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Testimony on Assembly Bill 47 *Guardianships of children*

Good morning Chairman Kooyenga and committee members. It was my pleasure to serve as chair of the Study Committee on Minor Guardianships alongside Co-chairwoman Senator Latonya Johnson. Thank you for the opportunity today to describe the legislation that our study committee unanimously recommended.

Late in 2017, I was approached by a constituent of mine regarding issues she was having with our state's minor guardianship laws. In short, our current laws held the potential for her niece, whom she had taken guardianship of, to be put back into an abusive and neglectful situation. After digging into this topic, it became clear that her concerns were echoed by countless guardians and families across the state, each with a different story but all with the same conclusion: our state's minor guardianship laws do not serve Wisconsin children, families, or guardians well.

These stories highlighted not only that there are large problems within our state's minor guardianship laws, but that the solution would be incredibly complex. I knew that speaking with experts and stakeholders directly involved in minor guardianships would provide me, and the legislature as a whole, with the information we need to move towards solving this problem. Bringing this issue to the Joint Legislative Council to form a Study Committee was the best way to provide the insights needed for legislation that can make a real, lasting difference for those affected by minor guardianship laws.



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The committee was tasked with examining guardianships under Chapter 54, which governs guardianships of both adults and minors, and recommending legislation that creates procedures specific to minor guardianships. Note that minor guardianships under Chapter 54 do not require involvement by the child welfare system and, therefore, are informally referred to as “private” guardianships. It is my understanding that Chapter 54 has been criticized for being unworkable in the context of minor guardianships, because many of its provisions apply only to adults and because the statutes do not reflect applicable case law.

To address these concerns and execute the committee’s charge, the committee was comprised of 3 state representatives, 1 senator, and 7 public members, including attorneys, judges, and advocates for child-related issues. The committee met four times from July to November of 2018.

As a starting point for its work, the committee drew upon legislation introduced in the 2009 and 2011 legislative sessions that was the product of a working group within the State Bar of Wisconsin’s Children and the Law Section. Some members of that working group also served as study committee members.

However, the committee deviated in part from the State Bar’s draft based on the scope of the committee’s charge and the committee’s independent study of the issues, which included testimony from various speakers, such as private guardianships, attorneys, a guardian ad litem, a litigant in a minor guardianship, and the Department of Children and Families.



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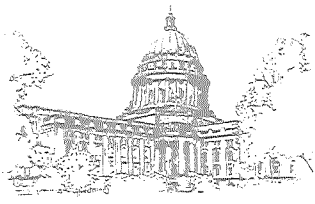
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Based on the testimony provided, the members' professional experiences, and thorough discussions over several meetings, the committee recommended what is now Assembly Bill 47, which makes various changes relating to private minor guardianships. The bill draft's key provisions include:

- A new statute governing private minor guardianships in a new subchapter under Chapter 48 of the statutes, which transfers jurisdiction of such actions from the probate court under 54 to the children's court.
- Creation of 4 types of private minor guardianships: full; limited; temporary; and emergency.
- Court procedures and legal standards specific to the new types of private minor guardianships.
- New guardian ad litem duties and responsibilities specific to private minor guardianships.

In reaching unanimous consensus on the bill draft, the committee tackled several complicated issues, including the constitutional rights of parents, the best interests of children, and the role of the guardian ad litem. I am proud of not only this final product created by the committee, but of the level of engagement and respect demonstrated by committee members throughout the process.

Chairman Kooyenga, again, I appreciate the opportunity to come before you to have this important conversation today. At this time, I'd be happy to answer any questions you or the members of the committee may have.



STATE SENATOR LaTonya Johnson

WISCONSIN STATE SENATE

6TH DISTRICT

**Senate Committee on Universities, Technical Colleges, Children and Families
Testimony on Assembly Bill 47
January 22, 2020**

Good morning members of the committee,

Last summer, I had the honor of serving as the vice chair of the Legislative Study Committee on Minor Guardianships. The study committee, chaired by Rep. Steineke, brought together a wide variety of legal subject matter experts and child welfare advocates to reform Wisconsin's laws regarding private minor guardianships. The primary issue addressed is that Chapter 54, the current location of our private guardianship statutes, treats adult and minor guardianships in the same way. This situation has resulted in inconsistency among the courts and confusion for families attempting to navigate the private guardianship process.

Assembly Bill 47 is the result of years of work by the State Bar's Children & the Law Section as well as the deliberations of study committee members over this past summer. The bill, which was accepted unanimously by the Joint Legislative Council, properly puts minor guardianships into Chapter 48—The Children's Code—and, among numerous procedural clarifications, ensures that a child's best interests will be taken into account when determining whether to terminate a properly granted minor guardianship.

The State plays an important role in protecting the rights of children, and nowhere is that role more important than in the decision to place a child outside of their home, but we all know of situations where seeking a guardianship was the best decision for the child and for their family. Sometimes a guardianship only needs to be temporary or limited in scope, but even where full guardianship is appropriate, it is important to maintain our focus on the best interests of the child. Creating a clear and fair process for granting private minor guardianships will help Wisconsin families who are facing these difficult decisions.

AB 47 is a thoughtful and thorough attempt to create a minor guardianship process that safeguards both parental rights and the child's well-being, and I am extremely proud of the bipartisan, collaborative and constructive process that produced this proposal.

I would like to thank Rep. Steineke, my fellow study committee members, and the Legislative Council staff attorneys for their work on this important legislation, and hope that these long-awaited reforms will be enacted into law without delay.



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Governor Tony Evers
Secretary Emilie Amundson

Secretary's Office

TO: Chair Kooyenga and Members of the Senate Committee on Universities,
Technical Colleges, Children and Families

FROM: Fredi Bove, Policy Initiatives Advisor, Department of Children and Families
Therese Durkin, Chief Legal Counsel, Department of Children and Families

DATE: January 22, 2020

SUBJECT: 2019 Assembly Bill 47

My name is Fredi Bove and I am a Policy Initiatives Advisor for the Department of Children and Families (DCF). I am accompanied by Therese Durkin, DCF Chief Legal Counsel. The Department is testifying in support of 2019 Assembly Bill (AB) 47.

The Department supports the goal of AB 47 to improve the law related to private minor guardianships to meet more effectively the special needs of minors and clarify private guardianship procedures. We recognize and appreciate the Joint Legislative Council's Study Committee on Minor Guardianships' attention to and review of this issue.

As the Department testified on May 21, 2019 before the Assembly Committee on Family Law, we believe that combining private minor guardianship procedures into the carefully defined Chapter 48 public child welfare proceedings creates confusion and uncertainty about the interplay of private guardianship and existing public child welfare procedures and authorities. The Department believes that statutory provision related to private minor guardianship proceedings should remain in Chapter 54 or another statutory chapter separate from Chapter 48. In our previous testimony we identified a number of unintended, confusing, and potentially adverse ramifications of the original bill.

Following the May hearing, the Department engaged with Representative Steineke's office and Legislative Council attorneys in detailed discussions regarding the Department's concerns. We appreciate Representative Steineke's collaboration with the Department on this bill. The amendment which was introduced by Representative Steineke, approved by the Assembly

Committee on Family Law, and is included in the version of the bill before you today, addresses many of the concerns raised by the Department.

Some of the Department's original concerns were not addressed and the Department identified new concerns that were introduced as a result of the amendment. Because of the complexity of the legislation and the interplay between public and private proceedings, we foresee that there may be more implications for county practice and that the full impact may not be seen until after the legislation goes into effect. For these reasons it is likely that a trailer bill will be necessary, which is not unusual for legislation of this complexity and magnitude. The Department does not object to moving forward with AB 47, as amended, with the understanding that a trailer bill will likely be necessary. The Department would be pleased to work with legislators and others on a trailer bill in the future.

In closing, we want to express again our appreciation to Representative Steineke for working collaboratively with the Department to refine the bill in ways we believe strengthen the bill. We are pleased to respond to any questions.

CHILDREN & THE LAW SECTION

To: Members, Senate Universities, Technical Colleges, Children and Families
From: Children & the Law Section, State Bar of Wisconsin
Date: January 22, 2020
Re: AB 47 – minor guardianship

The Children & the Law Section of the State Bar of Wisconsin supports AB 47, which revises and updates current law regarding the guardianships of children.

This bill seeks to repeal those portions of Chapter 54 which provide for the appointment of a guardian of the person of a minor and, in its place, create Wis. Stat. § 48.9795. The Children & the Law Section of the State Bar of Wisconsin believes this legislation – and the insertion of this law into Chapter 48 - is necessary to improve the legal process for meeting the needs of children if the appointment of guardian for a child becomes necessary. Guardianship of the estate of a minor will remain in Chapter 54.

When Chapter 880 was repealed and Chapter 54 created, the primary focus was on improving how guardianships for the elderly and disabled were sought, granted and administered. While guardianships for children were included in that rewrite, the needs of children under guardianship are separate and distinct and, therefore, not fully addressed in Chapter 54. The development of mandatory circuit court forms for Chapter 54 guardianships brought the distinctions between adult guardianships and minor guardianships into sharp focus. Judges, guardian's ad litem, private practitioners, corporation counsel, district attorneys along with legislators and other stakeholders participated in the Study Committee on Minor Guardianship to fashion a legislative solution to these deficiencies in the current law. The collective efforts of the study committee resulted in recommendations that were accepted unanimously by the Joint Legislative Council resulting in the introduction of AB 47. This proposed legislation inserts those changes that are not addressed in Chapter 54 and inserts this law into Chapter 48 in order to significantly improve the legal process for meeting the needs of children whose parents are unable to provide those needs as legal guardian.

Some of the specific issues which are addressed by the creation of Wis. Stat. § 48.9795 include the development of four distinct categories of guardianship (full, limited, temporary and emergency), clarification of who is an interested party as it relates to a minor, clarification of parental rights when a guardianship is granted, clarification of the responsibilities and rights of the guardian, clarification of the legal standard and burden of proof for petitioning for and terminating a guardianship as well as clarification of the procedural steps for each of these proceedings and clarification of the duties of a guardian ad litem. The bill also incorporates the case law standard for an involuntary removal of guardianship rights from a parent.

The guardianship reform bill for minors provides a comprehensive change to the existing guardianship laws that impact children by eliminating confusion, inconsistency and barriers that currently exist for implementing guardianship proceedings for a minor in Wisconsin as follows:



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1. Current guardianship statutes under Chapter 54 combine both adult and minor guardianship law. Unfortunately, the procedures that exist under Chapter 54 for adults needing guardianship orders are not differentiated for juveniles. As a result, the current law under Chapter 54 is unable to respond to the unique issues that only impact minors requiring guardianship such as emergency, temporary, limited or full decision-making authority.
2. The body of case law regarding minor guardianship which has evolved from the former existence of guardianship law under Chapter 880 and currently Chapter 54 is not incorporated into the existing statutes. As a result because of the lack of clarity in existing statutes, decisions by Courts in minor guardianship cases are frequently inconsistent on a state wide basis.
3. The proposed reform bill removes these impediments in the following manner:
 - a. The guardianship law for minors is separated from the existing guardianship law affecting adults in Chapter 54 and is placed in Chapter 48 – The Children’s Code. This provides an ease of reference for those accessing all of the guardianship laws of minors. This combines all minor guardianship cases under Chapter 48 whereas currently some types are vested in Chapter 48 whereas others are contained in Chapter 54. This will eliminate confusion and increase ease of access and application. Moreover, Chapter 48 has well defined procedures and well settled law which will benefit the courts and practitioners with placement of minor guardianship laws in Chapter 48.
 - b. The four specific types of guardianships affecting decision making on the issues affecting minors is specifically addressed under this proposed legislation whereas the current law under Chapter 54 for adults does not address this. This legislation creates four types or categories of guardianships ranging from emergency, temporary, limited and full guardianship. These categories specifically address the unique decision-making problems that caretakers, parents and the Courts must face with a minor. With the creation of these categories, private family matters are offered a flexible legal solution without involving governmental agencies.
 - c. The procedural legal requirements that accompany these types of guardianships are designed to respond to the specific time frames that the particular type of guardianship requires. Emergency guardianship procedures are crafted so that the court is able to respond quickly when necessary without having to follow the cumbersome requirements for adults under Chapter 54, whereas other non-emergent categories of guardianships have different procedural requirements that provide for timely decision making as well as clearly delineating the length of time that such orders will remain in effect.
 - d. The body of case law which has evolved interpreting minor guardianship law under the prior Chapter 880 and the current Chapter 54 is now incorporated into this reform bill. The lack of clarity currently leads to speculation and often inconsistent

application of the minor guardianship law state wide. Incorporating the case law standards into the legislation, along with clear criteria for each step in the process will eliminate the speculation and confusion that currently exists with minor guardianships under Chapter 54.

The Children & the Law Section believes this legislation vastly improves the guardianship law as applied to minors and encourages your support of this important legislation for children.

For more information, please do not hesitate to contact our Government Relations Coordinator, Lynne Davis, ldavis@wisbar.org or 608.852.3603.

The State Bar of Wisconsin establishes and maintains sections for carrying on the work of the association, each within its proper field of study defined in its bylaws. Each section consists of members who voluntarily enroll in the section because of a special interest in the particular field of law to which the section is dedicated. Section positions are taken on behalf of the section only.

The views expressed on this issue have not been approved by the Board of Governors of the State Bar of Wisconsin and are not the views of the State Bar as a whole. These views are those of the Section alone.