



WISCONSIN LEGISLATIVE COUNCIL

PERMANENCY FOR YOUNG CHILDREN IN THE CHILD WELFARE SYSTEM

Room 412 East
State Capitol

September 11, 2012
10:00 a.m. – 4:15 p.m.

[The following is a summary of the September 11, 2012 meeting of the Special Committee on Permanency for Young Children in the Child Welfare System. 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>.]

Call to Order and Roll Call

Chair Kerkman called the committee to order. The roll was called and a quorum was determined to be present.

COMMITTEE MEMBERS PRESENT: Rep. Samantha Kerkman, Chair; Sen. Mary Lazich, Vice Chair; Reps. Jill Billings and Tamara Grigsby; and Public Members Colleen Ellingson, Mark Gumz, Amy Herbst, Molly Jasmer, Jessica Murphy, Robin Neeson, Rändi Othrow, Ron Rogers, Michelle Snead, and Mary Sowinski.

COMMITTEE MEMBERS EXCUSED: Public Members Chris Foley, Esie Leoso-Corbine, and Laura Maki.

COUNCIL STAFF PRESENT: Melissa Schmidt and Margit Kelley, Staff Attorneys.

APPEARANCES: Megan L. DeVore, La Crosse County Deputy Corporation Counsel; Eve M. Dorman, Dane County Assistant Corporation Counsel; Wendy J.N. Klicko, Sauk County Assistant Corporation Counsel; Susan Conwell, Kids Matter Inc. Executive Director; Heidi Bronsdon; Brigitte Singletary; Amanda Salas; Bella Xiong; Tatiana Woody; and Ann Ahlstrom, Staff Attorney, Minnesota Supreme Court.

The committee observed a moment of silence in memory of the victims of the terrorist attacks on September 11, 2001.

Approval of the Minutes of the Special Committee's July 24, 2012 Meeting

Senator Lazich moved, seconded by Ms. Herbst, that the minutes of the committee's July 24, 2012 meeting be approved. The motion passed on a unanimous voice vote.

Presentations on Involuntary Termination of Parental Rights Trials

Megan L. DeVore, La Crosse County Deputy Corporation Counsel

Ms. DeVore shared her experiences as the sole attorney in the La Crosse County Corporation Counsel office who handles chapter 48 actions for a child in need of protection or services (CHIPS) and for termination of parental rights (TPR). She observed that the majority of TPR cases resolve voluntarily or when a parent does not contest an involuntary TPR determination, but that the contested involuntary TPR cases take a significant percentage of her time. She commented that in La Crosse County the local practice is to use mediation as an informational meeting with both the foster and birth families, and that the CHIPS process includes frank discussions with those caregivers about concurrent planning for the child.

Ms. DeVore observed that, for contested involuntary TPR actions, a jury trial is always requested. She noted that the amount of information on such cases is voluminous, including thousands of pages of family history, visitation notes, therapy notes, and other documentation. She noted that the trial preparation and trial itself are time consuming for herself and the social services agency workers, which can take time away from other matters, and means that generally only one TPR case can be prioritized at a time. Ms. DeVore also noted that the amount of time needed for a TPR trial makes it difficult to find sufficient calendar space on the court's docket.

Eve M. Dorman, Dane County Assistant Corporation Counsel

Ms. Dorman shared her experiences as one of five attorneys in the Dane County Corporation Counsel's office who concentrate on CHIPS and TPR actions. She noted that the average caseload for each attorney is currently around 90 cases. Ms. Dorman reviewed the statistics for the number of both voluntary and involuntary TPR actions handled by the office over the past few years, noting that there is an ebb and flow, which is difficult to predict because the cause is unknown. For 2011, Ms. Dorman noted that 11 of the involuntary cases went to trial, each with a jury request, and each was appealed. She noted that the office internally handles each TPR appeal.

Ms. Dorman commented on the various perceived areas of delay in the TPR process, including: a parent's appearance at the first informational hearing without yet having applied for public defender counsel; limitations on court scheduling; time to take depositions and prepare witnesses; the amount of history and documentation that must be provided for the continuing CHIPS basis for TPR, which is the most common ground; and time for new counsel for the parent to come up to speed on the matter, because public defender counsel is not provided during CHIPS proceedings. Ms. Dorman observed that TPR determinations are routinely appealed but are almost never reversed.

Wendy J.N. Klicko, Sauk County Assistant Corporation Counsel

Ms. Klicko shared her experiences as the sole attorney in the Sauk County Corporation Counsel office who handles CHIPS and TPR actions. She commented that it would be invaluable to have the same defense attorney represent a parent throughout both the CHIPS and TPR actions, because the thickest, most complex CHIPS case files proceed to TPR. She noted that in Sauk County the number of CHIPS actions has declined, due to the early intervention work by the county social services agency, but that as a result, the CHIPS cases that are filed are the most complicated, with mental health or alcohol or other drug abuse issues for the parents and children. She said that 10% of a caseload can easily take up 90% of an attorney's time.

Ms. Klicko commented that the timeline requiring filing of a TPR petition after a child has been placed outside the home for 15 of the last 22 months does not apply while a child is placed with a fit and willing relative. She observed, however, that it is common for a relative to burn out after having a child for a longer period, such as 18 months, if the relative originally only expected to have placement of the child for three to six months.

Ms. Klicko also observed that it is difficult to reconcile cases in which a young child was placed with a foster family for a substantial period of time, developed a relationship with that family, and then has a relative come forward with willingness to adopt the child. She noted that, in these situations, it is common for the biological parent to voluntarily consent to TPR only if the child will be adopted by the relative.

In response to questions, Ms. Klicko commented that when a relative comes forward, the relative often has conflicting feelings of wanting to help the parent but not being able to tell the parent that they are unable to help. Ms. Dorman commented that a statutory preference could be possible, for an adoption with a foster family with whom the child is attached over an adoption with a family member that the child does not know. However, she said that she would not recommend a flat schedule that disallows adoption with one or the other after a set period of placement. Ms. DeVore also noted that relatives are often not in the same community as the child and biological parent, which can cause an objection from the parent who would have difficulty in maintaining meaningful visitation.

In response to questions, Ms. Dorman commented that appeal timelines stay fairly close to the expedited timelines required by statutes, except for the timeline in which transcripts are to be provided. She further observed that the most common grounds for appeal are claims for ineffective assistance of counsel, or claims that stem from specialized jury instructions.

In response to questions, Ms. Klicko observed that representation by a public defender is not available for a parent during CHIPS proceedings, but that an attorney can be appointed by the court at county expense. Each of the three presenters observed that the lack of counsel during a CHIPS proceeding, as well as any change in counsel between the CHIPS and TPR proceedings, is a significant delay in achieving permanency. Each of the three also commented that a court trial would save roughly two or three days out of five for a jury trial in these matters, with a roughly proportionate savings in the preparation time as well. Ms. Dorman observed that a parent's attorney may prefer a jury trial over a court trial, even when the grounds for TPR are strong, because there may still be a chance to convince two people that the TPR is not warranted.

Presentation on Permanency Issues by Current and Former Foster Children

Susan Conwell, Kids Matter Inc. Executive Director, Moderator; Heidi Bronsdon, Brigitte Singletary, Amanda Salas, Tatiana Woody, and Bella Xiong

Ms. Conwell gave a brief introduction to each of the current and former foster youth participating in the panel presentation, noting that among them they have had every type of experience that can occur in the foster care placement system. Ms. Conwell's handouts are available on the committee's website at: <http://www.legis.wisconsin.gov/lc>.

Ms. Bronsdon shared her personal experiences with foster care. She noted that she and her siblings were not included in the permanency planning process or the court hearings. She noted that it was difficult as a child to understand why her biological parents could have a say in the TPR and adoption processes when she had repeatedly told her seven consecutive caseworkers that she loved her foster family and wanted to be adopted. Ms. Bronsdon also described the difficulties in being separated from her siblings, and the different, difficult experiences each of them had. She attributed her personal success to her foster mother, who talked with her about how to plan for living as an adult.

Ms. Singletary shared her personal experiences with foster care and the difficulties she and her brother each had. She observed that a foster child is haunted for the rest of his or her life on how to survive each day, eat each day, and get needed medications each day. She commented that it is difficult for children to speak out while they are in foster care, and that it took her about two years to feel stable with her foster family. Ms. Singletary attributed her personal success to her foster mother, who sent her to a life skills class and repeatedly told her that she would not be kicked out even if her foster mother was angry.

Ms. Salas shared her personal experience of being adopted by a relative and later placed in foster care that changed to independent living. She commented on the difficulties she has had in maintaining contact with her siblings and in earning and transferring high school credits. Ms. Salas made some specific suggestions, including: requiring the caseworker to meet alone with a child, apart from the foster or adoptive family, in order to become trusted enough for the child to share any true problems with the placement; requiring both the police and the social services agency to investigate when a child under the age of 12 is a runaway; removing parents' rights as soon as a parent is not allowed to do anything for the child; and requiring a caregiver who receives payments for placement of a child to set aside at least a small portion of the payments to be distributed to the child when reaching adulthood. Ms. Salas attributed her success to her high school ROTC commander as the first trusted adult in whom she could confide.

Ms. Woody shared her personal experiences living with her grandmother followed by placement in a group foster home after her grandmother's passing. She observed that she had a good, healthy upbringing with her grandmother, and didn't have any personal troubles. She said that she is now living in a group foster home that includes troubled teens who have previously been in juvenile detention facilities. She suggested that foster children should not all be treated the same, and should be separated into different group homes depending on their needs. She attributed her success to the foundations given to her by her grandmother.

Ms. Xiong shared her personal experience of first living with one parent, then the other, and then being placed in foster care. She commented that the permanency process takes too long, as she was first placed in foster care when she was 14, and she is now almost an adult, and still in foster care. She

suggested that it would be helpful to have better communication between siblings. She also suggested creating better communication between a child in out-of-home care and the caseworker so that the child can understand the caseworker's role and plans, and what is going to happen next. She noted that she is on track to graduate from high school this year.

In response to questions, the panelists commented that children can handle more direct communication, and would prefer to be more involved in the court process and in the decision-making process. The panelists commented that communication with their attorney is limited generally to the actual time in court, but that the experience of each with the attorney, although limited, was good. Ms. Ellingson commented that a court appointed special advocate (CASA) representative for a child is not an attorney, and is not available in every county due to reduced federal and state funding.

Presentation on Recent Minnesota Measures to Improve the Process of Achieving Permanency

Ann Ahlstrom, Staff Attorney, Minnesota Supreme Court

Ms. Ahlstrom's PowerPoint slides are available on the committee's website at: <http://www.legis.wisconsin.gov/lc>.

Ms. Ahlstrom described Minnesota's permanency progress review hearing process. She explained that when the review hearing was first required in 1999, it was only used for children under the age of eight at the time a CHIPS action was filed, because at that time the detrimental effects on long-term development from the early childhood experiences were well understood. She explained that effective August 1, 2012, the review hearing is now required for all children, recognizing that older children often have many issues and are more challenging to place, and that children often enter the child welfare system in sibling groups.

Ms. Ahlstrom explained that a permanency progress review hearing is held within six months of a child's removal from the home and placement either in foster care or in the home of the broadly-defined "other" parent. She noted that the hearing is held in court and on the record, with notices to all parties, including relatives. She said that a written report is provided to the court and all parties at least five days before the hearing, reviewing the progress of the parents and the reasonable efforts of the agency.

Ms. Ahlstrom noted that Minnesota requires a permanency plan to be filed within 30 days of a child's removal, which is shorter than the federal requirement of filing within 60 days, and that the court has authority to order assessments and evaluations as soon as it orders removal from the home.

Ms. Ahlstrom noted that relatives are an important part of the process and can ask to have notice of all hearings. She noted that relatives have the opportunity to challenge an agency's decisions about placement and can talk with the agency and the court about specific barriers for the child, although the law affords an agency the right to opt out of working with a relative. She noted that relatives can be a placement option, or a resource, as well as participating in planning or providing simple assistance such as transportation for a child.

Ms. Ahlstrom explained that the statutory timelines provide the ability for cases to move quickly, even if that does not often happen. She explained that under the Minnesota statutes, the permanency progress review hearing is held six months after removal, and if the child cannot be returned home or

cannot remain in foster care while the agency provides additional services or concurrent planning, the agency must file a TPR petition within 30 days of the hearing and have a trial within the next 60 days. She noted that this could potentially limit the time for achieving permanency to nine months in cases where the statutory timeline could effectively be utilized.

Ms. Ahlstrom noted that in Minnesota the permanency progress review policy is combined with other policies and efforts for achieving timely permanency, including: concurrent permanency planning; relative search and engagement; visitation between the parent and child; group placement of siblings or visitation between siblings; emphasis on early service delivery; provision of an attorney for all parents, and for all children over age 10; provision of a guardian ad litem (GAL) for all children; and a differential response known as family group decision making.

Ms. Ahlstrom reviewed the outcomes Minnesota has experienced with these policies, including: a 36% reduction of the number of children in foster care from 2002 to 2010; reduced entries into out-of-home care; increased exits to timely permanence; reduced CHIPS filings by 17% from 2002 to 2011; 30 fewer days in foster care; a reduced number of moves; an increased likelihood of exiting foster care to a permanent home; and a reduced time in foster care until adoption from 657 days in 2001 to 499 days in 2010.

In response to questions, Ms. Ahlstrom explained that a parent is always notified of the permanency progress review hearing and is expected to attend. She said that attendance rates are better in greater metropolitan areas. She also noted that while foster parents are notified, they often do not attend. She also noted that a current photo of the child is updated and posted at each hearing. Ms. Ahlstrom explained that the GAL program is state-funded; attorneys for parents is county-funded; and attorneys for children 10 or older is state-funded through the public defender's office. She noted that a fiscal note was probably not done for the original reforms package in 1999 when the state gave counties additional funding as part of the reform package. She noted that the fiscal impact has not been studied, but that Minnesota sees a long-term cost reduction and benefit from the reduction in children's days in care.

In response to questions, Ms. Ahlstrom noted that a court may allow a short extension, perhaps 30 days, to see if a parent's last-minute efforts are real. The court may also determine that the effort is too little too late, and that the parent should have demonstrated legitimate progress at 12 months to be ready for reunification. Ms. Ahlstrom observed that each agency bears the costs of a family finding search, with a recent statute clarifying that an agency may use any reasonable means for family finding, and must share the names of relatives that have been identified and must explain why any relative was ruled out. She noted that the best source for finding relatives is a parent after the parent has come to terms with the need for a relative search.

Description of Materials Distributed

Ms. Kelley briefly described the handouts from the National Conference of State Legislatures, following up on questions from the presentation by Ms. Williams-Mbengue at the committee's July 24th meeting.

In reviewing Memo No. 2, Ms. Kelley noted that one finding from the Arizona report, *Termination of Parental Rights by Jury Trials in Arizona: A Second Year Analysis*, was not included in the Memo, and that Judge Foley had mentioned this finding in his memorandum distributed at the

committee's first meeting. Ms. Kelley noted that according to Finding No. 5 of the report, in Arizona, both jury trials and bench trials were likely to result in TPR, and termination was the result in the wide majority of both types of trials.

Ms. Kelley commented that Memo No. 3 provides a summary listing of some concepts that have been brought forward in prior committee meetings and in emails to the staff, for further discussion and deliberation by the committee.

Discussion of Committee Assignment

The committee discussed options listed in Memo No. 3 related to CHIPS adjudication procedures and grounds for involuntary TPR. Chair Kerkman asked the committee if there was consensus on the various items under these categories. Based upon consensus of the committee, Chair Kerkman directed the staff to prepare bill drafts or to provide additional information, for further consideration and discussion at future meetings of the committee on the following topics:

- Elimination of jury trial in a CHIPS action.
- Allowance for a parent's right to representation in a CHIPS action.
- Creation of a new ground for court jurisdiction over a newborn in a CHIPS action.
- Specification for when reasonable efforts by an agency are not required or may be terminated.
- Prioritization of criminal proceedings that are pending while a parent is also a party to a CHIPS or TPR proceeding.
- Expediting appellate procedures for any action under ch. 48, Stats.
- Encouragement to utilize family group decision making.
- The possibility for creation of a peer specialist program for parents and an optional training program for attorneys.
- Specification for family finding efforts and inclusion of placement or visitation with relatives and siblings in a child's permanent placement goals.
- Revision of certain grounds for an involuntary TPR determination.
- Allowance for referrals to evaluations and services immediately upon a child's entry into out-of-home care.

Chair Kerkman noted that other topics included in Memo No. 3 that were either not discussed or had no request for additional information may still be reviewed at future meetings of the committee.

Adjournment

The meeting was adjourned at 4:15 p.m.

MSK:ksm