DAVE MURPHY

State Representative • 56th Assembly District

Assembly Committee on Children and Families

Public Hearing, October 13, 2021

Assembly Bill 289

Testimony of State Representative Dave Murphy

Mr. Chair and members of the committee, thank you for hearing Assembly Bill 289 today.

As a member of the Assembly Adoption Task Force last session, I heard from countless foster parents that the key to successfully providing a safe and nurturing environment for a child is understanding the trauma that the child may have experienced before arriving in a foster home. Unfortunately, some counties now feel that Wisconsin state statutes do not explicitly allow them to share this very information with foster parents and so they have stopped providing this information out of caution of running afoul of the law.

Assembly Bill 289 would explicitly allow a county to provide a child's permanency plan to foster parent, ensuring that the individuals trusted by our state to care for children have all the information necessary to be successful. While permanency plans can contain sensitive information, it is the very information required to provide all the love and care a foster child deserves.

As a bipartisan proposal, the bill as amended was passed by the State Senate without objection this past May. I'm hopeful the Assembly will display similar support for this commonsense piece of legislation.

Foster parents dedicate their lives to protecting and raising children in need, the least we can do as a state is ensure those foster parents have all the information they need to carry out this critical service.

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Testimony before the Assembly Committee on Children and Families
Senator André Jacque
October 13, 2021

Good Morning Chairman Snyder and Committee Members,

I want to thank you for your time this morning. Assembly Bill 289, a bill relating to providing permanency plans and comments to out-of-home care providers in advance of a permanency plan review or hearing is a proposal that I care deeply about. I want to thank my colleague, Rep. Murphy for his leadership on this proposal in the State Assembly.

For many years it has been a common practice for foster parents to receive a copy of the permanency plan for the children in their care. For kids in the foster system, often the goal is reunification with their biological parents. The permanency plan is an assessment of the child and their needs. It focuses on what is in the child's best interests. The importance of stability and continuity form the basis for the plan.

A permanency plan is a valuable tool for foster parents. Although the information contained in it is sensitive, it is the very information foster parents need to help provide the best care they can for their foster child.

Within the past few years, some county corporation counsels have found that there is no explicit statutory authority in the Wisconsin Children's Code to distribute these plans to foster parents. Concerned about liability, several counties have reluctantly stopped sharing the plans with foster parents.

A recent panel of county foster care coordinators in Northeast Wisconsin lamented the change, calling it a "huge disservice" that should be fixed.

This bill adds a child's foster parent or other guardian to the list of individuals that may, at a county's option, receive a copy of a permanency plan and any written comments submitted to the agency that is preparing the permanency plan. Any information that is required to remain confidential under federal or state law must be redacted from the permanency plan before it is provided to the out-of-home care provider.

Knowing what a child has been through is vital to being an effective parent. If foster parents are trusted with a child's care, they can certainly be trusted with the child's story.

Thank you for your consideration of Assembly Bill 289.

Wisconsin Department of Children and Families

Governor Tony Evers
Secretary Emilie Amundson
dcf.wisconsin.gov

TO: Chair Snyder, Vice-Chair Ramthun, and Honorable Members of the Assembly Committee on Children and Families

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

DATE: October 13, 2021

SUBJECT: 2021 Assembly Bill 289

The Department of Children and Families (DCF) is committed to the goal that all Wisconsin children and youth are safe and loved members of thriving families and communities. To support this goal, the Wisconsin child welfare system is guided by the principals of prevention, reunification, permanence, and connection to relatives. It is through the lens of these principles that DCF reviewed AB-289 and will be testifying for information.

This bill would allow a child welfare agency to provide a copy of a child's permanency plan and written comments on the plan to a child's out-of-home care provider. Under the bill, any information that is required to remain confidential under federal or state law must be redacted from the permanency plan before it is provided to the out-of-home care provider. Under current law and administrative rules, child welfare agencies must provide an out-of-home care provider with information about a child, including the child's developmental medical, cultural, emotional, behavioral, and educational needs; the child's placement history and permanence goal(s); considerations for making reasonable and prudent parenting decisions; and any additional information critical to the care of the child. Out-of-home care providers must also be given notice of permanency review proceedings held every six months and their right to be heard at these reviews.

The relational dynamics in a child welfare or youth justice case can be complicated. As the child welfare and youth justice systems strive to transition children in out-of-home care safety back with their family, whenever possible, the trust that is established between the child, caseworker, biological parent, out-of-home care provider, and tribe (in a case where the Wisconsin Indian Child Welfare Act (WICWA) applies) is critical for co-parenting to occur.

Notwithstanding the confidentiality provisions in the bill, there is a delicate balance that must be reached regarding the information an out-of-home care provider needs to provide care to a child and the sensitive information contained in the permanency plan detailing the parents' trauma history and treatment that could impact the relationships among those working to meet the child's needs. As a result, DCF appreciates that the ability to provide a copy of these documents to out-of-home care providers is discretionary for local child welfare agencies, as this flexibility reflects deference to local practice and decision-making.

One practical hurdle created for local child welfare agencies opting to distribute these documents to an out-of-home care provider in order to comply with state and federal confidentiality laws is the method of redaction. Currently, the statewide child welfare information system known as eWiSACWIS does not have an electronic redaction function. Local child welfare agencies could use software such as AdobePro for redaction of individual documents, or redact the documents manually. Either way, there would be local costs associated with child welfare workers' time to redact confidential provisions in each permanency plan and written comments.

DCF appreciates the provisions to protect information that must remain confidential under state and federal law and would recommend the following amendments to align with other confidentiality provisions in Chapters 48 and 938 (changes that were adopted by Senate Amendment 1 to the companion bill, SB-256) :

1. Because AB-289 permits the disclosure to the out-of-home care provider of both the permanency plan and any written comments, DCF would recommend that the confidentiality provisions reflect that the written comments must also be redacted as required by federal and state law.
2. Currently the bill does not contain language noting that an out-of-home care provider receiving a child's permanency plan and written comments may not disclose any information from the records to any other person, except as permitted by law. This language appears in other parts of the permanency plan statute; for example, s. 48.38(5)(d) which states, "[a] person permitted access to a child's records under this paragraph may not disclose any information from the records to any other person." DCF would recommend similar language be added to AB-289.

Thank you for the opportunity to testify about this legislation. We would be pleased to respond to any questions.

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

Written Comments
AB Bills 503, 577, 289, and 412
Wisconsin State Assembly
Committee on Children and Families
October 13, 2021

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

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

AB 503 - Subsidized Guardianship Payments

- **Support Bill**

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

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

However, we would like to take this opportunity to stress the importance of subsidized guardianships, particularly for the Ho-Chunk Nation that has an expansive traditional kinship system. Many Tribes prefer guardianship as the primary permanency option, as opposed to adoption. This is particularly true for the Ho-Chunk Nation. The Ho-Chunk Nation does not support the permanent

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severance of parental ties, and as such explicitly bans the use of termination of parental rights in tribal court and likewise does not support such in state courts.

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

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

While one of the main goals of the 2018 federal Family First Prevention Services Act is to ensure children can remain safely in their homes and avoid unnecessary removals, it recognizes that there will at times be a need for necessary removal. In that event, the counties should be looking towards identifying kinship/relative caregivers instead of foster homes to which the children have no relation to. If children are appropriately placed with kin in the event of removal, and a case needs to progress to permanency, then subsidized guardianship is the ideal form of permanency.

AB 577- Access to Adoptee's Bio Parent's Original Birth Certificate

- **Support Bill**

There have been massive numbers of traumatic removals of tribal children throughout history that were accomplished through unnecessary social services intervention and by the federal government's boarding school assimilation tactics. The passage of the Indian Child Welfare Act in 1978 was meant to help rectify these wrongs inflicted on tribal families and communities. While there are tools built into the federal and state Indian Child Welfare Acts to assist in gaining basic information regarding tribal affiliation, the Ho-Chunk Nation will always provide support for further legislation that will make it easier to bring our relatives back to the Tribe.

AB 289– providing permanency plan and comments to out-of-home care providers in advance of a permanency plan review or hearing

- **Oppose Bill**

This bill is unnecessary. If the concern is ensuring that the foster parents have information to assist them in caring for children, they already receive this type of information through information sharing that is addressed through DCF Rules (DCF 37).

The Nation was opposed to the sharing of the Permanency Plan during the last session that this was addressed. Permanency Plans share highly confidential information (including HIPAA and 42 CFR Part 2 confidential medical/alcohol & drug information). Foster parents are not parties to the matter, and as such should never have access to these sensitive reports.

The redaction that is now being requested in this version will create an unnecessary burden on an already overly extended social services system. Social Workers need to be focused on case management and the provision of reasonable, and in the case of Indian Child Welfare Act matters- active efforts, so that families have the best chance at reunification.

There is no ability to easily redact this information in the state's centralized database system that generates these reports. This was addressed by DCF the last time this topic was addressed. This will require individual redaction- that in addition to being time consuming (time that could be better spent on managing their overburdened caseloads) can and will lead to user error as we are only human. There is too great a chance of missing information that requires redaction. The chance for user error and the extra work on an overly taxed child welfare system outweighs the need to share these reports- particularly when the information that foster parents need to do their jobs well is already provided.

AB 412– creating foster parent bill of rights

- **Oppose Bill**

The ambiguity of AB-412 presents opportunities for foster parents to be errantly raised to the level of party status and on the same footing as a biological parent. The purpose of foster care is to provide a temporary home to ensure a child's safety while biological parents are provided support and services to develop the necessary protective parenting capacity needed to ensure their children's safety. Foster parents play an important role in providing this safety, but the primary goal is and should always be – except in those very rare and statutorily expressed egregious circumstances – reunification. To lose sight of this creates imbalance that will circumvent a biological parent's constitutionally protected fundamental right to parent and a child's constitutionally protected fundamental right to be with their parent.

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

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

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

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

Conclusion

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

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

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