them. Please take these children and families into account when helping to determine the bill's proper trajectory. I urge you to vote in favor of AB 201.

Best Regards,

A handwritten signature in black ink, appearing to read 'Hannah Renfro-Sargent', written over a horizontal line.

Hannah Renfro-Sargent





204 South Adams Street, St. Croix Falls, WI 54024
 web site: www.scimc.org

Fax Cover Sheet

SEND TO	From
<i>Attention: Rep. Steve Kestell Chair</i>	<i>Cately Hansen - WHFMA</i>
Company Name	Date
<i>Assembly Committee on Children and Families</i>	<i>6/18/03</i>
Fax Number	Phone number
<i>1-608-282-3627</i>	<i>715-483-0409</i>

Urgent Reply ASAP Please comment Please review For your information

Total pages, including cover: 2

COMMENTS:

Dear Rep. Kestell,

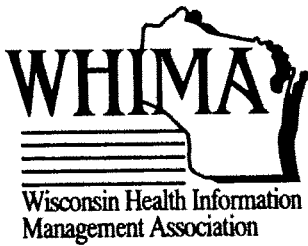
Please see attached comments from WHFMA concerning AB 201, which is scheduled for public hearing on June 24th. Please let me know if you have any questions. I will follow up with a mailed hard copy. Thank you!

*Cately Hansen, RHA
 WHFMA President Elect*

If this fax includes a medical record, please contact the sender (above) when you receive the fax.

The information contained in this facsimile message is privileged and confidential intended for the use of the addressee listed above. If you are neither the intended recipient or the employee or agent responsible for delivering this information to the intended recipient, you are hereby notified that any disclosure, copying, distribution, or taking of any action in reliance on the content of this telecopied information is strictly prohibited.

If you have received this copy in error, please immediately notify us by telephone and destroy the facsimile.



2350 South Avenue, Suite 107
La Crosse, WI 54601-6272
608.787.0168 FAX 608.787.0169

Website www.whima.org

E-mail whima@execpc.com

Date: June 18, 2003
To: Assembly Committee on Children and Families
From: Cathy Hansen, RHIA, WHIMA President Elect *CH*
Kristine Bergmann, RHIA, WHIMA Policy and Legislative Team
RE: AB 201

The Wisconsin Health Information Management Association (WHIMA) is the state association of 1,300 credentialed health information professionals who are responsible for health information management throughout Wisconsin. Our profession is represented in a variety of health information management settings including hospitals, nursing homes, mental health facilities, business, law, information system vendors, and ambulatory care settings. We are the professionals who interpret and implement laws and regulations affecting health care information.

Upon review of the proposed AB 201, WHIMA has the following comments:

1. The consent appears to be adequate to accomplish the stated purpose. Additionally, the creation of this form will be especially beneficial to health care providers in determining who is able to consent for treatment.
2. Verbiage needs to be included to specify how and by whom this form would be provided to the health care provider. It would make the most sense to have the designated caregiver be responsible for providing a copy of the form to the provider at the next treatment encounter following creation of form. Currently, the bill only outlines who needs to inform providers when the consent is revoked.
3. The bill does not address access and/or disclosure of the child's protected health information (PHI) by the caregiver as appropriate for the treatment of the child. Wisconsin statute 146.81(5) specifies that the "person authorized by the patient" as it relates to minors includes:
 - Parent
 - Legal guardian
 - Legal custodian as defined in statute 48.02(8) and (11)
 - The person vested with supervision of the child under statute 938.183 or 938.34(4d), (4h), (4m), & (4n)
 - The guardian of a patient adjudged to be incompetent as defined in statute 880.01(3) and (4)

Since the circumstances associated with this bill do not appear to involve court-appointments for guardians or custodians for the children nor are these children involved in altercations with the law, the above referenced statutes for "legal custodians" or "persons vested with the supervision of the child" would not apply. Therefore, the "designated caregiver" would have no rights under state law to access the child's PHI to facilitate treatment. We believe this should be addressed within the bill to provide further clarification of the caregiver's abilities to provide for treatment of the child.

Additionally, we questioned whether or not there should be some language specifying that this process does not terminate or suspend a parent's rights to access or disclose the child's PHI as specified by state law. It should be clarified in the bill that the initiation of this form does not qualify as a "denial of parent rights" or a "denial of physical placement rights" which would restrict the parent's access to the child's PHI.

Thank you for your time and consideration. If you have further questions or concerns, Cathy may be reached at (715) 483-0409 and Kristine at (920) 568-5000.



Matzen, David

From: Kestell, Steve
Sent: Wednesday, June 25, 2003 3:17
To: Matzen, David
Subject: FW: AB201

-----Original Message-----

From: Sister Mary Fran Gebhard [mailto:mgebhard@saintbede.org]
Sent: Wednesday, June 25, 2003 2:15 PM
To: rep.kestell@legis.state.wi.us
Subject: Fw: AB201

The Honorable Steve Kestell
Wisconsin State Assembly
Madison, WI

Dear Mr. Kestell,

AB 201 is scheduled for a hearing before your committee Thursday, June 26th. I urge you to support this bill because:

* AB 201 removes the requirement that children living with relatives must be at risk of meeting CHIPS or JIPS criteria in order to qualify for kinship payments. Currently, these rights may be denied regardless of the child's best interests.

* AB 210 would prevent the denial of benefits based upon a criminal background check unless the agency found that a conviction or pending arrest was likely to adversely affect the child or the relative's ability to care for the child. Currently, benefits are denied based on arrests as well as convictions and the law applies to a very long list of crimes, regardless of how long ago they occurred.

* AB 201 provides for a fair hearing whenever kinship care benefits are denied based upon a criminal background check

whereas now these cases are limited to the agency that made the initial denial decision.

* AB 201 does not prohibit waiting lists, but does authorize the DHFC to request supplemental funding of the Department of Administration if funds are insufficient to provide payments.

In general the bill would improve service and benefits to the more than 8,000 children who are eligible for these benefits.

Thank you for your consideration.

Sincerely Yours,

Sister Mary Frances Gebhard
St. Bede Monastery
PO Box 66
Eau Claire, WI 54702
715-834-3176



Matzen, David

From: Kestell, Steve
Sent: Wednesday, June 25, 2003 10:37 AM
To: Matzen, David
Subject: FW: AB 201

-----Original Message-----

From: Karen Jick [mailto:kjick@execpc.com]
Sent: Wednesday, June 25, 2003 8:46 AM
To: rep.kestell@legis.state.wi.us; rep.ladwig@legis.state.wi.us;
rep.albers@legis.state.wi.us; rep.jeskewitz@legis.state.wi.us;
rep.vukmir@legis.state.wi.us; rep.sinicki@legis.state.wi.us;
rep.miller@legis.state.wi.us; rep.krug@legis.state.wi.us
Cc: kjicj@execpc.com
Subject: AB 201

Dear Kinship Care Committee Members:

As a social work professional who encounters challenges to kinship care providers in Milwaukee county, I strongly encourage you to support the proposed changes to the kinship care program as outlined in AB 201.

While this bill does not go far enough in providing more economic support to kinship care providers (including eliminating waiting lists), in providing case management services, or in providing free school lunches for kinship children, it does remove barriers to placement of children with relatives and to keeping families together whenever possible. The committee is to be commended for the work it has done on behalf of this vulnerable group of children and those relatives who step up to the plate to provide stability in the lives of these children.

Thank you.

Karen Jick
4225 N. Prospect Avenue
Milwaukee, WI 53211
414-963-1428



Matzen, David

From: Kestell, Steve
Sent: Wednesday, June 25, 2003 3:18 PM
To: Matzen, David
Subject: FW: Support AB201

-----Original Message-----

From: Sister Barba Linke [mailto:slinke@columbia-stmarys.org]
Sent: Wednesday, June 25, 2003 1:49 PM
To: rep.albers@legis.state.wi.us; rep.jeskewitz@legis.state.wi.us;
rep.kestell@legis.state.wi.us; rep.krug@legis.state.wi.us;
rep.ladwig@legis.state.wi.us; rep.miller@legis.state.wi.us;
rep.sinicki@legis.state.wi.us; rep.vukmir@legis.state.wi.us
Subject: Support AB201

Dear Representative,

I am writing to ask your support of AB201, regarding Kinship Care. Kinship Care relatives perform a very valuable service to children and families in Wisconsin. The changes to the current law regarding Kinship Care would add much needed support to relatives who are caring for children who have not had the care of their biological parents. Please do all that you can to see that the support is given for these children to receive all that they need.

Thank you!

Sincerely,

Sister Barbara Linke
School Sisters of Notre Dame



Assembly Bill 201 - Public Hearing Testimony
Proposed legislation for Kinship Care
June 26, 2003

Background on Kinship Care

Kinship Care is the care of minor children by relatives under certain circumstances. The State's Kinship Care program was implemented in 1997 and, in part, replaces the AFDC/Non Legally Responsible Relative program. It was created to provide financial assistance to relatives for care and maintenance of children in need of or at risk of needing protection or services. These children may be placed with relatives by court order, or the placement may be voluntary and initiated by the parents or concerned relatives.

Eligibility for and payment of KC benefits are handled locally by county and tribal child welfare agencies. As of April 2003, there were 8,383 children receiving KC payments of \$215 per month per child. Another 75 children were also eligible and placed on waiting lists for payment. It is likely that there are also other eligible families who have not applied for Kinship Care because they are aware of the waiting lists. The 2003 Kinship Care annual budget allocation is \$23,198,000.

Department position re: AB 201

We oppose Assembly Bill 201 in its current form although we agree with and support some of the proposed programmatic changes to Kinship Care. Our primary reasons for this opposition are as follows:

1. AB 201 changes the intent of the Kinship Care program and expands the service group to include children that are no longer at risk of abuse or neglect. This will result in an increased number of children eligible for payments without providing additional funds to support the expanded population.
 - KC was created to provide assistance to children that are in need of protection or services, or that are at risk of needing protection or services if they remain with their parents.
 - AB 201 removes this requirement and expands the program to serve children that are no longer at risk.
 - Without additional funding to support this change, we are fearful that children at risk of abuse or neglect may be placed on waiting lists behind children that are not at risk.

2. AB 201 removes the local agency's ability to consider all arrest information about a potential caregiver prior to approving or not approving payment for the living arrangement. Arrests, as well as convictions, for certain offenses are an important part of the applicant's criminal background and provide additional information about the home environment where the child may soon be residing. It is important that this

criteria and the local agencies' authority be retained in determining eligibility for the KC program.

3. AB 201 requires a 10-day termination notice, which may result in continued payments to relatives although the relative and child are no longer eligible for that payment.
 - The current KC regulations tie the payment to eligibility for KC rather than notification of termination. Current regulations also allow for continued payment for the child when the request for the appeal is made within 10 days.
 - We feel this is a fair and less costly process that results in fewer KC overpayments, which are difficult to recover.
4. Medical Consent Form
 - Conceptually, the form is a good idea. Legally and practically, it may be confusing in terms of the authority of a legal custodian or guardian and a relative with health care proxy rights.
 - In addition, because the form is so general, many health care providers will not accept it and will require specific approval for a specific treatment.

Areas of support for AB 201:

- AB 201 removes the current requirement that certain criminal offenses result in an automatic bar to approval for KC.
 - We support the removal of the automatic denial of eligibility because it may streamline the eligibility process while still allowing the local agency to consider all information that may adversely affect the ability of the relative to care for the child.
- AB 201 requires DHFS to study methods to manage KC funding in order to minimize the need for waiting lists for payments.
 - Although wait lists will continue to be necessary without increased funding to provide and sustain payments for all eligible cases, it may be beneficial to review the current system for possible modifications.





ASSEMBLY COMMITTEE ON CHILDREN AND FAMILIES

Hearing on AB 201, relating to kinship care
June 26, 2003

Testimony by Carol W. Medaris
Senior Staff Attorney

I appear today for the Wisconsin Council on Children and Families in support of AB 201, and request an additional amendment to better accomplish the wishes of the Special Committee. The Council is a statewide, nonprofit, nonpartisan child advocacy organization that works to improve the health and well-being of children and their families, particularly vulnerable children. As part of that work, I served on the Legislative Council's Special Committee on Relative Caregivers, to help draft the bill before you today. This bill makes a number of improvements to the program.

The Kinship Care program provides a monthly benefit of \$215 for children who live with relatives instead of their parents for a variety of reasons. For example,

- a parent may be incarcerated or incapacitated by alcohol or other drug abuse,
- a parent may be a teenager and unprepared for the responsibilities of motherhood, who determines that her child would be better cared for by her own mother,
- a parent may believe that a child cannot live safely with other household members,
- a family may be evicted and children sent elsewhere until stable, adequate and affordable housing may be found,
- a parent and relative may agree that the relative is better able to provide necessary supervision to a rebellious teenage.

Formerly these relatives were supported through the AFDC program. Once AFDC ended, the kinship care program was formed to separate these families from those parent-headed families who went into the W-2 program.

Since the program began, a number of problems have become apparent, as evidenced by mothers and relatives testifying before the Committee as well as advocates who have represented relatives contesting benefit denials. The Committee's proposed changes would resolve some of those problems.

The bill removes the requirement that children living with relatives must be at risk of meeting CHIPS or JIPS criteria in order to qualify for kinship care payments. Agencies would still be required to make a finding that the placement with the relative was both necessary and in the best interest of the child. Currently relatives may be denied benefits for children who have lived with them for years, often since birth, when the children's parents have never provided care for them but still are not deemed totally unable to provide for their care in the future. Benefits may be denied regardless of where the children's best interests lie.

The bill provides that the agency, in determining need, would be required to find need if the child met the CHIPS or JIPS criteria, or if the child had been living with the relative for at least two years, or if the child met other requirements as set forth in the Department's rule.

The current draft is subject to some misinterpretation, since it does not make clear that the Department's current criteria for finding that the child needs the placement are incorporated in the AB 201 draft. I have attached suggested language for an amendment that would make that clear. The Department's rule definition of need includes 1) the child's need for adequate food, shelter and clothing can be better met with the relative; 2) the child's need to be free from physical, sexual, or emotional injury can be better met with the relative; 3) the child's need to develop physically, mentally, and emotionally to his or her potential can be better met with the relative, and 4) the child's need for a safe or permanent family can be better met with the relative.

The bill would prevent a denial of benefits based upon a criminal background check unless the agency found that a conviction, or pending arrest, was likely to adversely affect the child or the relative's ability to care for the child. Currently benefits are denied based upon arrests as well as convictions, and the law applies to a very long list of crimes, regardless of how long ago they occurred. The denial of benefits is automatic, unless the relative files for a review.

There is no determination of the best interests of the children in these cases. Neither is there any requirement that children be removed from the home. In most cases relatives denied kinship care benefits continue to

care for the children, often to the financial detriment of the other children and family members in the home.

The bill provides for a fair hearing whenever kinship care benefits are denied based upon a criminal background check. Currently reviews in these cases are limited to the agency that made the initial denial decision. In all other appeals in kinship care cases, review is provided through fair hearings by the state Division of Hearings and Appeals, likely to be a less biased forum and one less connected with the initial decision to deny benefits.

The bill does not prohibit waiting lists, but does authorize the Department of Health and Family Services (DHFS) to request supplemental funding of the Department of Administration (subject to approval by the Joint Finance Committee) if funds are insufficient to provide payments to all relatives who are eligible. DHFS is also directed to study methods of managing kinship care funding in order to minimize the need for waiting lists, and report back to the legislature by June 30, 2004. In September, 2002, when the Committee was looking at the issue, there were 136 children on the statewide waiting list. By now, that waiting list is down to 69 children as of February, 2003.

Many relatives who assume care for their grandchildren, nieces, nephews or siblings live on limited, fixed incomes. If they decline to volunteer, the state and county agencies face the greater costs of foster care (generally \$302 to \$391 plus supplements) and children will face placement with strangers. Kinship care eligibility is a much better alternative.

Other provisions in AB 201 would 1) improve the notice of kinship care notice of appeal rights, 2) remove working kinship care relatives liability for child care copayments, 3) provide for a medical consent form for use when a parent is absent, 4) change hearing notices when guardians are appointed, and 5) request a joint legislative council study of state laws regarding guardians and legal custody of minors.

Kinship care relatives perform a very valuable service to children and families in Wisconsin and to the state. As of December 2002, there were 8,750 children living with relatives and receiving kinship care benefits because their parents were unable or unwilling to care for them. These are primarily children in very vulnerable families with problems frequently exacerbated by poverty. It is sound public policy to provide the support necessary and appropriate so that these children are not further separated from their families when relatives are able and willing to provide care.






22 EAST MIFFLIN STREET, SUITE 900
MADISON, WI 53703
TOLL FREE: 1.866.404.2700
PHONE: 608.663.7188
FAX: 608.663.7189

MEMORANDUM

TO: Honorable Members of the Assembly Committee on Children and Families

FROM: Craig Thompson, Legislative Director 

DATE: June 26, 2003

SUBJECT: Testimony on Assembly Bill 201

The Wisconsin Counties Association thanks you for the opportunity to provide brief comments on Assembly Bill 201, relating to kinship care.

The bill makes several changes to current law regarding kinship care benefits, including modifying the eligibility criteria so that a child does not need to be a child or juvenile in need of protection or services (JIPS or CHIPS) in order for a kinship care relative to receive payments. In addition, a county department of human or social services 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.

Our concern with this legislation lies with the fact that under the bill, over 30,000 children and their caregivers will be eligible for kinship care funding, with no increase in state funds to make the payments. While WCA realizes that counties may place families on waiting lists (with the exception of court-ordered kinship care cases), passage of this legislation will create an expectation of service and increased pressure on counties to fund those cases that qualify for payments, yet are not receiving payments due to the lack of state funding. According to the fiscal estimate prepared by the Department of Health and Family Services (DHFS), approximately \$76 million would be needed statewide to fully fund all kinship care cases.

The Wisconsin Counties Association strongly believes that the state should not provide false hope for families by promising them a service / payment that we know the state cannot follow through on. Rather, the state should only provide the level of services to its citizens that the citizens of this state can afford.

Thank you for considering our comments.