



WISCONSIN LEGISLATIVE COUNCIL

ADOPTION AND TERMINATION OF PARENTAL RIGHTS LAW

Legislative Council Conference Room
Madison, Wisconsin

February 18, 2005
9:30 a.m. - 3:00 p.m.

[The following is a summary of the February 18, 2005 meeting of the Special Committee on Adoption and Termination of Parental Rights Law. The file copy of this summary has appended to it a copy of each document prepared for or submitted to the committee during the meeting. A digital recording of the meeting is available on our Web site at <http://www.legis.state.wi.us/lc/2004studies.htm>.]

Call to Order and Roll Call

Chair Jeskewitz called the meeting to order. The roll was called and a quorum was determined to be present.

COMMITTEE MEMBERS PRESENT: Rep. Suzanne Jeskewitz, Chair; Sen. Tom Reynolds; Rep. Steve Kestell; and Public Members Susan Dreyfus, Joseph Ehmann, Christopher Foley, Stephen Hayes, Patrick Kenney, Mary Jane Proft, and Jodi Timmerman.

COMMITTEE MEMBERS ABSENT Sen. Jeff Plale; and Rep. Chris Sinicki.

COUNCIL STAFF PRESENT: Anne Sappenfield, Senior Staff Attorney; and Laura Rose, Deputy Director.

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

Approval of the Minutes of the January 21, 2005 Meeting of the Special Committee

Mr. Kenney moved, seconded by Ms. Dreyfus, to approve the minutes of the January 21, 2005 meeting of the committee. The motion carried by a unanimous voice vote.

Description of Materials Distributed

WLC: 130/1, relating to hearing to review agency decision of order affecting placement of a child

Ms. Sappenfield explained the draft. Mr. Hayes suggested that the draft require a showing by a preponderance of the evidence instead of a clear and convincing evidence. Judge Foley said that he thinks that a showing by a preponderance of the evidence is more appropriate because foster parents may have a bias regarding the child's placement.

Patrick Kenney moved, seconded by Stephen Hayes, that WLC: 0130/1 be approved. The motion was approved by a vote of Ayes, 8 (Rep. Jeskewitz; and Public Members Dreyfus, Ehmann, Foley, Hayes, Kenney, Proft, and Timmerman); and Absent, 4 (Reps. Kestell and Sinicki; and Sens. Plale and Reynolds).

WLC: 0026/3, relating to fair hearings for head of foster, treatment foster, or group home

Ms. Sappenfield described the draft. Mr. Hayes said that he would prefer if the draft allowed the Department of Health and Family Services (DHFS) to redact information instead of modify it to protect a person's identity.

Ms. Timmerman said that she does not like the provision of the draft allowing for foster parents to see additional confidential records in a case in which the child is going to be reunified with his or her parent. She said that the parent's records should be kept confidential. Mr. Hayes said that foster parents are generally not well treated under the current system and that he does not think it is unhealthy for a foster parent to challenge reunification for a child who has been with the foster parent for a long time. Mr. Kenney said that Mr. Hayes' interpretation is supported by current case law and that the committee should either overturn the case law or clarify the current statute. He said that this draft, in combination with WLC: 0130/1 would clarify many issues in proceedings involving a foster parent's challenge to an agency decision.

Ms. Dreyfus said that she was concerned that the draft violates the federal Health Insurance Portability and Accountability Act. Mr. Kenney said that he believes that local agencies can make changes through forms and training to ensure compliance.

Patrick Kenney moved, seconded by Stephen Hayes, that WLC: 0026/3 be approved, as amended. The motion was approved by a vote of Ayes, 6 (Rep. Jeskewitz; and Public Members Dreyfus, Foley, Hayes, Kenney, and Proft); Noes, 2 (Public Members Ehmann and Timmerman); and Absent, 4 (Reps. Kestell and Sinicki; and Sens. Plale and Reynolds).

WLC: 0033/2, relating to involuntary termination of parental rights ground of continuing need of protection and services

Ms. Sappenfield explained the draft. Mr. Kenney said that he believes that in an action to terminate parental rights on the ground of continuing need of protection or services, it is more appropriate to look forward six months, instead of nine, to determine whether it is likely that the parent will comply with the court-ordered conditions for the safe return of the child to the home. Mr. Ehmann said that prior law required the fact finder to determine whether the parent would ever meet those conditions, so the current one-year look-ahead period was a huge compromise. He said that six months is too short and that cases would not be handled more efficiently with the change.

Patrick Kenney moved, seconded by Stephen Hayes, that WLC: 0033/2 be approved. The motion was approved by a vote of Ayes, 8 (Rep. Jeskewitz; and Public Members Dreyfus, Ehmann, Foley, Hayes, Kenney, Proft, and Timmerman); and Absent, 4 (Reps. Kestell and Sinicki; and Sens. Plale and Reynolds).

WLC: 0038/4, relating to declarations of paternal interest

Ms. Sappenfield described the draft. Representative Kestell said that he did not support making the affidavit and the narrower notice provisions discretionary. Mr. Hayes said that the draft could require an affidavit in every case and require a termination of parental rights (TPR) petitioner to make a diligent effort to find the mother to have her complete the affidavit. There was consensus to make this change to the draft.

Mr. Hayes suggested that the requirement that a TPR petitioner provide a certified copy of a declaration of paternal interest or a certified statement that no such declaration is on file be removed from the draft. There was consensus to make this change.

Mr. Hayes raised a concern that requiring the parent of a minor alleged father to sign a declaration of paternal interest and sending a notice that an alleged father has the right to file a declaration of paternal interest violates an alleged father's privacy. Mr. Ehmann said that he believes that children need an adult's help in deciding whether to sign a declaration of paternal interest. Ms. Proft said that, as a parent, she would want to know about her son's potential involvement in a TPR proceeding.

Mr. Hayes said that he believed that allowing an alleged father 30 days to file a declaration of paternal interest after being notified that he has been identified as a father may delay TPR proceedings. Ms. Dreyfus said that she would be comfortable with a shorter time period if a copy of the declaration of paternal interest form was included in the notice mailed to the alleged father. There was consensus to amend the draft to include the form with a notice mailed to an alleged father and to require the father to file the declaration within 21 days of the mailing date of the notice.

Stephen Hayes moved, seconded by Representative Kestell, that WLC: 0038/4 be approved, as amended. The motion was approved by a vote of Ayes, 9 (Reps. Jeskewitz and Kestell; and Public Members Dreyfus, Ehmann, Foley, Hayes, Kenney, Proft, and Timmerman); and Absent, 3 (Rep. Sinicki; and Sens. Plale and Reynolds).

WLC: 0045/2, relating to specifying that evidentiary privilege does not apply to statements made by a parent during the course of an alcohol and drug abuse assessment or a mental, physical, psychological or developmental examination of the parent in a termination of parental rights proceeding

Ms. Rose described the draft. Judge Foley said that the privilege exception relating to statements made by a parent during an assessment should only apply in chs. 48 and 938, Stats., proceedings. Mr. Ehmann said that it should not apply in delinquency proceedings, though. There was consensus to amend the draft so that the privilege exception applies only in chs. 48 and 938 proceedings, except delinquency proceedings under s. 938.12.

Senator Reynolds asked whether a parent will know that statements he or she makes will not be privileged. Judge Foley said that the evaluator and the parent's attorney will inform the parent. Mr. Ehmann said that, in many counties, the parent would not be represented by an attorney. There was consensus to amend the draft to require the judge to inform a parent that statements made during an evaluation will not be privileged when the judge orders the evaluation.

Patrick Kenney moved, seconded by Jodi Timmerman, that WLC: 0045/2 be approved, as amended. The motion was approved by a vote of Ayes, 9 (Rep. Jeskewitz; Sen. Reynolds; and Public Members Dreyfus, Ehmann, Foley, Hayes, Kenney, Proft, and Timmerman); and Absent, 3 (Reps. Kestell and Sinicki; and Sen. Plale).

WLC: 0087/2, relating to advertising related to adoption

Ms. Sappenfield described the draft. Ms. Dreyfus said that the draft makes a very narrow change because out-of-state adoption agencies may not advertise in Wisconsin, but they are not prohibited from doing business in Wisconsin.

Stephen Hayes moved, seconded by Mary Jane Proft, that WLC: 0087/2 be approved. The motion was approved by a vote of Ayes, 8 (Rep. Jeskewitz; and Public Members Dreyfus, Ehmann, Foley, Hayes, Kenney, Proft, and Timmerman); Noes, 1 (Sen. Reynolds); and Absent, 3 (Reps. Kestell and Sinicki; and Sen. Plale).

WLC: 0088/2, relating to involuntary termination of parental rights on the grounds of continuing need of protection or services

Ms. Sappenfield described the draft. Mr. Kenney said that he does not support the language contained in brackets in the draft because the problem to be addressed is that agencies cannot provide services to parents while they are in prison. Mr. Ehmann said that the problem that the committee set out to solve was having to provide services to a parent who is going to be incarcerated for such a long time, that placement of the child with that parent is unlikely. Judge Foley said that when he orders services for an incarcerated parent, he orders services for that parent that can be provided while the parent is incarcerated. He suggested amending current law relating to dispositional orders to limit what can be ordered for a period during which a parent is incarcerated in a prison. This language was drafted as WLC: 0131/.

Christopher Foley moved, seconded by Patrick Kenney, that WLC: 0131/1, be approved. The motion was approved by a vote of Ayes, 9 (Reps. Jeskewitz and Kestell; and Public Members Dreyfus, Ehmann, Foley, Hayes, Kenney, Proft, and Timmerman); and Absent, 3 (Rep. Sinicki; and Sens. Plale and Reynolds).

WLC: 0091/1, relating to posttermination of parental rights contact between a child and the child's birth parents, birth siblings, and other birth relatives

Ms. Sappenfield noted that at the last meeting of the committee, there were many concerns raised regarding WLC: 0091/1. There was consensus to not vote on the draft and to have a separate working group consider the legislation.

WLC: 0094/2, relating to training for prospective adoptive parents

Ms. Rose explained the draft. Based upon concerns raised by Mr. Hayes and Ms. Dreyfus, there was consensus to amend the bill draft to provide that parents who adopt children through the child welfare system are not required to pay for training; to clarify the requirement for international adoptions in cases in which the adoptive parent is not appointed the child's guardian in this state; to require that training is completed before the child is placed for adoption; to refer to "preparation" instead of "training"; and to require out-of-state adoptive parents to show that they have completed comparable training in their home state before they may adopt a child.

Stephen Hayes moved, seconded by Susan Dreyfus, that WLC: 0094/2, be approved, as amended. The motion was approved by a vote of Ayes, 9 (Reps. Jeskewitz and Kestell; and Public Members Dreyfus, Ehmann, Foley, Hayes, Kenney, Proft, and Timmerman); Noes, 1 (Sen. Reynolds); and Absent, 2 (Rep. Sinicki; and Sen. Plale).

WLC: 0095/1, relating to indigency determinations made by the state public defender in termination of parental rights proceeding

Ms. Rose described the draft.

Joseph Ehmann moved, seconded by Patrick Kenney, that WLC: 0095/1, be approved. The motion was approved by a vote of Ayes, 9 (Reps. Jeskewitz and Kestell; and Public Members Dreyfus, Ehmann, Foley, Hayes, Kenney, Proft, and Timmerman); and Absent, 3 (Rep. Sinicki; and Sens. Plale and Reynolds).

WLC: 0098/1, relating to continuing representation of a person in a termination of parental rights proceeding

Ms. Rose described the draft.

Patrick Kenney moved, seconded by Jodi Timmerman, that WLC: 0098/1, be approved. The motion was approved by a vote of Ayes, 9 (Reps.

Jeskewitz and Kestell; and Public Members Dreyfus, Ehmann, Foley, Hayes, Kenney, Proft, and Timmerman); and Absent, 3 (Rep. Sinicki; and Sens. Plale and Reynolds).

WLC: 0103/1, relating to requiring the court to advise a part of time limits in termination of parental rights proceedings

Ms. Rose described the draft. Based upon comments by Mr. Kenney, there was consensus to modify the draft so that it applies only to parents who are present in court when the TPR order is entered.

Joseph Ehmann moved, seconded by Mary Jane Proft, that WLC: 0103/1, be approved, as amended. The motion was approved by a vote of Ayes, 9 (Reps. Jeskewitz and Kestell; and Public Members Dreyfus, Ehmann, Foley, Hayes, Kenney, Proft, and Timmerman); and Absent, 3 (Rep. Sinicki; and Sens. Plale and Reynolds).

WLC: 0114/1, relating to enlargement of time for filing a notice of appeal in a termination of parental rights proceeding

Ms. Sappenfield explained the draft. Mr. Ehmann said that the timeline for filing a notice of appeal in a TPR is usually missed due to ineffective counsel. He said the draft would make those cases easier to resolve and that the courts would monitor the use of the statute closely. Mr. Hayes said he was concerned that it could compromise the goals of permanency and finality in some cases. Mr. Kenney said that the problem is with attorneys and that the draft simply gives courts the discretion to enlarge the time.

There was consensus to amend the draft so that the time may be enlarged only if the judgment or order was entered as a result of a TPR petition that was filed by a district attorney, corporation counsel, or other representative of the public.

Joseph Ehmann moved, seconded by Patrick Kenney, that WLC: 0114/1 be approved, as amended. The motion was approved by a vote of Ayes, 9 (Reps. Jeskewitz and Kestell; and Public Members Dreyfus, Ehmann, Foley, Hayes, Kenney, Proft, and Timmerman); and Absent, 3 (Rep. Sinicki; and Sens. Plale and Reynolds).

WLC: 0128/1, relating to requiring voluntary agreement for child placement or a guardianship order to remain in effect during the pendency of a termination of parental rights proceedings

Ms. Rose described the draft.

Stephen Hayes moved, seconded by Susan Dreyfus, that WLC: 0128/1, be approved. The motion was approved by a vote of Ayes, 9 (Reps. Jeskewitz and Kestell; and Public Members Dreyfus, Ehmann, Foley, Hayes, Kenney, Proft, and Timmerman); and Absent, 3 (Rep. Sinicki; and Sens. Plale and Reynolds).

Draft Letters

Ms. Rose described the draft letters to Secretary of Health and Family Services Helene Nelson, Representative Curt Gielow, and Director of State Courts John Voelker. There was consensus that the letters be sent on behalf of the Special Committee.

Right to Jury Trial

Mr. Kenney said that he believed that the committee should vote on whether to eliminate the right to a jury trial in TPR cases. He said that it would help counties meet the time limits set by the federal Adoption and Safe Families Act. He also said that the decision of whether there are grounds for an involuntary TPR is best left to a judge.

Representative Kestell said that he does not support the elimination of the right to a jury trial because he believes it is a good check on the system. Mr. Ehmann said that eliminating the right to a jury trial could be found unconstitutional and would increase the number of appeals in TPR cases. He said that he believes that the trend is to afford parents the right to a jury trial in TPR cases.

Representative Jeskewitz said that she is willing to work on alternatives short of eliminating the right to a jury trial that would address some of the issues raised by committee members. There was consensus not to vote on whether to eliminate the right to a jury trial.

Formation of Work Group on Sibling Searches

Ms. Rose stated that DHFS has concerns about WLC: 0071/1, relating to permitting adoptees to obtain access to medical and genetic and identifying information about their birth siblings, and wants to form a working group to develop legislation. There was consensus that WLC: 0071/1 not be included in the committee's final legislative recommendation.

Final Recommendation

Representative Jeskewitz suggested that all of the bill drafts that have been recommended by the committee be combined into one bill draft for presentation to the Joint Legislative Council. There was consensus to do so.

Other Business

There was no other business brought before the committee at this time.

Plans for Future Meetings

This was the last meeting of the Special Committee.

Adjournment

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