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Testimony before the Senate Committee on Universities, Technical Colleges, Children and Families
State Senator André Jacque
December 4, 2019

Chairman Kooyenga and Members of the Senate Committee on Universities, Technical Colleges, Children and Families,

Thank you for the opportunity to testify before you today in support of Senate Bill 232, The Adoption Reform Act that Rep. Brandtjen, Rep. Fields and I have introduced to make some vital reforms to the adoption process in Wisconsin. I also want to thank Sen. Darling and Sen. Olsen for co-sponsoring this important legislation.

Adoption in the United States is a complex patchwork of law and practice that imposes considerable strain on those navigating it. According to the most recent state-by-state statistical review of adoption, published by the Children's Bureau of the U.S. Department of Health & Human Services in 2011, Wisconsin ranks behind 37 states and the District of Columbia in the rate of adoptions completed in our state, even lagging behind several less populated states in the number of total adoptions. The difficult and uncertain court process faced by prospective birthparents and adoptive parents in Wisconsin is often cited as a factor, leading families seeking to adopt to look out of state. Several multi-state adoption agencies have indicated that they do not finalize adoptions in Wisconsin due to the length and complexity of the court process; one prominent interstate adoption agency assists in placements in 46 states, but notably, Wisconsin is not among them.

This proposal makes a number of vital reforms to Wisconsin's adoption system in consultation with and at the request of birth parents, adoptive parents, adoption attorneys and adoption agencies:

1. Adding the option for both birthparents to invoke the termination of their parental rights (TPR) without the requirement to endure a lengthy court process. Such an alternative is commonly used in the majority of states throughout the U.S. and is considered a best practice.

This change will create a system that is easier to navigate for birthparents by removing the fear and uncertainty surrounding mandatory court proceedings which can make them feel like they are being penalized for their decision, particularly if such proceedings would potentially require them to relive traumatic events. This option would also remove a large portion of uncertainty for adoptive parents about the permanency of the placement of a child with them, which would encourage more adoptions to take place in Wisconsin.

Biological fathers are already able to disclaim their parental rights by filling out a court form. By allowing birth mothers to voluntarily disclaim their parental rights after 72 hours from the birth of the child, Senate Bill 232 will bring more consistency to Wisconsin's adoption process instead of variability from county to county and judge to judge, while reducing unnecessary court time and costs for the completion of the adoption. This legislation allows for the TPR paperwork to be completed by birthparents with trusted counselors they have

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established a relationship with, and requires the affidavit of disclaimer of parental rights to be signed by two witnesses and notarized.

2. Adding abandonment grounds for involuntary TPR, including failure to provide care and support for a child, failure to pay child support, and failure to provide reasonable care and support for the mother of the child without reasonable cause. It is especially important that in situations where a biological father consistently demonstrates abusive or threatening behavior toward the birthmother and his unborn child, he should not be rewarded with leverage over the birth mom wanting to place her child for adoption.
3. Combining the fact-finding and dispositional hearings in a TPR proceeding by requiring the juvenile court to hear all evidence relevant to TPR grounds and disposition before making a determination. This will improve process efficiency and certainty for all involved.
4. Expanding parental options by allowing payments to be made to a licensed out-of-state private child placing agency for services provided in connection with an adoption.
5. Requiring greater accountability and responsibility by providing that an alleged father of a nonmarital child whose paternity has not been established is entitled to actual notice of a TPR proceeding, and the resulting rights of standing in that proceeding, only if that person has filed a declaration of paternal interest- putting teeth into our existing putative father registry for something that should already be taking place.

Our proposal does not impact the other requirements of the domestic adoption process in Wisconsin, including selecting an agency and completing a home study, which encompasses background checks, home inspections and interviews about family, background, finances and reasons for wanting to adopt. Wisconsin law requires that women considering adoption be provided counseling and certain living expenses up to $5,000.

A significant portion of this legislation relating to the out of court affidavit option passed the State Assembly by voice vote in a previous session, and we were pleased to work with Wisconsin's Native American Tribes to allay concerns before doing so. Those changes have been maintained in this legislation, along with additional components which make this reform even more effective and comprehensive. Unfortunately, that prior legislation did not have a Senate author, but I am pleased that several of my senate colleagues have joined me in bringing this legislation forward this session. I am pleased to also note that this legislation is supported by the Wisconsin Chapter of the National Association of Social Workers.

Thank you for your consideration of Senate Bill 232.

JANEL BRANDTJEN

STATE REPRESENTATIVE • 22ND ASSEMBLY DISTRICT

Thank you Chairman Kooyenga and the members of the Senate Committee on Universities, Technical Colleges, Children and Families for hearing SB 232. This bill is a bipartisan bill that addresses a list of concerns regarding adoption in Wisconsin. Wisconsin is known throughout the adoption community as a difficult state to adoption children in; SB 232 will go a long way to correct that perception. We can all agree that promoting an environment where children can grow up with loving and caring parents, who have the will and the means to raise healthy children, is a worthy endeavor. Although we should all realize that the perfect solution does not exist, eliminating unnecessary obstacles will help thousands of Wisconsin children live happier, more productive lives.

AB 263 does the following to streamline the adoption process in Wisconsin:

1. Combines the fact-finding hearing and dispositional hearing in a TPR proceeding, which will significantly reduce the time it takes to adopt a child in Wisconsin.

2. Provides a method by which a mother, father, or alleged or presumed father, may disclaim his or her parental rights with respect to a child in writing, as an alternative to appearing in court to consent to the termination of his or her parental rights.

3. Changes the factor related to expressing concern for, or interest in, the support, care, and well-being of the child, as to whether the person has provided care or support for the child.

4. Provides that an alleged father of a nonmarital child, whose paternity has not been established, is entitled to actual notice of a TPR proceeding and the resulting rights of standing in that proceeding, only if that person has filed a declaration of paternal interest.

5. Allows payments to be made to a licensed, out-of-state, private, child-placing agency for services provided in connection with an adoption.

I have personally witnessed the unneeded pain and turmoil suffered by children who are waiting for the chaos in their lives to end and the stability of a permanent family structure to begin. We believe these simple changes to Wisconsin's adoption laws will make a positive difference in the lives of many Wisconsin children. Every child deserves a happy and loving home.

Thank you,

Janel Brandtjen

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Hon. Randy R. Koschnick
Director of State Courts

Testimony
Of

Nancy Rottier, Legislative Liaison,

Kristen Wetzel, Program Analyst
Children's Court Improvement Program,

and

Hon. Shelley Gaylord,
Dane County Circuit Court Judge

For information only on Senate Bills 232, 531-534, and 548

Senate Committee on Universities, Technical Colleges, Children and Families
Senator Dale Kooyenga, Chair
December 4, 2019

Thank you for allowing us to testify on Senate Bills 232, 531 through 534, and 548. Several of the bills were introduced after several months of work by the Speaker's Task Force on Adoption. We appreciate the hard work of the Task Force and were very pleased to present information at its Waukesha public hearing.

We are appearing for information only in order to comment on various aspects of the bills that impact the court system. The Wisconsin court system administration takes no position on the policy aspects of the bills but rather seeks to highlight court procedures that may be impacted, efficiencies that may be created, resources that may be required, unintended consequences that may be identified and technical drafting issues that may require attention.

By way of introduction, we want to give a brief look at the work of the Children's Court Improvement Program (CCIP). For nearly 25 years, Wisconsin has joined with all other states in applying for and receiving federal grant funding to improve the handling of child abuse and neglect, termination of parental rights and adoption cases in the court system. CCIP staffs several committees, including the multi-disciplinary Wisconsin Commission on Children, Families and the Courts, as well as the Wisconsin Judicial Committee on Child Welfare, which focuses on best practices for judges and court commissioners. We work closely with the Department of Children and Families (DCF) in an effort to make the child welfare system run more smoothly and improve outcomes for children and families.

CCIP co-sponsors with DCF a biennial conference for state, county and tribal leaders to learn innovative practices in the area of child welfare. This year's conference was held in September in Wisconsin Dells and attracted over 550 participants from throughout Wisconsin. The *Conference on Child Welfare and the Courts: Working Together to Effectuate Timely Permanence* seems particularly relevant, given the work of the Task Force.

Our interest in this subject matter runs deep, so we greatly appreciate the opportunity to submit comments on each of the bills. These comments are not intended to be an exhaustive list. But we hope the questions, concerns and suggestions are helpful to the committee as it deliberates. We have also attached flow charts of the CHIPS and TPR processes, for your information; we had provided those to the Task Force in August.

2019 SB 232: Termination of Parental Rights, Rights of Alleged Fathers, and Adoption Payments (All comments refer to the provisions of Senate Substitute Amendment 1.)

- Sections 2 and 20: These sections provide that a person who is eligible to but has failed to file a declaration of paternal interest is deemed to have irrevocably consented to termination of parental rights/adoption. There are three exceptions listed: person subject to a paternity action or motion that has been filed and not yet resolved, person acknowledged as the child's father under a voluntary acknowledgment of paternity, or person who meets the conditions set forth in s. 48.423(2).
    - The Committee may want to consider adding the circumstances under s. 48.299(6)(e)4. as an additional exception. Under that subsection, the court has determined that the person is the child's biological parent for purposes of a child in need of protection or services (CHIPS) proceeding after genetic testing.
- Section 4: In order to be consistent with the wording of the other abandonment grounds in s. 48.415(1), as well as the definition of substantial parental relationship in the failure to assume parental responsibility ground in s. 48.415(6), the Committee may want to change the term "care and support" to "care or support."
- Section 8: Under the bill, only alleged fathers who have filed a declaration of paternal interest are entitled to actual notice of a termination of parental rights (TPR) proceeding.
    - In an effort to be consistent with the exceptions provided in Sections 2 and 20, should a person subject to a paternity action or motion that has been filed and not yet resolved and a person acknowledged as the child's father under a voluntary acknowledgment of paternity be included in the list of individuals who are entitled to be summoned?
    - The Committee may want to consider adding a person who has been determined to be the child's biological parent for purposes of a child in need of protection or services (CHIPS) proceeding after genetic testing pursuant to s. 48.299(6)(e)4. It is not clear whether these individuals would be entitled to notice under the existing "parent" category as s. 48.299(6)(e)5. states that the determination in the CHIPS case is not considered an adjudication of paternity.

- The bill would combine the fact-finding and dispositional hearings in TPR cases, which may be problematic in situations where a jury trial is requested. If the jury hears evidence related to the dispositional factors and best interests, it may result in confusion of the issues and unfair prejudice when making determinations related to the grounds.
- There may be due process/equal protection issues with the provisions that deny alleged fathers the right to receive notice of the TPR proceeding and that permit termination of their parental rights without an opportunity to demonstrate fitness, particularly those alleged fathers who have lived in a familial relationship with the child. See *Stanley v. Illinois*, 405 U.S. 645 (1972), which held that: (1) due process requires an individualized determination of parental unfitness; unmarried father could not be presumed to be an unfit father and was entitled to a hearing prior to removal and (2) the State's treatment of unmarried fathers violated the Equal Protection Clause.

2019 SB 531: Copy of Permanency Plan and Comments to Foster Parent and Child
(All comments refer to the provisions of Senate Amendment 1).

- Was it the intention to only provide a copy of the permanency plan to foster parents in CHIPS cases only and exclude JIPS and delinquency cases? If yes, it is fine as written. If no, similar provisions should be added to Chapter 938.
- Sections 2 and 5: How is "foster parent" and "foster home" intended to be defined for purposes of this bill? Under the current definition of "foster home" in s. 48.02(6), it would include relative placements that are licensed but exclude non-licensed relative placements.
- In an effort to ensure that the information contained in the permanency plans is not re-disclosed to another individual, the committee may want to consider adding a penalty for using or disclosing the information in violation of the statutes. For example, see s. 48.396(3)(d).

2019 SB 532: Rights of Foster Parents & Relative Caregivers

- Sections 1 and 15: By removing "relevant to the subject matter of a proceeding" from ss. 48.293(2) and 938.293(2), it may allow individuals listed in this section to receive access to records that are outside the scope of the proceeding or hearing.
- Sections 6, 9, 11, 13, and 19: The bill needs clarification on the foster parent's and caregiver's "right to be represented by counsel".
    - Sec. 48.23(3) currently allows the court to appoint counsel for any "party" in the case. By making the foster parent/caregiver a party under the bill, the court would have the discretion to appoint counsel for the foster parent/relative caregiver at its discretion. By also stating that the foster parent/caregiver has the right to be "represented by counsel" in these sections, the bill goes further than this by implying that the court would be required to appoint at county expense. This would require counties to incur additional costs and affords foster parents with a higher level of protection than biological parents.
    - Language should be included to indicate that this right can be waived.

- In an effort to ensure that the information contained in the records is not re-disclosed to another individual, the committee may want to consider adding a penalty provision for using or disclosing the information in violation of the statutes. For example, see s. 48.396(3)(d).
- This bill may result in additional contested change in placement hearings and motions to the court (e.g., requests for discovery, examinations, and counsel), which would impact judicial workload.

2019 SB 533: Expanding Adoption Assistance

- No comments.

2019 SB 534: Post-TPR Contact Agreements

- No comments.

2019 SB 548: Restrictions on Relative Preference

- Some of the provisions of the bill appear to conflict with federal law and policies that promote placement, involvement, and connections with relatives. Specifically:
    - The bill directly conflicts with the placement preferences assigned in cases subject to the Indian Child Welfare Act (ICWA). Therefore, an exception should be provided for those cases.
    - The federal Children's Bureau assesses states' conformity with federal child welfare requirements through the Child and Family Services Review (CFSR) process. One of the items assessed as part of the review is Permanency Outcome 2, Item 10: Relative Placement to "determine whether, during the period under review, concerted efforts were made to place the child with relatives when appropriate" and Permanency Outcome 1, Item 9: Preserving Connections, which includes extended family.
    - The Title IV-E funding requirements include that the State Plan for Foster Care and Adoption Assistance shall provide that the state "shall consider giving preference to an adult relative over a non-related caregiver when determining a placement for a child, provided that the relative caregiver meets all relevant State child protection standards." See 42 U.S. Code s. 671(a)(19).
- Pursuant to Fostering Connections to Success and Increasing Adoptions Act of 2008, the Committee may want to consider including language in ss. 48.21(5)(e)2. and 938.21(5)(e)2. that would require the notice to relatives to contain an explanation of the consequences for failing to respond within the 4-month time period.

Thank you for your attention and for allowing us to testify. If you have questions, please do not hesitate to contact our Legislative Liaison, Nancy Rottier. Thank you.

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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: Jeff Pertl, Deputy Secretary
Nadya Perez-Reyes, Legislative Advisor
Danielle Karnopp, Chief, Adoptions and Interstate Services Section

DATE: December 4, 2019

SUBJECT: 2019 Senate Bills 232, 521, 531, 532, 533, 534, and 548

Thank you for the opportunity to provide testimony on Senate Bills 232, 521, 531, 532, 533, 534, and 548.

The Department of Children and Families (DCF) recognizes and expresses appreciation for the dedication of legislators to issue affecting Wisconsin children and families.

These bills, all related to adoption, touch one of the most fundamental rights we have – the right to parent. These bills address complex legal and programmatic issues with profound consequences to a range of children, families, and stakeholders. DCF was pleased to participate in the Speaker's Task Force on Adoption and is pleased to continue engaging with the Committee, legislators, and stakeholders about these bills or other modifications for the purpose of collaboratively developing bills that support the children, families and communities in our state to thrive.

The Department of Children and Families 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 following key principles. These principles are also embodied in the new federal child welfare law, the Family First Prevention Services Act, which Wisconsin must implement by October 2021:

- **Prevention:** Child welfare increasingly focuses on prevention efforts and keeping children in their homes when possible.

- **Reunification:** The primary goal is to reunify a child with his/her birth family whenever it is safe to do so.
- **Permanence**: The child welfare system aims to transition children in out-of-home care (OHC) safely and quickly back with their family, whenever possible, or to another permanent home.
- **Relatives:** As familiar, caring adults relatives play an important part in children's lives as caregivers or ongoing supports and should be used as out-of-home placements whenever possible.

It is through the lens of these principles that the Department reviewed the seven bills before the Committee today.

Child Welfare System and Placement

Most adoptions are public adoptions and are affected by the processes, policies, and requirements of the child welfare system.

- The child welfare system seeks to maintain a child safely at home, whenever possible.
- When a child cannot remain safely at home, the child welfare system seeks to place a child temporarily in a safe, stable, and supportive out-of-home care setting subject to the review and approval of the court.
- When an out-of-home care setting is needed, the child welfare system seeks to place a child with a relative, rather than a foster parent, to maintain the child's connection to his/her family and culture and minimize the trauma experienced by the child by being removed from the home.
- The child welfare system seeks to achieve a permanent home for children in out-of-home care as expeditiously as possible through reunification with the child's birth parents, whenever possible; or a guardianship with a relative or other eligible adult or through adoption when reunification is not possible.
- To achieve permanency through adoption, the birth parent rights must be terminated through a court process following steps established in statute.

Types of Adoptions

The seven bills under consideration today relate to adoption. As context for these bills, following is some basic background information on adoption in Wisconsin. In 2018, there were 941 adoptions finalized in Wisconsin, broadly defined in three ways:

(1) **public adoptions**, which involves adoption from the child welfare system and made up 79% (748) of 2018 adoptions;

(2) **private adoptions**, which involves a non-child welfare child and are handled by a private child placing agency and made up 16% (146) of 2018 adoptions; and

(3) **international adoptions**, which are also handled by a private child placing agency and can be finalized either in the United States or the foreign country and made up 5% (47) of 2018 adoptions.

DCF Engagement and Outreach

In summer and fall 2019, the Department of Children and Families testified at three hearings before the Speaker's Task Force on Adoption, providing information about adoptions in Wisconsin, the child welfare system and experiences of case workers in Milwaukee County, and legislative proposals to support Wisconsin's children, youth, and families.

On October 29, DCF testified before the Assembly Committee on Family Law on the bill companions to SB 531, 532, 533, 535, and 548, which were bills introduced from the Speaker's Task Force on Adoption. The Department testified in opposition to SB 531, SB532, SB535, and SB548 and in support of SB 533. On November 13, before the Assembly Committee on Children and Families, DCF testified in opposition to the bill companion to SB 232.

Since those hearings, the Department has undertaken further analysis of the bills and engaged in wider-ranging discussions with legislators and stakeholders to explore ways to modify the proposed bills to address stakeholder concerns and achieve their intended purposes in ways that align with the guiding principles of our child welfare system.

For most of these bills, additional time and work is needed to fully address the myriad of issues raised. These bills address complex legal and programmatic issues with profound consequences to a range of children, families, and stakeholders. Fundamental issues impacted by these bills include confidentiality and privacy protections, right to counsel, racial and socioeconomic disparities, due process rights, and tribal rights, identity, and community. Due to

the complexity and range of issues and stakeholders involved, many of the strategies and modifications explored so far still present unintended consequences and/or create additional undesirable ramifications.

The purpose of our testimony today is to bring to the attention of legislators the *implications of the bills as drafted and of possible modifications* to the bills. The Department is pleased to engage with the Committee and others in further discussions on possible modifications to achieve the goal of developing statutory changes that balance the interests of all stakeholders and avoid unintended adverse consequences and strengthen the lives and outcomes for Wisconsin's children, family, and communities.

Today, the Department of Children and Families (DCF) is testifying:

1. **In support of SB 533;**
2. **In opposition to SB 532 and 548; and**
3. **DCF is already on record in opposition to SB 232, 521, 531, and 534 as drafted, but will testify for information to share the ongoing discussions with legislators and stakeholders on these bills.**

IN SUPPORT

SB 533

The Department supports SB 533, which expands eligibility for Adoption Assistance. Adoption Assistance is an important tool that helps adoptive parents access the services and supports to meet their child's needs by providing Medicaid eligibility to the adoptive child and monthly payments to the adoptive parents. Wisconsin's current eligibility for Adoption Assistance is more restrictive than many other states. Funding, as outlined in the fiscal estimate submitted, is needed to support the expansion of Adoption Assistance eligibility as directed in the bill.

FOR INFORMATION (Oppose as drafted)

SB 232

The Department is testifying for information on SB 232, which has several components.

Termination of Parental Rights (TPR) Jury Trial: SB 232 eliminates the right to a TPR jury trial. The right to parent is one of the most treasured and fundamental rights. It is the Department's view that birth parents should have all possible legal protections before the decision to terminate

parental rights is made. *We support the parts of Assembly Substitute Amendment 1 that delete the provision in SB 232 that eliminates a TPR jury trial.*

Out-of-Court Affidavit for Voluntary TPR: SB 232 allows a parent to submit an affidavit of a disclaimer to their parental rights without appearing in court to terminate their parental rights.

The Department supports the concept of establishing an avenue to voluntarily terminate parental rights that avoids imposing on a parent the possible trauma of appearing in court; however, the proposed process would need to be amended to:

- Provide appropriate time for birth parents to fully consider the consequences of terminating their parental rights;
- Minimize the opportunity for (intentional and unintentional) coercion, fraud or duress, as well as identifying parties who may serve as witnesses; and
- Modify the provision allowing the invalidation of an affidavit within 6 months (if exceptions do not apply) to remedy potential timeline conflicts between the affidavit window and adoption finalization.

The Department is happy to engage further with legislators and stakeholders on how to appropriately align the timelines.

Combining fact-finding and dispositional hearing in a TPR Case: SB 232 allows the fact-finding and dispositional hearings in a TPR case to be combined. The Department explored this provision with legislators and stakeholders. *However, even with potential medications, stakeholders continued concerns about due process, state and federal Indian Child Welfare Act (ICWA) and technical issues on statutory considerations for factfinders in TPR cases.*

It is important to note that these provisions, if enacted into law, will expand the ramifications of any legislative proposal that allows the initiation of a TPR as part of a CHIPS case, because many birth parents are not represented by legal counsel in CHIPS cases. This issue would likely need to be address in the state budget process to extend representation to all birth parents and provide the necessary funding for public defenders.

Payments to Out-of-State Child Placing Agencies: SB 232 clarifies that it is permissible to make payments to an out-of-state private child placing agency for private adoptions. Substitute Amendment 1 to AB 263 requires that the child placing agency be licensed in the state in which it operates. *While the Department supports the concept of simplifying the private adoption process by permitting the use of out-of-state payments. There are concerns related to ICWA compliance around the identification of Indian children, notice to tribes and placement preferences with out-of-state child placing agencies involving adoptions of Indian children.*

Abandonment Grounds: SB 232 revises abandonment grounds for TPR to include failure without reasonable cause to provide care and support for a mother during pregnancy or failure without reasonable cause to pay child support. Current law already allows a court to consider whether a parent has "neglected or refused to provide care or support for a child" or whether a person who is or may be the father of the child has expressed an interest or concern for the care and support of the mother during pregnancy as a basis to terminate parental rights for failure to assume parental responsibility.

The proposed changes in SB232 impact the rights of fathers by making the failure to provide care and support for a mother during pregnancy or failure to pay child support, without reasonable cause, a ground for termination of parental rights on its own. This provision likely will have a disproportionate effect on parents living in poverty, tribal families and families of color. For example, some families may provide in-kind/non-monetary support to a child or family such as diapers and tribal families may provide wood or hunt wild game.

Additionally, key provisions are not defined, nor is the Department granted rule-making authority. What constitutes "reasonable cause" for failure to pay child support or whether failure to make a single child support payment is grounds for TPR need to be addressed.

Finally, the Department anticipates appeals related to the provisions in this ground, which will result in delays in permanency for children. *For these reasons, the Department proposes the Committee consider deleting these provisions from the bill.*

Notice to Fathers: SB 232 lessens notice requirements to potential fathers in termination of parental rights proceeding, which will limit the rights of fathers to their children, especially to fathers of children over one year of age. Under current law alleged and presumed fathers and fathers who have filed a declaration of paternal interest are entitled to notice of TPR

proceedings. The bill specifies that except in certain circumstances, the failure to submit a declaration of paternal interest deems the father to have irrevocably consented to the termination of parental rights, even if he was unaware at the time that he was the father.

This provision could impede ICWA, if a father no longer receives notice, and a identification of an Indian child, depriving tribal nations and Indian children of their rights and severing the connections between an Indian child and their tribal community and culture. The right to parent one's child is a fundamental and treasured right; it should be taken away only after all protections have been accorded to the parent. This new provision to eliminate notices to alleged fathers does not afford protections to the parent. *For these reasons, the Department proposes the Committee consider deleting these provisions from the bill.*

SB 521

SB 521 allows adult adoptees access to a Record of Adoption from the Department of Health Services (DHS) which includes the disclosure of the identity of the birth mother who placed a child for adoption, upon request of the adult adoptee. Wisconsin has embraced, as a long-standing value, balancing the interests of an adult adoptee in knowing his/her biological background for medical, social, cultural, and emotional reasons, with the right to privacy for a birth parent.

Under current law, an adult adoptee can request from DCF the identity of a birth parent; DCF discloses the identity to the adult adoptee only if the birth parent consents or the birth parents are deceased. SB 521 allows DHS to release the Record of Adoption, which includes the disclosure of the identity of a birth mother who placed a child for adoption, upon request of the adult adoptee, including birth mothers who have chosen and been assured confidentiality under current law.

In effect, the bill rescinds the confidentiality protection that was extended to birth mothers at the time the mother placed her child for adoption. These birth mothers are likely to have progressed to different stages of their lives; exposing their past decision may be distressing and disruptive to their current relationships with family members, friends, faith community and/or careers. In addition, the bill creates a complicated process for adoptees in that some adoption information would be available through DHS and other adoption information available through DCF. *For these reasons, the Department encourages the Committee to consider including in the bill*

measures that respect and maintain the privacy rights of birth mothers under current law; for example, by exempting from the bill's provisions records involving birth mothers who have not consented to disclosure under current law. The bill also needs to clarify that requirements related to Indian children in s. 48.028(9) and 2016 Federal Regulation reference is 25 C.F.R. §23.138 continue to hold.

SB 531

SB 531 requires that a child welfare permanency plan be provided to foster parents and foster children 12 years and older. By statute and administrative rule, foster parents already receive information necessary for the care of the child.

SB 531 raises concerns because a permanency plan is a comprehensive document that includes confidential and sensitive information about the birth parent(s) and relatives that is not needed for a foster parent to care for the child and either could be traumatic for a youth to learn or may harm family relationships if released to relative foster parents. To the extent that certain information in the permanency plan is protected by state and federal confidentiality statutes, child welfare workers will incur increased workload to complete the appropriate redactions in each permanency plan. Some sensitive information, such as domestic abuse experiences not reported to law enforcement, is not statutorily protected as confidential.

Modifying the bill to make the transmission of the plan to foster parents discretionary helps address the workload concern; however, the concern regarding sensitive information related to birth parents and relatives remains and needs to be addressed. Additionally, if this proposal moves forward, it should treat non-licensed relative caregivers in the same manner as foster parents to extend equitable treatment to foster and relative caregivers.

SB 534

SB 534 establishes a legally-enforceable post-adoption agreement. The Department supports the concept of "open adoptions" when it is safe and freely supported by both the birth and adoptive parents. *However, the Department views that a legally-enforceable post-adoption agreement imposes an unreasonable burden on the adoptive parents, particularly if the adoptive parent seeks changes in the agreement due to a change in the adoptive family's or birth family's circumstances or the child's needs.* The adoptive parent may need to initiate court action to

secure a change in the agreement, imposing time, cost, and effort on the adoptive parent, and delaying needed changes.

The bill treats adoptive parents differently than all other parents by limiting the adoptive parents' authority to make decisions about how and with whom their children spend time. Many different approaches to post-adoption agreements, including legally and non-legally enforceable approaches, are in place across states. The Department is evaluating using a *non-legally* binding post-adoption contact agreement, providing a model voluntary post-adoption agreement, and expanding required training on post-adoption agreements for pre-adoptive parents, and how stakeholder concerns about fraud, coercion and duress can be addressed.

IN OPPOSITION

The Department opposes SB 532 and SB 548. In general, these bills run counter to the principle of supporting and strengthening birth families so that they can safely maintain or reunify with their children whenever possible and the principle of engaging relatives as caregivers and supports in a child's life. Our comments seek to bring to the attention of the Committee the broader ramifications of the bill so that the Committee can consider the impact on all affected parties and stakeholders as it develops statutory changes in this policy area.

SB 532

SB 532 establishes foster parents and group homes as parties in change of placement proceedings. Foster parents already have the right to receive notice of a change of placement, request a hearing regarding a change of placement, and to provide information and be heard by the judge at a change of placement hearing. The Department recognizes and values foster parents for their critical role in opening their homes and hearts to care for children. However, giving foster parents party status is problematic for a number of reasons, as detailed below.

(1) Change of placements are often initiated by the child welfare agency due to concerns related to the safety and/or child functioning in the foster home. It is not reasonable or appropriate to require the child welfare agency to enter into litigation with a foster family when a child needs to move to a home that is safe or can adequately meet the child's needs. Granting foster parents party status opens the door to increased adversarial litigation, which lengthens the time to permanency for a child. Children's interests already have an independent voice in court through their guardians ad litem, who are

attorneys appointed to the case to gather relevant information from an array of sources, make independent and objective recommendations to the court, and to represent the child's best interest and/or adversary counsel for older youth who represent the child's expressed wishes. Further, the judge is the most appropriate individual to determine the scope of access to the judicial process, and under current law judges already allow greater participation by foster parents if it does not delay the process and is in the child's best interest.

(2) The bill provides foster parents the right to be represented by counsel. Because not all birth parents are currently represented by counsel in change of placement proceedings, the bill places birth parents at a disadvantage in cases where a foster parent is represented by counsel and could result in a court receiving uneven information from the parties about placement decisions.

(3) The bill recognizes a group homeowner as being party to a case, similar to foster parents. Group homes are congregate care facilities and independent businesses. It is a conflict of interest for a business owner, who generates revenue by continued placement of a child in the facility, to be provided legal standing to advocate against a change of placement which the child welfare agency recommends in the child's best interest.

(4) The bill allows for the automatic release of private medical and mental health records to all parties, regardless of their relevance to the proceeding. It is important to maintain confidentiality in child welfare cases because families struggle with extremely sensitive issues. There is no basis to give foster parents this level of access to information, and it is contrary to privacy rights and the child's welfare. Current law already requires a process that provides foster parents with information pertaining to the child's needs and caring for the child. The judge is the most appropriate individual to determine access to other classified information, and under current law may release additional information to foster parents when appropriate.

SB 548

SB 548 modifies the law regarding placement with relatives, including limiting the time a relative has to request placement. Consistent with federal law and state policy, including policy under the principles embodied in the new federal Family First Prevention Services Act, when a child cannot remain safely at home, the child welfare system seeks to place the child with a relative, whenever possible, rather than an unfamiliar foster parent. For children, the best outcome is to

be placed with a relative to preserve family connections and minimize the trauma of being removed from their home. There are valid reasons why it may take time for a relative to decide to take placement. Considerations include the time needed by child welfare workers to contact and discuss placements with multiple relatives who may be interested and capable. Further, complex family dynamics must be considered, and potential relative caregivers may view that initial placement with the relative is not supportive of the birth parents' reunification efforts.

Additionally, this bill appears to conflict with federal funding requirements that require child welfare agencies and courts to consider giving preference to a relative over a non-related caregiver when determining a child's placement. It also appears to conflict with the state WICWA and federal ICWA requirements that require child welfare agencies and the courts to follow tribal preferences for out-of-home placements, which place priority on placement with relatives.

Conclusion

Thank you for the opportunity to testify on these bills. As highlighted in our testimony, these bills address important and complex legal and programmatic issues with significant consequences to a range of children, families, and stakeholders. The Department is pleased to engage with the Committee and others in further discussions about these or other modifications for the purpose of collaboratively developing bills that support the children, families and communities in our state to thrive. We are pleased to respond to any questions.

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Governor Tony Evers
Secretary Emilie Amundson

Secretary's Office

TO: Chair Snyder and Members of the Assembly Committee on Children and Families

FROM: Nadya Pérez-Reyes, Legislative Advisor
Danielle Karnopp, Chief, Adoptions and Interstate Services Section
Rachel Nili, Attorney, Office of Legal Counsel

DATE: November 13, 2019

SUBJECT: 2019 Assembly Bill 263

Thank you for the opportunity to provide testimony on Assembly Bill 263.

The Department of Children and Families 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 following key principles as the Department has highlighted in prior testimony before the Speaker's Task Force on Adoption and Committee on Family Law. These principles are also embodied in the new federal child welfare law, the Family First Prevention Services Act, which Wisconsin must implement by October 2021:

- **Prevention:** Child welfare increasingly focuses on prevention efforts and keeping children in their homes when possible.
- **Reunification:** The primary goal is to reunify a child with his/her birth family whenever it is safe to do so.
- **Permanence**: The child welfare system aims to transition children in out-of-home care (OHC) safely and quickly back with their family, whenever possible, or to another permanent home.
- **Relatives:** As familiar, caring adult relatives play an important part in children's lives as caregivers or ongoing supports and should be used as out-of-home placements whenever possible.

It is through the lens of these principles that the Department reviewed the bill before the Committee today. The Department of Children and Families is testifying in opposition to AB263 and Assembly Substitute Amendment 1.

The Department recognizes and expresses appreciation for the dedication of legislators to issues affecting Wisconsin's children and families. AB263 addresses complex legal, programmatic, and emotional issues that carry significant ramifications for a wide range of individuals. As currently drafted, the bill presents legal, policy, and implementation challenges. Our comments seek to bring to the attention of the Committee the broader ramifications of the bill so that the Committee can consider the impact on all affected parties and stakeholders as it develops statutory changes in this policy area.

AB 263 eliminates the right to a TPR jury trial. The right to parent is one of the most treasured and fundamental rights. It is the Department's view that birth parents should have all possible legal protections before the decision to terminate parental rights is made.

AB 263 allows a parent to submit an affidavit of a disclaimer to their parental rights to a child without appearing in court to terminate their parental rights. The Department supports efforts to create an avenue to voluntarily terminate parental rights that avoids possible trauma of appearing in court, but opposes the bill, as written, for several reasons:

a) Allowing a mother to submit an affidavit of disclaimer as early as 72 hours after the birth of a child does not allow adequate time for a mother or father to receive appropriate counseling and/or legal representation after the birth of their child regarding services that may be available to the mother or father, the consequences of terminating her parental rights, and the effects of an adoption on their child;
b) Under the current language of the bill, an affidavit executed by a mother is irrevocable if executed 72 hours or more after the birth of the child (which is the only time when the mother can submit an affidavit) unless it was obtained by fraud or duress. There is no process specified on how a parent would prove fraud or duress.
c) Current language in the bill allows a parent to bring an action to invalidate an affidavit within 6 months of execution of the affidavit, if exceptions do not apply. Adoptions may be finalized within the 6-month period, which could leave the integrity of the adoption vulnerable.

d) The parent must have two witnesses for the affidavit of disclaimer, but the bill does not define or place parameters on who may be a witness. This would allow for witnesses that may not have the parent's best interest at heart, or may have other incentives or potential for personal gain. This would create the opportunity for coercion of the parent to sign a disclaimer without understanding the consequences;
e) The bill does not describe a process to ensure the parent's understanding of the disclaimer. There are concerns as to:
    a. Whether there is an identified father who must be notified;
    b. Whether the child is an Indian child;
    c. Whether the parent received adequate explanation of services and counseling available to him/her; and
    d. Whether the parent understands the consequences of the disclaimer and subsequent termination of their parental rights; and
f) This bill appears to be targeted for parents of newborns and does not address whether there is an expiration of time for a disclaimer as the child ages. This leaves questions as to its impact on a parent arranging an adoption of an older child. The bill's timeline is based on the birth of the child, which leaves question of whether it applies to adoptive parents of a child.

AB 263 revises abandonment grounds for TPR to include failure without reasonable cause to provide care and support for a mother during pregnancy or failure without reasonable cause to pay child support. Current law already allows a court to consider whether a parent has "neglected or refused to provide care or support for a child" or whether a person who is or may be the father of the child has expressed an interest or concern for the care and support of the mother during pregnancy as a basis to terminate parental rights for failure to assume parental responsibility.

The proposed changes in AB263 impact the rights of fathers by making the failure to provide care and support for a mother during pregnancy or failure to pay child support, without reasonable cause, a ground for termination of parental rights on its own. The Department anticipates the provision will have a disproportionate effect on parents living in poverty. In addition, there are key concepts that are not defined such as what constitutes "reasonable cause" for failure to pay child support or if a failure to pay a single child support payment is

grounds for TPR. The Department anticipates appeals related to the provisions in this ground, which will result in delays in permanency for children.

AB 263 lessens notification requirements to potential fathers in termination of parental rights proceedings significantly, which will limit the rights of fathers to their children, especially to fathers of children over one year of age. The bill specifies that except in certain circumstances, the failure to submit a declaration of paternal interest deems the father to have irrevocably consented to the termination of parental rights, even if he was unaware at the time that he was the father of the child. The right to parent one's child is a fundamental and treasured right; it should be taken away only after all protections have been accorded to the parent. This new provision to eliminate notices to alleged fathers does not afford protections to the parent.

With respect to Assembly Substitute Amendment 1, though a comprehensive review has not been completed with stakeholders, the Department is supportive of the efforts to maintain rights to a jury trial and to offer clarification regarding voluntary termination of parental rights via affidavit before a child's first birthday. DCF is not supportive of the addition of a provision that allows minors to voluntarily terminate their parental rights through submission of an affidavit, in light of DCF's concerns with the provisions related to the affidavit provisions discussed earlier in this testimony. The other provisions of AB263 appear to remain consistent between the bill as drafted and the amendment, except for these changes, therefore the Department opposes the substitute amendment.

Conclusion

Thank you for the opportunity to testify on this bill. The proposed bill and substitute amendment AB263 have potentially adverse consequences for at least some key stakeholders. For these reasons, we view that it is appropriate for any legislation in this area to be developed in a careful manner with sufficient time to allow full and thoughtful consideration to the range of views and impacts and an understanding of the tradeoffs of possible statutory and policy changes. The Department is pleased to engage with legislators and others in further discussion, including exploring possible modifications to the bill. We would be pleased to respond to any questions.

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Protecting Justice for all Since 1977

Kelli S. Thompson
State Public Defender

Jon Padgham
Deputy State Public Defender

Senate Committee on Universities, Technical Colleges, Children and Families
Wednesday, December 4, 2019
Senate Bills 232, 531, 532, 533, 534, 548

Chair Kooyenga and members,

Thank you for the opportunity to testify on this package of bills. My name is Adam Plotkin, Legislative Liaison for the State Public Defender's Office. Joining me is our Legal Counsel, Diane Rondini. Diane has more than 30 years experience practicing juvenile and family law in Wisconsin. A few of the bills raise significant concerns for the practice of law and clients of the State Public Defender's (SPD) office.

The SPD is authorized to provide representation for children who are the subject of a Juvenile in Need of Protection and Services (JIPS), Children in Need of Protection and Services (CHIPS), or who are accused of having committed a delinquent act.

For parents in the family system, we provide representation statewide in Termination of Parental Rights (TPR) proceedings and for parents only in Indian Child Welfare Act (ICWA) cases.

The SPD is just over a year into a pilot program of representing parents in any CHIPS case in 5 counties - Brown, Outagamie, Winnebago, Racine and Kenosha. So far we have made about 1,000 appointments for parents in the pilot program under 2017 Act 253. The goal of providing representation for parents at the CHIPS stage is to increase the chances of success, reduce the number of termination proceedings, and increase the speed and permanency of placement.

Throughout these bills we are concerned about the impact on SPD clients, many of whom come from diverse backgrounds, have mental or cognitive issues, or have a history of trauma. The racial disparities in the criminal justice system extend to the family law area as well. Our concern is that many of the obstacles that lead to overrepresentation of minority groups in the justice system are impacted by changes in this package. Oftentimes it appears that assumptions are made about the type of people involved in the adoption and foster care system. Many of the children who are removed from the home are older children of color who have a history of trauma and mental health or developmental issues.

Senate Bill 232

In bills such as SB 232 and others that have been introduced recently, it appears that there is an assumption that decreasing the time from petition filing to permanency is what meets the statutory benchmark of "best interests of the child." It is often our experience that speed leads to instability in placement which means the overall process will take longer to reach a final permanency.

We do want to note and thank the author of the bill for the change in the amendment removing the provision eliminating the right to a trial by jury in a termination of parental rights (TPR) case. As we've

noted in previous testimony to several legislative committees, there is empirical evidence that shows a jury trial does not delay TPR cases and is a vital element in a TPR, a type of case that courts have likened to the "civil death penalty."

There are four main topics of the bill that we want to address.

Termination of Parental Rights Hearings

The bill as amended combines the fact-finding and dispositional hearing for a TPR proceeding. Our concern is that combining these two proceedings confuses the separate findings made during the grounds phase of the case and the disposition in the best interests of the child. Most importantly combining these two proceedings makes it more difficult to find alternatives to termination.

Not providing representation for parents in CHIPS cases also makes implementation of a policy like this significantly more difficult and problematic. Outside of the five pilot counties, because SPD attorneys aren't involved with the parent at the CHIPS stage, there are often significant delays and tremendous amounts of discovery material to gather and review. What the attorney is looking for out of that material is significantly different for the grounds phase versus disposition.
Combining the two phases and getting all the material for the first time when the TPR petition is filed will lead to increased delays as attorneys will need more time to prepare for a hearing where the end result is a combination of outcomes. Combining the material would also confuse the trier of fact as they hear what might be important in one phase of the TPR trial, but may not be important or even relevant in the other phase.

Disclaimer of Parental Rights

Given the stakes involved in terminating parental rights, ensuring due process is important when considering a concept like disclaimer of parental rights. We do not allow a person to plead guilty to a misdemeanor without appearing before a judge and, given the stakes in a TPR proceeding, should not require anything less for this process. There can be conflicts of interest between the attorney representing the other parent or the adoption agency that may not be readily apparent to the individual, or, in the worst case hypothetical, coercion into signing the document that a personal appearance in court would address. At the least it would be advisable to allow for the appointment of counsel and a court appearance to ensure voluntariness.

Grounds for Termination of Parental Rights

The changes to the definition of substantial parental relationship under the failure to assume parental responsibility grounds and the changes to the abandonment grounds raise a number of potential issues.

First, the reality is that sometimes fathers don't know that they are a parent until later in the process and through no fault of their own. The Bobby G. case, 2007 WI 77, is a good example of a father who continued to seek out the mother after an initial encounter to no avail. In addition, when more than one father is named, men may rely on what might end up being inaccurate information on their status as the father. A pregnant woman may rebuff help or services based upon who she believes to be the father.

Other case law relates to the ability of a mother to refuse the help of the father. Mary EB v. Cecil M., 2014AP160. That case law and the language in SB 232 will have to be synchronized, likely through litigation.

Second, the statute as drafted includes the phrase "reasonable cause" related to payment of child support. As this is a term of art, it is likely that litigation will be required to figure out how reasonable cause interrelates to the portion of the statute that says that CHIPS petitions should only be filed for reasons other than poverty. An individual experiencing poverty or with a mental illness, cognitive difficulties, or with a history of trauma can be a good parent.

Finally, several years ago the legislature made changes to the failure to assume parental responsibility to account for how long the parent failed to assume responsibility. The words of that statute and the intent of the legislature seemed clear at the time but a subsequent court decision, Tammy W-G v. Jacob T. 2011 WI 30, changed the time factor to allow for any amount of time to meet the standard of failure to assume which greatly expanded the bill author's original intent. The outcome of that legislation and subsequent court decision could be instructive in considering the unintended consequences of this legislation.

Rights of an Alleged Father

This is another example of the Bobby G. scenario where a father is either unaware of or tries to be supportive both pre- and post-natal. As has come up in previous Task Force hearings on this issue, very few people are aware of the parental registry or have a compelling interest to report their sexual activity to the government. Not allowing a potential father to participate in a termination proceeding will increase the chances of future litigation on their right to notification, and eliminate the ability to consider not only the father but the father's extended family for placement and support of the child.

Senate Bill 531 (providing foster parents with a copy of a permanency plan)

The concept behind SB 531 could be useful. As drafted, and in conjunction with SB 532, questions such as how the information can be used and the re-release of information become a factor. SB 531 would be very concerning if the permanency plan were to be included in the court record that is available to the public.

Senate Bill 532 (the rights of a foster parent or other physical custodian of a child on removal of the child from the person's home)

One of the stated goals of the Adoption Task Force was to focus on a shortened timeline for adoptions. SB 532 will significantly increase the time that a child is in temporary, out-of-home custody by providing party status and the right to representation by counsel for foster parents.

Foster parents input on placement is already a statutory right under s. 48.357. Also, the children's best interests are represented by a court appointed Guardian Ad Litem. With the exception of the Act 253 pilot representation counties and a handful of counties which appoint counsel at county expense for parents in a CHIPS proceeding, those parents, particularly if they are indigent, are not often represented. If foster parents of means become a party and are able to

hire private counsel, biological parents who still have a constitutional right to their children will be put at a significant disadvantage.

Case law on the subject also has made clear that third parties should not be given equal status to parents in CHIPS cases. Both *Troxel v. Granville* (530 U.S. 57 (2000) and *Barstad v. Frazier* (118 Wis. 2d 549 (1984) are unambiguous on this point.

This change will increase the number and complexity of hearings as it adds additional parties and attorneys. And because court appointment of counsel and access to experts is paid at county expense, the financial burden for that portion of SB 532 falls squarely on the shoulders of Wisconsin's counties.

It is also worth noting that the deleted language on page 12, line 5 would expand access to any record for the GAL or counsel to review, not just those deemed relevant to the case. This could mean access to all manner of records that may not have been intended under the draft.

Senate Bill 533 (eligibility for adoption assistance)

SB 533 could help ensure that adoptive parents have a more appropriate level of financial assistance to better support a permanent placement.

Senate Bill 534 (postadoption contact agreements)

SB 534 is a step towards open adoptions but raises concerns about meaningful access particularly for SPD clients. Section 4 of the bill deals with future enforceability of the provisions in the contact agreement. Unfortunately it requires mediation or arbitration the costs of which are split by the birth and adoptive parents. For indigent individuals, this may put enforceability beyond their access which means the contact agreement is not meaningful if the terms can be violated without consequence.

There are also questions about workload and future representation in modification or enforcement proceedings. It is unclear whether SPD would be allowed or required to provide representation for a proceeding that may be occurring months or years after the initial representation.

Finally, the bill does not make clear the status of the postadoption contact agreement if the adoption is disrupted.

Senate Bill 548 (placement of a child with a relative under the Children's Code or the Juvenile Justice Code)

Often placing a child with a relative prevents a TPR by allowing permanency to be found more quickly through guardianship. When considering trauma informed care and known indicators of trauma, relative placement should be left open as an option and be easy to consider throughout the life of the case to reduce identity issues later as preteens or adolescents. Often foster care placements disrupt and having a ready and able relative as a placement option becomes important.

On page 3, line 6 of the bill, changing the language from placement with a relative "whenever possible" to "if it is in the best interest of the child" is the key change and represents a substantial culture change in out-of-home placement during the CHIPS proceeding.

In fact, SB 548 may be contrary to national trends that favor relative placement (Fostering Connections to Success and Increasing Adoptions Act 2008). If one of the goals of this bill and the package in general is to increase permanence, this bill has the potential to go the opposite direction.

Thank you again for the opportunity to testify. Ultimately, the SPD and the other system actors you will hear from today want a very complicated system to work in the best interests of children but in a way that must balance the rights of parents to retain custody of their children. Balancing the constitutional rights of a birth parent with the desire to achieve permanency is a difficult balance. Ultimately, achieving permanency, whether through reunification or adoption, is everyone's goal. That goal is best served by ensuring that due process is guaranteed and that what at first appears permanent is in fact permanent.

Submitted by:
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In Support of Assembly Bill 263 and Senate Bill 232

Cody Foss & Jillian Camara-Foss

On December 4th, 2017, our private Wisconsin adoption agency contacted us stating that a pregnant mother was choosing us to adopt her baby. As luck would have it, our daughter was born the next day on December 5th. We met our daughter and her birthmother in the hospital on December 6th, at which point the birthmother decided that she did in fact want us to adopt her baby girl. At this time, we were informed that the biological father was unknown. After leaving the hospital, our adoption agency and the birthmother signed a Voluntary Placement Agreement and Medical Consent and Authorization forms. On December 8th, we brought our daughter home from the hospital and made the very quick transition into being a family of three.

In the following months, our adoption agency made repeated attempts to determine the identity of the biological father for TPR proceedings. No man came forward to claim biological rights. During this time, the birthmother resumed using illicit substances and was in and out of police custody. It became difficult to reach her as she did not want to go to court for TPR, but stated that she still wanted to proceed with the adoption plan. In February of 2018, our adoption agency was finally able to have a meeting with the birthmother to discuss TPR proceedings and schedule a court date. It was at this meeting the birthmother named an alleged biological father. In the following months, it was proven through DNA that this man was our daughter's biological father. We then learned that the birthmother had known all along who he was but was not truthful about his identity as he had been abusive towards her and is a longtime criminal offender, to include multiple convictions for sexual abuse of children. The birthmother stated that she had informed him of her pregnancy in an attempt to gain money for an abortion, which he refused to give her. He never followed up with her regarding the status of her pregnancy, nor did he contact her around her due date.

In May of 2018, Green Lake County took control over our daughter's case and our adoption agency was pushed aside. We were now considered foster parents, with the permanency goal still being adoption. The court imposed several conditions for the biological father to meet prior to beginning supervised visitations. Despite his failure to meet many of the conditions set forth by the court, on September 6th, 2018, he was granted his first visit with our now nine month old daughter. This visit soon turned into us driving 40 minutes away, two to three times per week, for our daughter to scream and cry at supervised visits with her biological father.

On December 4th, 2018, Green Lake County Family Court decided to proceed with unsupervised weekend visitation and a trial reunification to begin on February 1st, 2019. We were shocked at this decision and absolutely devastated. On the fourth weekend visit, our daughter was returned to us covered in petechiae (burst blood vessels) on her throat and face and with an unexplained bruise on her lower cheek. We took her to the emergency room where an examination was conducted and a CPS report filed with Outagamie County for suspicion of child abuse. As instructed by the emergency room, we followed up by bringing her to her Pediatrician and to the Children's Advocacy Center, both of whom agreed with the suspicion of child abuse during her biological father's unsupervised weekend visit. Despite all of this, Green Lake County screened out the CPS reports and decided to proceed with the trial reunification as planned.

On February 1st, 2019, we awoke and got one last good morning kiss from our now almost fourteen month old daughter. We then fed her breakfast, brushed her teeth, bathed and dressed her. We sat and read her favorite book, one last time. We played on the floor with her favorite toys and shared countless hugs and kisses. The social workers arrived at 10am. They carried her unicorn suitcase and flowered totes filled with clothes, dolls and toys out to their car. Then we brought her outside, told her we how much we love her and placed her in the car seat. She was screaming "mama" and reaching for us as the social worker closed the car door. Her cries for comfort, that we could no longer provide her, will haunt us for the rest of our lives.

Green Lake County told us that a court date and probable jury trial would be scheduled for sometime in May of 2019. Although our lawyer called repeatedly, we never received a notice. Due to an alleged mistake by the clerk of courts, we, our lawyer, and the Guardian ad Litem never received notice and therefore were not in attendance at what was the final court date. The case was officially closed on June 13th, 2019. To add insult to injury, that very same evening, our daughter's biological father was arrested and charged with several misdemeanors and a felony for crimes committed with our little girl in the backseat of his car. As you can imagine, we are in constant fear for her safety.

Although it will never change our story, we are testifying in support of Assembly Bill 263 and Senate Bill 232 in honor of our daughter. If this bill were in place last year, we would likely still have our family together. We sincerely hope that our voices may be able to help enact legislation to prevent a similar situation from happening to any other child and their adoptive family. Thank you for your time in allowing us the opportunity to share our devastating story of disrupted adoption. Please consider these types of situations as you decide on how to vote for the proposed bills.

Respectfully,

Cody Foss

Cody Foss

Jillian Camara-Foss

Jillian Camara-Foss

To Whom It May Concern:

My wife Jill and I attempted to adopted a baby girl in November, 2017. The birth mother chose us to parent her child when she was seven months pregnant. She explained that neither she nor the father was in any position to parent and that she wanted what was best for this child. She had been harassed by the birth father, so much so that she petitioned the court for a restraining order, which was granted.

The birth father made no attempt to offer any support to the birth mother throughout the pregnancy. He was made aware of the adoption plan and on multiple occasions the social service facilitating the adoption attempted to contact him for his input. He refused all correspondence, even rejecting certified mail. Not once did he reach out to ask about the health of the birth mother, and most importantly, the health of the child. (We recognize that he was not allowed to contact the mother due to the restraining order, but he was able to contact her family members, or the social worker).

Our daughter was born on November 1st, 2017. We stayed with her in the hospital and then took her home two days later. The social worker attempted to contact the birth father immediately after birth. He did not reply to her voicemail. We spoke with the attorney working the case, and were told the birth mother would go to court to legally terminate her parental rights and the birth father would be served papers to appear for the same court hearing. If the birth father did not show up to the court hearing, the judge would most likely grant a default judgement against him, automatically terminating his parental rights. The lawyer and social workers told us that they had no reason to believe the birth father would appear in court as he did not make a single attempt to inquire about the child throughout the pregnancy.

Nearly two months after birth, the court date finally came. Wisconsin law states that this court date be approximately 30 days from birth, but there were delays in this as well. By comparison, other states require parental rights to be terminated within 48 hours from birth. This was a big day for us as terminating parental rights is the largest step towards legally completing an adoption. The birth mother appeared in court ready to terminate her rights. Sadly, the birth father decided to appear out of nowhere and came to the hearing

The birth father decided to contest the adoption. My wife and I then met with him to try and explain the benefits of an adoption and to tell him that we would like him to be involved with us in having a relationship with the child. He later refused. The birth mother was adamant that the father would be a danger to the child and therefore went forward with what is called an involuntary termination of parental rights trial. All legal fees associated with this trial are paid for by the adoptive parents, regardless of who the judgement is made in favor for. The birth father was also made aware that if the judgement was in his favor, the birth mother would simply take the child back and he would be required to take her to family court to initiate visits with the child, at which point his child support obligations would begin. There were multiple pre-trial hearings, and on each occasion the birth father appeared without an attorney. State law in Wisconsin states that these matters must be resolved within 45 days of birth, unless the court finds "good cause" for extending past this deadline. Judge Joe Voiland, the judge assigned to this case, apparently ruled that the birth fathers unwillingness to hire an attorney was "good cause". Therefore, this process was extended until the child was nearly six months old.

There are two parts to a termination of parental rights trial. Part one is called the "grounds phase". This determines whether or not the biological parent has done something so negligent or harmful to the child that the court may decide to move forward to part two. In this case, the ground being argued was called "failure to assume parental responsibility". In Wisconsin, if you do not make an attempt to take responsibility for your child, as well as show concern for the health and well being of the mother carrying your child, your parental rights may be terminated.

As our story would indicate, the birth father did neither. In fact, if you read the legal definition of "failure to assume parental responsibility," you would be convinced that it was written to exactly describe this particular case.

The second hearing only takes place if the court finds there are sufficient grounds to move forward. This second hearing examines what is "in the best interest of the child." There are six items that are considered in this best interest phase, and all six items clearly leaned in our favor, and against the birth father.

The trial came and sadly, somehow, the ruling was made in favor of the birth father in the grounds phase. We still have no idea how or why this was. The facts could not have been more clear. We never made it past the grounds phase and therefore we were not even allowed to present the case of what is in the best interest of the child. The birthfather's deposition alone, should have been enough to show he was not what was in the best interest of the child. This was not even allowed to be shown in court because we didn't "make it to part two".

After nearly six months with our daughter, we made plans to return her to her birth mother the next day. That night we read her one last story, and said her bed time prayer one last time. The following morning we packed her belongings to be sent with her. We gave her one last bath, changed her diaper one last time and fed her one more bottle. Then, the social worker came, we put her in a stranger's car seat, said goodbye and watched the car drive off, with our child inside.

This happened in May of 2018. Over the next few months, the birth mother stopped updating us on the child. As of that time, months after the trial, the birth father had still not made a single attempt to initiate visits with the child through the court. He was told in early January 2018 of the steps needed to take in order to visit the child. He refused to offer support and we believe that he does not care about this child. If that isn't "failure to assume parental responsibility", I have no idea what is.

This should not have happened. The judges' incorrect ruling forever removed the child from a comfortable home with two parents in a stable, loving marriage and forced a single mother to parent against her will. This process was set into motion by a spiteful birth father intent on making the birthmothers' life as difficult as possible. This is just one of the examples of a court case in Wisconsin that did not take the child's best interest into mind.

We have talked with multiple social workers who have advised us to try to adopt a child in a different state because the laws in Wisconsin make adoption incredibly difficult. We have paid in excess of $20,000 for our daughter who we will most likely never get to see again. We are currently going through Texas as we can't afford the heartache we have experienced in WI again. 11 out of the 29 families waiting on the adoption agency we are going through in TX are from WI. I think those numbers speak for themselves that adoptive parents who live in WI, are tired of the laws here that are stacked against them.

Sincerely,
Tim and Jill Damrow
Appleton, WI

December 4, 2019
Re: Senate Bill 232

Written Testimony on behalf of Senate Bill 232 from Brian & Addie Teeters, Appleton, Wisconsin

To the distinguished Committee Members:

We are grateful for the opportunity to submit our written testimony today on behalf of Senate Bill 232.

Our story with the Wisconsin adoption system began more than ten years ago, in early 2009. Our desire to adopt in the state of Wisconsin was significant. We had goals of working to support children in our home state, and had the desire for an open adoption with our child's biological family (which has proven to significantly benefit the mental health of adopted children). We worked with a reputable adoption agency in Wisconsin and completed all the necessary education and home study requirements.

Just a few short months after completing the process, we received a call from Milwaukee that would change our lives. A four-day-old infant girl had been born at Children's Hospital of Wisconsin. Her mother had chosen to place her child for adoption, looked through several profiles while in the hospital, and had chosen us to parent her child. If we accepted the case we could bring the baby home the very next day. We of course leapt at the opportunity, and the next day we brought home our first child, our amazing little girl.

Just more than thirty days after she was placed with us, our daughter's first mother was scheduled to appear in court to terminate her parental rights. Our daughter was the result of a sexual assault, and the birth father was not present. Our daughter's first mother was still very traumatized by the assault, and while she began the court hearing and the appropriate process, became very stressed by the courtroom environment and the judge made the determination to postpone the hearing, for an additional thirty days. Then after 60 days, our daughter's first mother was still not prepared to complete the hearing process, and again, court was postponed. The third and final hearing took place as our daughter was turning three months old. At this hearing, her first mother exclaimed that she wanted to give it a try. Therefore, after three months of parenting our child, we lost her the very next day following the third and final court hearing.

We were devastated and as a result, transferred our file to the state of Texas, and had a successful adoption with our son, and saw a process in the state of Texas that fostered such respect towards birth parents that it helped in-turn foster a beautiful open adoption with our son's first family to this very day.

Our key learnings and request for consideration include:

1. Allowing birth parents the option to terminate parental rights outside of the courtroom and in a shorter period of time. We are not treating Wisconsin's first parents with the respect they deserve. Allowing this alternative is providing first parents with the options they deserve.
2. Helping to strengthen Wisconsin's adoption process so more prospective adoptive parents stay in-state to adopt children, therefore creating more open adoptions between birth parents and children.

Ultimately we are hopeful that enacting this legislation will support the full adoption triad of adopted child, birth parent, and adoptive parents and foster more successful relationships and adoptions in the State of Wisconsin in the future.

Thank you for your consideration.

MENOMINEE INDIAN TRIBE OF WISCONSIN

P.O. Box 910
Keshena, WI 54135-0910

To: Senator Dale Kooyenga, Chair
Members of the Wisconsin State Senate Committee on Universities, Technical Colleges, Children and Families

From: Douglas Cox, Chairman, Menominee Nation

Date: December 4, 2019

Re: Wisconsin State Senate Public Hearing Committee on Universities, Technical Colleges, Children and Families – December 4, 2019
Menominee Tribe's Comments on
SB 232 (AB 263)-termination of parental rights, rights of alleged fathers in certain proceedings, and payments allowed in connection with adoption
SB 521 (AB 579)-access by an adult (21+) adoptee to report of adoption from DHS
SB 531 (AB 563)-providing permanency plan to foster parents and children over age 12
SB 532 (AB 562)-rights of foster parent or physical custodian of a child on removal of the child from home
SB 533 (AB 564)-adoption assistance
SB 534 (AB 561)-postadoption contract agreements
SB 548 (AB565)-placement of a child with a relative under the Children's Code and Juvenile Justice Code

Copy of Testimony of Joan Delabreau, Vice Chairwoman, Menominee Tribal Legislature to Wisconsin State Assembly - Public Hearing - Speaker's Task Force on Adoption - University of Wisconsin-Green Bay - July 2, 2019

Testimony of Jeffrey Jazgar, Assistant Tribal Attorney-Child Support, Menominee Indian Tribe – to Wisconsin State Senate Wisconsin State Senate – Public Hearing – Committee on Universities, Technical Colleges, Children and Families – December 4, 2019

Menominee Nation respectfully submits written testimony to the Wisconsin State Senate Committee on Universities, Technical Colleges, Children and Families regarding SB 232-termination of parental rights, rights of alleged fathers in certain proceedings, and payments allowed in connection with adoption; SB 521-access by an adult (21+) adoptee to report of adoption from DHS; SB 531-providing permanency plan to foster parents and children over age 12; SB 532-rights of foster parent or physical custodian of a child on removal of the child from home; SB 533-adoption assistance; SB 534-postadoption contract agreements; SB 548-placement of a child with a relative under the Children's Code and Juvenile Justice Code.

Written testimony provided to Wisconsin State Assembly Public Hearing from the Speaker's Task Force on Adoption on July 2, 2019 is respectfully submitted to the Wisconsin State Senate Committee on Universities, Technical Colleges, Children and Families.

Written testimony regarding Senate Bills 232, 521, 531, 532, 533,534, 548 is respectfully submitted to the Wisconsin State Senate Committee on Universities, Technical Colleges, Children and Families by Jeffrey Jazgar, Assistant Tribal Attorney of the Menominee Indian Tribe.

MENOMINEE INDIAN TRIBE OF WISCONSIN

P.O. Box 910
Keshena, WI 54135-0910

To: Senator Dale Kooyenga, Chair
Members of the Wisconsin State Senate Committee on Universities, Technical Colleges, Children and Families

Date: December 4, 2019

Re: Testimony of Jeffrey Jazgar, Assistant Tribal Attorney-Child Support, Menominee Indian Tribe – to Wisconsin State Senate Wisconsin State Senate – Public Hearing – Committee on Universities, Technical Colleges, Children and Families – December 4, 2019

SB 232 (AB 263)-termination of parental rights, rights of alleged fathers in certain proceedings, and payments allowed in connection with adoption
SB 521 (AB 579)-access by an adult (21+) adoptee to report of adoption from DHS
SB 531 (AB 563)-providing permanency plan to foster parents and children over age 12
SB 532 (AB 562)-rights of foster parent or physical custodian of a child on removal of the child from home
SB 533 (AB 564)-adoption assistance
SB 534 (AB 561)-postadoption contract agreements
SB 548 (AB565)-placement of a child with a relative under the Children's Code and Juvenile Justice Code

Chairperson and members of the Committee. The Menominee Tribe of Wisconsin thanks you for the opportunity to testify regarding the seven proposed bills before this body today.

My name is Jeff Jazgar and I am an attorney for the Menominee Tribe, representing it in all child welfare matters off the Reservation.

The Tribe has submitted written testimony that was eloquently provided by its Vice-Chair, Joan Delabreau in July before the Assembly Speaker's Task Force on Adoption hearing that was held in Green Bay.

Since her testimony, bills have been drafted and the Menominee Tribe would like to take this opportunity to express its concerns as well as offer some possible solutions.

It is the Tribe's belief that everyone in this room is concerned about the length of time it takes to establish permanency for a child. There are multiple committees currently within the system reviewing procedures to highlight the inefficiencies and develop methods to reduce those inefficiencies. The Tribe's concerns with these bills is that it fundamentally changes the goals of Chapter 48, WICWA and ICWA, interferes with the fundamental rights of parents and would inevitably cause litigation that would not reduce the time to permanency.

The Menominee Tribe has a very simplistic view of the system that might be appropriate to provide as the Children's welfare system has become very complicated. The Tribe believes that every child should have a legally identified father. Once that father is legally identified, all rights and responsibilities shall be

MENOMINEE INDIAN TRIBE OF WISCONSIN
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conveyed. Subsequently, both mother and father have a shared responsibility in the safety of the child. If the government has to intervene, the parents shall be provided the opportunity to rectify the safety issues for the return of that child. If the parents fail to exercise that opportunity, the courts may find a permanent placement for that child. While the parents rectify the safety issues, the child shall be placed with a relative if available.

This is a very simplistic approach to the system. However, the number of federal and state programs such as Family First, Fatherhood, seem to all have adopted this philosophy. The bills before this committee seem to undercut that belief.

SB 232- The Menominee Tribe strongly opposes this bill.

1) There is a fundamental right to parent a child and that right should be protected with a jury trial.
2) Combining the fact finding and dispositional hearing is inconsistent with current statutes. The fact finding is based upon grounds for termination regarding the parents.
   The disposition is about the best interest of the child. Blending the matters would be a logistical nightmare.
3) There are no enforcement mechanisms for the protection of Indian children.
4) The additional grounds for termination essentially shift the burden of proof from the government to a parent, mainly a father, to prove that he deserves to parent.

SB 521 & 533- The Menominee Tribe takes no position on these bills at this time.

SB 531 & 532- The Menominee Tribe strongly opposes both these bills.

1) These bills would interfere with the objectives of Chapter 48 which is ultimately reunification.
2) If parents and foster parents have competing interests, it would interfere with Ch. 48.
3) Parents have a fundamental right to parent unless it is determined otherwise.
4) Foster parents are a valuable resource but not an agent of the government within the court system while parents are going through this process

SB 534 – The Menominee Tribe opposes this bill.

1) There is not an equal contractual relation between birth parents and adoptive parents.
2) It could be used as promise for termination by the parents but not enforceable by the birth parents after.

SB 548- The Menominee Tribe opposes this bill.

1) The system does not have the capacity to absorb this timeframe.
2) Placement with a relative shall always be paramount.
3) WICWA provides an ongoing obligation for relative placement, no matter what stage of the process.

MENOMINEE INDIAN TRIBE OF WISCONSIN

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Possible Solutions-

1) Genetic testing when child is born out of wedlock.
2) Eliminate the CHIPS jury trial but maintain TPR jury trial.
3) Eliminate depositions at TPR trial phase unless granted by the court.

In conclusion, The Menominee Tribe fundamentally believes that all efforts shall be exhausted to legally establish the identity of a father. Once that is established, it can be determined if that child is eligible for enrollment and the Tribe may intervene in accordance with intent of ICWA and WICWA.

Thank you for your time and available for questions.

On Behalf of the Menominee Tribe,

Oneida Nation
Oneida Business Committee
PO Box 365 • Oneida, WI 54155-0365
oneida-nsn.gov

ONEIDA

TESTIMONY FOR ADOPTION BILLS BEFORE THE
SENATE COMMITTEE ON
UNIVERSITIES, TECHNICAL COLLEGES, CHILDREN AND FAMILIES

Greeting and Introduction:

Attorney Michelle Gordon, proud member of the Oneida Nation and their lead attorney for Indian Child Welfare and Child Support matters. I am here on behalf of the Oneida Nation to provide testimony regarding the 5 of the proposed adoption related bills.

Today I will be testifying regarding SB 232 (AB 263), SB 531 (AB563), SB 532 (AB 562), SB 534 (AB 561), and SB(548).

Senate Bill 232 as Amended on October 25, 2019: The Oneida Nation is very concerned with the proposal to include language that if a father does not file a declaration of paternal interest, that he irrevocably consents to termination of his parental rights and the rights to any notice of proceedings. In the proposal there is no consideration given as to whether he was even told that a woman he had sexual intercourse with was pregnant or that the child could be his. There is no consideration given if the mother defrauds the potential father. It should be based on whether the person knew of should have known that he was the alleged father. A man should not be considered to have terminated his parental rights if he did not even know he may be the father of the child. This leaves the door open to so many instances of mother's not naming fathers to avoid notice to them.

In addition, it is not a well-known fact that a man can even file a notice of paternal interest. So why would we fault a man who didn't even know filing such a document could protect his parental rights.

Most of all this is potentially harmful to so many children whose father's may want to be involved, take custody or have their family take guardianship or adopt. If they find out too late that they may be the father, their rights are taken away without even so much as a notice.

Lastly, but most importantly, for Indian Tribes this could be detrimental. Many of our children are based on the blood line of their fathers and could be lost because the father is not noticed simply because he didn't file a declaration of paternal interest. However, we believe this is completely against what ICWA stands for and would be a direct violation of both ICWA and WICWA. Any time a child who is enrolled or eligible for enrollment is placed outside of the home, including termination of parental rights and adoption, the appropriate Tribe must be notified and allowed to intervene. Parents are to be noticed via ICWA and WICWA and have the right to counsel. An irrevocable consent to termination of parental rights based on a failure

to file a piece of paper would violate those rights afforded under ICWA and WICWA. If this is still considered, it should include a statement that this also does not apply to Indian children.

The Oneida Nation continues to object to failure to pay child support as a basis to establish abandonment of a child for termination of parental rights. Below is the testimony I provided regarding AB 559 which also proposed to have failure to pay child support as grounds for failure to pay child support.

Failure to pay child support is not always based on a parent shirking their responsibilities as a parent. And clearly this would affect more fathers than anything. Sometimes these fathers are involved in their children's lives and are behind in their support payments. There is unexpected illness or injury or loss of a job that cause them to get behind in their child support payments. That doesn't mean they aren't a good parent or an involved parent. There is no amount placed on this ground, so it could literally be used for someone who is only $100 in arrears on their child support. This gives a lot of deference to the DA or Corp Counsel and with this being very vague, it opens the door for great inconsistency across the State for how this ground is utilized. This should not be a stand-alone for a termination of parental rights.

Lastly, the Oneida Nation objects to the portion of the bill that allows payments to be made to an out-of-state private child placing agency that is licensed in the state in which it operates. This is very concerning for Tribal Nations. We have many experiences with other states and their adoption agencies who do not follow ICWA. These agencies will not be regulated and controlled to ensure compliance. What is the ramification to that agency if they are found not to be following ICWA? This opens the door for too many of our children to be lost to adoption without proper notification as moms will be able to shop and find an agency who chooses not to follow ICWA and not inform the Tribes. We already know this occurs within the State of Utah. It puts Native children at risk.

The original bill eliminates the right to a jury trial. We also disagree with the removal of a jury trial for something as significant as terminating any rights as a parent, and the rights of the child to certain things from the parents such as inheritance. It is a basic freedom and right of ours to be a parent without undue interference, unless of course there is abuse or neglect. And if you want to take that away from a person forever, and take that from a child, then it should be given the highest challenge and that is a right to a jury trial. In this line of work, what we see, is children, even if the parents are not the best, they still want that parent, they still love that parent, because that is mom and dad. TPR is traumatic for everyone involved and should not be done so easily and lightly.

Senate Bill 534: This bill allows for a post adoption contract to be approved by the court for parent/relative contact after adoption. The Oneida Nation agrees with this concept as it is similar to Tribal Customary Adoptions. However, more thought regarding the logistics and process needs to be done and revisions made before going forward. There is concern regarding enforcement of the agreement and the potential for increased litigation when someone may not follow through with the agreement. What if circumstances for the parties have changed and

there needs to be a revision and the parties can't agree. Now the disagreement is headed to a hearing before the court. This will create further time constraints in the court system. And what is the impact on the children if biological parents and adoptive parents are litigating these issues? Therefore, the Oneida Nation agrees with the proposal of the Department of Children and Families, and that is to make it non-legally binding agreement

Senate Bill 532: This bill is particularly troublesome; the proposal to make foster parents and groups homes a party to the CHIPS action. When I interned for my master's in social work degree, I helped to assist in training new foster parents. One of the key points we always made sure they understood, is that becoming a foster parent is temporary; that children will come in and out of your life, but that isn't a bad thing; that they were a temporary safe home while the parents did what they needed to do for the reunification of the family.

While I don't disagree with allowing them to have a voice, which is our current law, they should not rise to the status of party, on an equal playing field with the biological parents, because they are not equal. While foster parents may feel they have a vest interest as they are the one's caring for the child/children.... but that is what they signed up for and understood when doing so it was temporary. They should not now be given the right to participate as a full party to the action. This seems to stack the cards against biological parents.

Tribes are even more concerned as this seems to move towards the foster parents being able to make an argument regarding bonding as a best interests factor. This stand in the face of ICWA and its regulations. There is nothing in the draft bill that states this does not apply to those cases involving Indian children.

When training foster parents we also talk regarding building a rapport with the biological parent, explaining how beneficial it is to the children to see all the adults involved in their decision making getting along. This however has a large risk of creating ill feelings between foster parents and biological parents; it creates the potential for foster parents to not understand their role as temporary but rather to fight to keep the children long-term or permanently, which is no their role. The potential that a foster parent could interfere in some way now with the reunification of the family; well it is detrimental to the children. Children can sense the animosity, they hear conversations and it's just not healthy for the children to live in a litigious world. Instead they should see they temporary home they are living in fostering that child's relationship with their parents.

A foster parent, as defined in Chapter 48 provides care and maintenance for a child. An adoptive parent legally takes another's child and brings it up as one's own. A foster parent is to care for, not be involved in the legalities of the CHIPS case. Providing them with a voice, allowing them to speak as per our current law yes, but to provide them with counsel, the ability to call experts, the ability to have the child tested and examined..no. Why are making this more difficult for the child? This will make cases much more litigious and potentially causing more trauma to all involved, especially the child.

Assembly Bill 531: This bill allows for foster parents and children over 12 to receive a copy of the permanency plan. As with my prior testimony I think this is highly inappropriate for foster parents. Of most concern is the biological parents right to confidentiality and privacy. This would be such a violation. Again, because foster parents are temporary caregivers, their need to know the extreme details that go into a permanency plan is inappropriate. For those of you who aren't familiar with a perm plan, it provides great detail as to the parent's history, such as their won upbringing and perhaps abuse; their criminal history, their mental health, and treatment status. It gives so much personal detail that the foster parents do not need to be privy to. We don't want foster parents to become predisposed based on what they read and then just no longer want to work with a biological parent. This could damage a good working relationship.
As for those 12 and older, this just can't be in their best interests. A copy already goes to their attorney who can fully explain and discuss the pertinent parts of the plan. Information contained in this document may be information the child did no already know. It could be harmful to that child to find out certain things. These children come from trauma, we as a system need not traumatize them more.

Senate Bill 548: This bill is the most upsetting to the Oneida Nation. It goes against everything that Native people believe, and it goes against the basic principles of ICWA and its Regulations and WICWA.
We believe there is nothing more sacred then your family. No one can connect you to who you are, where you come from like your family can. Just put yourself in a small child's shoes or even and adolescents' shoes. If you were removed from home, would you rather be placed with strangers or with family. Even if 6 months or 9 months has passed by and you couldn't return to the care of your parent, in the end while you may have bonded to this family over this short period of time, wouldn't you want to be with family, who could teach you about the family you come from that you belong to. Sometimes it is just hard to explain how important the value of family, clan and culture is. The European way isn't the same as our way.
That is why ICWA is there, to create placement preferences that align with our values of family first, even if that family doesn't become available until 1 year later. This bill stands in the face of those federally mandated placement preferences. In addition, ICWA requires active efforts to seek family throughout the proceedings until tpr. This goes against ICWA and WICWA. There is nothing in the proposed language that states that it does not apply to Indian children. This appears to be an attempt to get around the requirements of both ICWA and WICWA.
Frankly, it should not apply to any child. The Federal government passed the Family First Prevention Services Act in February of 2018. It requires counties to look for family members for purpose of placement first. Why, because the Federal Government is finally seeing what we as Native American people have been saying all along, that families create that base, that haven, that sense of belonging. So, looking for a child's family members are what is in the child's best interest. This proposed bill stands in the face of that Federal Initiative.
Sometimes families can't take children right away, they must take care of certain things before they can take the children. Understand that many times its not just 1 child that needs a home. It is a group of siblings of 4, 5 or 6 children that need a home. And only so many of them are able to share a room. We've had family members that just needed time to find different housing to accommodate all the children. This can't always be done in a matter of some arbitrary number of 4 months to accomplish. We've had family members have to work on changing their shift at work to accommodate the needs of the children. What you may not realize is that many of the

children that come into care have more needs then an average child. They must be brought to therapy appointments, more than the average number of medical appointments, they must get caught up on dental appointments and eye appointments. Sometimes people just aren't sure they can take on the financial burden and need time. Why on earth would you say to a family member it is no longer in the child's best interests to be with you because you couldn't get it together within 4 months. That is a disservice to the family and an even bigger disservice to that child.

That completes my comments on these proposed Adoption Bills. Let me just end with this. Much more thought and reworking of these Bills should be done. Much of the proposed language changes would do more harm than good to the family and to the child. It seems as if these Bills are geared to benefit Foster Parents and Adoptive Families. It is said that the purpose is so that it does not take so long to get to TPR and finally adoption. But make sure when looking at these Bills that it is ultimately the child you are thinking of and not Foster Parents or Adoptive Parents who may just have a louder voice. Make sure that the Bills remain in compliant with ICWA. Make sure your priority in passing these Bills is for what is best for the child and his or her family, not the foster parent or those who may want to adopt in the future. We should be lobbying for the child not the adoptive parent. In the end, a child wants his or her family; those that share their name, the way they look, that share their culture and beliefs. **Our ultimate goal should be improving how we work towards reunifying families, not making new ones.**

Yaw^ko.

CHILDREN & THE LAW SECTION

To:	Members, Senate Universities, Technical Colleges, Children and Families Committee
From:	Children and the Law Section, State Bar of Wisconsin
Date:	December 4, 2019
Re:	AB 263/SB 232 – Adoption Reform

The State Bar of Wisconsin's Children and the Law Section supports in part sections of SB 232 and AB 263, as amended, regarding Wisconsin's TPR and adoption systems. Specifically, the board supports the section related to allowing payments out-of-state private adoption agencies and individuals. The board does not have a position on any other portion of the proposed legislation.

Currently, Wisconsin law prohibits any payments in an adoption to an adoption agency that is not licensed by the Wisconsin Department of Children and Families. In other words, payments made to an out-of-state adoption agency are prohibited. *See* Wis. Stat. §§ 48.913(1)(e) (the adoption expenses statute), 48.60(1) (licensed "child welfare agency" defined), and 48.02(4) (definition of "department"), in that order. When prohibited payments are made, the adoption is jeopardized and could be denied.

As written, the proposed bills would allow payments for "services provided in connection with the adoption by a private child placing agency, as defined in s. 48.99(2)(p), operating lawfully under the laws of another state."

The board appreciates the efforts of Sen. Jacque and Rep. Brandtjen to address initial drafting concerns raised by the board as related to this section, and believes allowing payments to out-of-state private adoption agencies and individuals would be a welcome change to current statute.

If you have questions or concerns, please do not hesitate to contact our lobbyist, Lynne Davis, ldavis@wisbar.org or 608-852-3603.

STATE BAR OF WISCONSIN

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Senate Committee on Universities, Technical Colleges, Children and Families
Public Hearing December 4, 2019

TO: Senate Committee on Universities, Technical Colleges, Children and Families
FROM: Eve Dorman, Dane County Legal Director for Permanency Planning
DATE: December 4, 2019
RE: SB 232, SB 531, SB 532, SB 533, SB 534, SB 548

Chairman Kooyenga and members of the committee, thank you for allowing me to offer input on behalf of Dane County, its Department of Human Services, and the office of the Corporation Counsel regarding some of the bills before your committee today. My name is Eve Dorman, and I am the Legal Director for Permanency Planning in Dane County. I have been with the Corporation Counsel's Office for approximately 16 years. In my role, I along with four other attorneys, prosecute Children in Need of Protection or Services (CHIPS) and Termination of Parental Rights (TPR) cases.

Dane County Department of Human Services and the Permanency Planning Unit work very closely together to serve our community in a way that ensures child safety, supports legal permanency, and builds on family strengths. We have a strong track record with steadily declining caseloads and more discharges from care than new entries into care. Over the past several years, approximately 45% of our kids reunify, 25% achieve permanency through TPR/adoption (many with relatives) and another 20% achieve permanency through relative guardianship.

Dane County has concerns about several of the proposed bills at issue today. Our state has taken big strides in recognizing addiction as a brain disease as a result of the work of Tonette Walker's Task Force, in trying to support people struggling with poverty and homelessness, and in striving for equitable access to our state's resources. Some of these bills seem to stand in direct contradiction of those efforts.

SB 232

This bill would combine fact-finding and disposition hearings in TPR cases. That means a fact finder, whether judge or jury, won't make a decision about parental unfitness until they have heard all the information about parental behavior alleged to support grounds for TPR, plus information related to the child's best interest. Case law and the jury instructions make it clear that evidence regarding the child's best interest is not relevant or admissible to determine the grounds phase of a TPR action as the grounds are currently defined in Sec. 48.415 Wis. Stat. Simply combining the steps procedurally does not address the evidentiary concerns. If we have a fact finder - especially a jury - hear all the dispositional evidence BEFORE they decide whether grounds exist, then there is a high potential for jury verdicts based on improper evidence.

If you choose to mandate combined TPR hearings, it would be better to formally eliminate the jury trial at the grounds phase. Judges as fact-finders are commonly tasked with determining as a question of law, what evidence is relevant to the issues presented. Juries are finders of fact and are not permitted to decide questions of law.

Finally, expanding TPR grounds under abandonment to require actual care and support of the child or mother and require payment child support to avoid TPR is concerning because it will disproportionately affect poor and minority clients. If you choose to require actual care and support of mother during pregnancy, I believe you should consider providing clear exemptions in cases in which the parents are not together as a couple during the pregnancy as a result of domestic violence, cases in which the identity of the father may not be known until after the birth of the child, and cases in which the mother interferes with the ability of a potential father to provide care or support. If you choose to include failure to pay child support as a form of abandonment, to avoid constitutional concerns, I believe you need to ensure that poverty is considered reasonable cause for any failure to pay, similar to the exemption for poverty in the definition of neglect at the CHIPS stage. Secs. 48.02(12g) and 48.13(10) Wis. Stat.

SB 531

This bill requires copies of all permanency plans to be shared with foster parents and children over 12. Granting foster parents access to permanency plans is a bad idea because they contain extensive confidential information about treatment progress and failures of biological parents who are working to reunify with their children.

Biological parents should not be required to share their medical, AODA, mental health, trauma, family dynamics and other information with foster parents. This information is not necessary for foster parents to provide care to the children and social workers already have the ability to share necessary information with foster parents. Dane County does not support this bill.

SB 532

This bill expands the rights of foster parents in change of placement proceedings in CHIPS cases, including granting party status, access to records of the child, allowing the foster parent to request a professional evaluation with an evaluator of the foster parents' choosing, the right to object to an evaluation ordered under Sec. 48.295 and the evaluator selected to conduct such an evaluation. These rights mirror the rights of biological parents who have a fundamental constitutional right to parent. *See also,* my comments on SB 548 below regarding the presumption-favoring placement with relatives.

Granting foster parents these rights is likely to slow down time to permanency as many case decisions will be more contested and litigated more frequently. These provisions may also make proceedings more costly as it is unclear who will bear the cost of additional evaluations and access to records, which may need to be copied and/or redacted. Dane County does not support this bill

SB 533

Dane County supports this bill to help get some of our hard-to-place children to permanency quicker and more effectively.

SB 534

Dane County supports creating agreements for post-adoption contact in general. I have concerns about the biological parent or relative not having any say in the selection of the mediator and being obligated to bear half the cost of mediation, which will likely disparately affect parents of color and limited means.

SB 548

Dane County does not support limiting the timeframe within which relatives can be considered for placement of a child in out of home care, and the presumption in favor of legal custody being granted to a relative "whenever possible." Federal reimbursement dollars are increasingly conditioned on agency's efforts to incorporate extended family members into caring for children whose parents are struggling. There also should not be a time limit on the ability of a relative to come forward.

Research shows that if children cannot be safely placed in a parental home, they fare better when placed with family. In line with current research, there should be a presumption that placement with relatives is in a child's best interest, even if it requires a move from a non-relative foster home. Though relatives are often not in a financial position to take a placement immediately, they may be more able to do so later. Agencies are often in the position of seeking out relatives again later in the life of a case after a non-relative home has refused to care for a child any longer. Relative placements can also save state dollars because they are eligible for subsidized guardianship as a permanency outcome funded by the counties rather than the state.

Thank you for the opportunity to submit testimony today. I'd be happy to answer any questions from members of the committee as these bills move through the process.

disabilityrights WISCONSIN
Protection and advocacy for people with disabilities.

Date: December 4, 2019

Re: Comments on Speakers - *Informational*

To: Chair Senator Kooyenga, Vice-Chair Senator Nass and Committee Members on Universities, Technical Colleges, Children and Families

From: Sally Flaschberger, Lead Advocacy Specialist

Disability Rights Wisconsin appreciates the opportunity to provide these informational comments to the Senate Committee on Universities, Technical Colleges, Children and Families and we thank you for your consideration of our recommendations. Disability Rights Wisconsin is the Protection and Advocacy Agency for the State of Wisconsin, and our charge is to protect the rights of children and adults with disabilities in Wisconsin.

DRW had followed the work of the Speakers Task Force on Adoption to identify policy recommendations with the hope of benefiting many Wisconsin children and families. As advocates for parents and children with disabilities, assessing these policy changes may be very complex as we evaluate the impact on parents who have a disability and may experience disability related discrimination, and the needs of children, including those with disabilities, for permanence and a supportive family.

Several of the bills being proposed today mirror some of the work of the Task Force. Given the complexity of the system and policy proposals you are considering today, DRW supports a slower process that will allow policy makers to carefully consider the input from stakeholders and from the legislative service bureaus. We are concerned that some of the proposals before you today could result in unintended consequences for parents with disabilities and their children, as well as for children with disabilities in the child welfare system.

Background

DRW submitted comments to the Task Force regarding protecting the rights of parents with disabilities, how to provide better supports for families of children with disabilities to help eliminate the potential of abuse and neglect and additional measures that can be taken to ensure that children with disabilities are receiving appropriate supports and services in their homes, foster homes or adoptive homes. *A copy of those comments is also attached for your reference*.

As we consider the impact of the changes you are considering on parents with disabilities, it is vital that policy makers also consider options to fund and expand prevention and preservation services and provide services to families while the children are maintained in the home. Research has shown that home services are most effective, particularly for parents with disabilities.

These recommendations noted in our August testimony were especially important for families and could be helpful to guide Wisconsin policy makers:

1. There are numerous models in other states that acknowledge, support and protect the needs and rights of families where the parents or children have disabilities. Wisconsin has also developed some flagship programs that could be expanded.
2. Develop Family Resource Centers that will help families learn of resources and navigate the complex service system.
3. Provide means for parents to seek diagnoses for their children and offer screening for eligibility for services.
4. Provide support and training for parents and foster families to understand and support children with difficult diagnoses. Increase the capacity of those resources to improve access.
5. A collaborative agreement between DCF, DHS and DPI could identify children with disabilities and families in need of greater support services and information.
6. Foster and adoptive parents should be eligible for the same support resources, such as respite and child care, as natural parents.
7. Consider legislation to require safety services and foster care agencies to refer any child with a disability to their county disability services to conduct a functional screen for Wisconsin Medicaid Waiver programs such as Children's Long-Term Support Waiver, Children's Community Options, Comprehensive Community Services, and WRAP / Coordinated Services Teams (CST).

BACKGROUND

Parents with Disabilities

Any changes to the termination of parental rights laws and procedures need to take into account the impact on, and the rights of, parents with disabilities. Parents with disabilities face many obstacles and challenges in the child protective system. There is a significant need to improve the services provided to parents with disabilities and their children. The problems faced include failure to provide reasonable accommodations, lack of resources and services, lack of ongoing services, and stigma and bias against people with disabilities that influence official actions and decisions.

According to the National Council on Disability's 2012 Report, *Rocking the Cradle,* (https://www.ncd.gov/publications/2012/Sep272012), parents with disabilities are at greater risk for termination of parental rights: "Removal rates where parents have a psychiatric disability have been found to be as high as 70 percent to 80 percent; where the parent has an intellectual disability, 40 percent to 80 percent. In families where the parental disability is physical, 13 percent have reported discriminatory treatment in custody cases. Parents who are deaf or blind report extremely high rates of child removal and loss of parental rights."

Many parents with significant disabilities have raised their families successfully, yet they may be inappropriately stigmatized because of misguided presumptions about their parenting abilities. People with disabilities, especially those with intellectual and mental health disabilities, continue to

be stigmatized and unfairly judged. Sometimes parents with these disabilities have their children taken from them even before they leave the hospital. They are assumed to be incompetent parents by people who know little or nothing about the individuals involved or their disabilities.

Children with Disabilities

Children with disabilities represent one-third of children in the child welfare system, according to this 2016 report by the Department of Children and Families (DCF): https://dcf.wisconsin.gov/files/cwportal/reports/pdf/act365.pdf. Children with disabilities are over-represented in the child welfare system compared to the general population and are more likely to be involved in an out of home placement. In 2016, DCF reported that 12% of children in child welfare have a disability, but the Department of Public Instruction (DPI) and the Department of Health Services (DHS) showed an additional 25% of children had disabilities. Families of these children struggle to meet the needs of their children without necessary supports and services and often have never been directed to the appropriate supports and services in their communities.

Comments on SB 232, SB 533, SB 548

In reviewing these bills, DRW has assessed the impact these proposals will have on parents who have disabilities, families of children with disabilities who are at risk of child welfare intervention, children with disabilities in out of home placements, and children with disabilities adopted through the public system.

SB 232 – Elimination of the Right to a Jury Trial, Grounds for Termination of Parental Rights

- DRW is concerned about the elimination of jury trial for parents who face termination of their parental rights. Parents who are at risk of losing their children should have the opportunity for a jury of their peers. We understand that policy makers are concerned with the challenge of educating jury members about such a complex system. However, if judges are the ultimate decision makers, judges will need training regarding parents with disabilities and accommodations under the American with Disabilities Act (ADA) to be able to participate fully in the proceeding. This should address the applicability of the ADA to TPR proceedings, and the duty of child welfare agencies and dependency courts to provide reasonable accommodations to parents with disabilities.
- If a failure to provide court ordered payments for child support is considered abandonment, would this have a disproportionate impact on some fathers with disabilities? This is a concern given the barriers to employment experienced by many individuals with disabilities and Wisconsin's history of limited opportunities for competitive employment for people with disabilities.

SB 533 – Adoption Assistance

- While the statute takes into account many functional and behavioral conditions to calculate adoption assistance, it does not specifically address diagnosed disability. The addition of a disability as diagnosed by a medical professional could be added as an additional determination of adoption assistance.

- DRW recommends developing an amendment that adds a requirement for DCF to refer child to determine whether they qualify for Medicaid waivers and publicly administered mental health programs that could provide additional supports for families. Children should be screened for this at the time of the consideration of adoption assistance. This could include Children's Long-Term Support (CLTS), Children's Community Options Program (CCOP), Comprehensive Community Services (CCS), Coordinated Service Team (CST) and other wraparound services.

SB 548 - Placement of a child with a relative under the Children's Code or the Juvenile Justice Code

- Potential concern: If a child has a significant disability, the family may need a longer period to be able to have the child placed in their home and accommodate their needs. For example, if a child has a physical disability, the relative may need to move to accessible housing, or have home modifications in place.
- A possible amendment could be added to extend the timeframe for families who need additional time to prepare for placement of a child with disability.

Thank you for your consideration of these informational comments and your work to address the needs of Wisconsin families and children. Disability Rights Wisconsin would welcome the opportunity to discuss our comments on these proposals, and recommendations to support parents with disabilities, as well as children with significant disabilities in the child welfare system.

Please feel free to contact Barbara Beckert, Milwaukee Office Director, at Barbara.Beckert@drwi.org or 414-292-2724 with any questions or to schedule a time to meet with staff from Disability Rights Wisconsin.

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To: Wisconsin Assembly Committee on Children & Families
From: Attorneys Theresa L. Roetter, Stephen W. Hayes, Lynn J. Bodi, Elizabeth A. Neary, Emily Dudak Leiter, Gary A. Debele, & Krislyn M. Holaday
Date: November 12, 2019
Re: AB 263/SB 232

We write to you today in support of AB 263/SB 232.

We are licensed Wisconsin attorneys with state-wide law practices. We regularly appear in our 72 counties to assist birth mothers in making an adoption plan for their children and to support prospective adoptive families hoping to provide a home for a child who needs a stable, mature, loving environment. We are also Fellows of the Academy of Adoption and Assisted Reproduction Attorneys and many of us have served the Academy in leadership roles. The Academy is an invitation-only organization dedicated to advancing the ethical practice of adoption and surrogacy in the United States and internationally.

We appreciate the work of the Adoption Task Force, the Bills which resulted from that work, and the work of other legislators over the past few years which has resulted in the current draft of these Bills.

In the last thirty years, there have been very few revisions to the Wisconsin adoption laws. AB 263 / SB 232 provides necessary changes to the framework supporting the legal placement of children in adoptive homes.

The barriers to adoption in Wisconsin are many. Delay after delay occurs in our court system due to the current clunky process which includes a jury trial option, provides broad excuses for abandoning a child or failing to ever assume parental responsibility, requires in-court consents, limits Wisconsin residents from benefitting from matching services from reputable agencies licensed in other states, and results in many women parenting a child when they believe that placing their child for adoption is truly what is best.

The changes included in AB 263/SB 232 will improve the adoption process for children, birth parents, and prospective adoptive families by addressing the problems outlined above. The changes will encourage Wisconsin residents to look here – in their own home state – for an adoption match rather than looking to another state or country.

It was discouraging to hear the opposition to these Bills at the Task Force meetings. It was clear to those of us who attended, that the reasons for opposing the bills were not focused on the best interest of children. It is important to remember that Wisconsin Statutes Chapter 48, the Children's Code, has best interests as an overarching guide – what our courts have referred to as the "Polestar" of our laws regarding Wisconsin children and families. Wis. Stat. 48.01: "...the best interests of the child . . . shall always be of paramount consideration." We recommend AB 263/SB 232 in the best interest of Wisconsin children.

We ask you to vote "yes" and unanimously pass AB 263/SB 232 out of Committee. Thank you.

December 4, 2019
Re: Senate Bill 232

Written Testimony on behalf of Senate Bill 232 from Brian & Addie Teeters, Appleton, Wisconsin

To the distinguished Committee Members:

We are grateful for the opportunity to submit our written testimony today on behalf of Senate Bill 232.

Our story with the Wisconsin adoption system began more than ten years ago, in early 2009. Our desire to adopt in the state of Wisconsin was significant. We had goals of working to support children in our home state, and had the desire for an open adoption with our child's biological family (which has proven to significantly benefit the mental health of adopted children). We worked with a reputable adoption agency in Wisconsin and completed all the necessary education and home study requirements.

Just a few short months after completing the process, we received a call from Milwaukee that would change our lives. A four-day-old infant girl had been born at Children's Hospital of Wisconsin. Her mother had chosen to place her child for adoption, looked through several profiles while in the hospital, and had chosen us to parent her child. If we accepted the case we could bring the baby home the very next day. We of course leapt at the opportunity, and the next day we brought home our first child, our amazing little girl.

Just more than thirty days after she was placed with us, our daughter's first mother was scheduled to appear in court to terminate her parental rights. Our daughter was the result of a sexual assault, and the birth father was not present. Our daughter's first mother was still very traumatized by the assault, and while she began the court hearing and the appropriate process, became very stressed by the courtroom environment and the judge made the determination to postpone the hearing, for an additional thirty days. Then after 60 days, our daughter's first mother was still not prepared to complete the hearing process, and again, court was postponed. The third and final hearing took place as our daughter was turning three months old. At this hearing, her first mother exclaimed that she wanted to give it a try. Therefore, after three months of parenting our child, we lost her the very next day following the third and final court hearing.

We were devastated and as a result, transferred our file to the state of Texas, and had a successful adoption with our son, and saw a process in the state of Texas that fostered such respect towards birth parents that it helped in-turn foster a beautiful open adoption with our son's first family to this very day.

Our key learnings and request for consideration include:

1. Allowing birth parents the option to terminate parental rights outside of the courtroom and in a shorter period of time. We are not treating Wisconsin's first parents with the respect they deserve. Allowing this alternative is providing first parents with the options they deserve.
2. Helping to strengthen Wisconsin's adoption process so more prospective adoptive parents stay in-state to adopt children, therefore creating more open adoptions between birth parents and children.

Ultimately we are hopeful that enacting this legislation will support the full adoption triad of adopted child, birth parent, and adoptive parents and foster more successful relationships and adoptions in the State of Wisconsin in the future.

Thank you for your consideration.

wafca
partnering to improve lives

TO: The Honorable Members of the Senate Committee on Committee on Universities, Technical Colleges, Children and Families

FROM: Kathy Markeland, Executive Director

DATE: December 4, 2019

RE: **Legislative Proposals on Foster Care, Adoption and Permanence**

Thank you for the opportunity to provide comments and information on legislation before the Committee today that proposes various modifications to laws governing foster care and adoption.

WAFCA is a statewide association that represents nearly fifty child and family serving agencies and advocates for the more than 250,000 individuals and families that they impact each year. Our members' services include family, group and individual counseling; substance use treatment; crisis intervention; outpatient mental health therapy; and foster care and adoption programs, among others. Many of our member agencies license foster homes, including treatment foster homes, and facilitate both public and private adoptions.

We are grateful for the time invested by the legislature over the past two sessions to explore opportunities to improve our foster care and adoption systems. As members of this Committee well know, the family law arena is complex and issues surrounding foster care, parental rights and adoption are no exception. As was emphasized throughout the work of the Foster Care Task Force and the Adoption Task Force, the ultimate focus of all parties must be on the best interest of the child. The laws surrounding the processes and guiding decision-making pivot around that focal point, but sometimes in practice the laws fail to fully accommodate equitable voice for all parties or delay a child's progression toward permanence.

With regard to the specific proposals before the Committee today, we offer the following comments and recommendations.

SB 232 proposes a number of changes to current law regarding termination of parental rights and the rights of alleged fathers. WAFCA appreciates the efforts of the bill authors to establish a voluntary process for TPR that could occur outside of the court room. In the realm of private adoption, our members have experienced instances when a birth mother, having received appropriate pre-adoption planning and counseling services, nevertheless finds the requirement to appear in court distressing. While we acknowledge that a voluntary process outside of a court proceeding presents a different set of

challenges and concerns in public adoptions, we are supportive of the effort to identify an alternative option for birth parents who have made a plan to voluntarily release their child for adoption. At the same time, we are concerned about elements of SB 232 that modify the basis for involuntary termination of parental rights for alleged fathers, specifically the new grounds for determining abandonment.

We see **SB 531** and **SB 532** as efforts to address the real concern expressed by some of Wisconsin's foster parents regarding respect for their voice within the child welfare system. Opening up your home and your heart to a child is a unique calling. The system works diligently to recruit and train foster parents who understand their role as a resource to support a child toward permanence, which most often means reunification with family. As a result, foster parents provide care and nurturance to the child, and often also engage with and nurture the family. They are a fundamental part of the team and are expected to serve critical roles within the team; however, their voices may go unheard during legal proceedings, and information that is shared with the rest of the team may be withheld from them. When foster parents experience situations where they are not fully included as members of a child's team and are not given information to help them understand the plans for the child in their home, it can appear that the system does not value them as partners.

SB 531 seeks to address an inconsistency in practice in the state with regard to providing a child's permanency plan to caregivers. Ch. 48.38(4)(f), Wis. Stats., states that the permanency plan must include: "A description of the services that will be provided to the child, the child's family, and the child's foster parent, the operator of the facility where the child is living, or the relative with whom the child is living to carry out the dispositional order, including services planned to accomplish all of the following:

1. Ensure proper care and treatment of the child and promote safety and stability in the placement.
2. Meet the child's physical, emotional, social, educational and vocational needs.
3. Improve the conditions of the parents' home to facilitate the safe return of the child to his or her home, or, if appropriate, obtain for the child a placement for adoption, with a guardian, or with a fit and willing relative, or, in the case of a child 16 years of age or over, obtain for the child, if appropriate, a placement in some other planned permanent living arrangement that includes an appropriate, enduring relationship with an adult."

We understand that there is variable practice across the state in providing permanency plans to foster parents and youth; however, it appears that both parties could benefit from having access to at least some of the information referenced above. It is our understanding that the system expects foster parents and youth to be engaged in planning for permanency. To do so effectively, they need information. We appreciate that counties and other stakeholders have raised concerns about mandating provision of the plan and the potential cost for redacting records. We would support any efforts to establish a process for foster parents and youth to access information to enable them to contribute to permanency planning and at a permanency hearing.

While appreciating the spirit in which **SB 532** is offered, we have questions regarding the impacts of this proposal. First, it is unclear why group homes have been included in this bill. The role of group homes differs from the role of foster parents in our system. SB 532 would expand the rights of a congregate care provider in a manner that would be inconsistent with their caregiver role. Second, our members are

concerned that the bill as drafted could compel foster home licensing agencies to pay for counsel or other expert witnesses in an action initiated by foster parents. Supporting representation for foster parents in these circumstances would be cost prohibitive and result in an untenable situation if the licensing agency and the foster parent disagree about the change of placement recommendation. In addition, we share the concern expressed by others that the bill as currently drafted appears to grant legal resources to foster parents that would not be guaranteed to birth parents.

WAFCA supports **SB 533**, which expands access to adoption assistance. Adoption assistance is a critical element of our adoption system that enables a family to provide an appropriate level of care for a child with special needs who is joining their family forever. Adoption assistance recognizes that adoption is not an event, but a life-long journey and supports a family seeking help should new challenges emerge. The expansion of the qualifying criteria for adoption assistance will help more children move to permanence.

Finally, **SB 534** establishes a mechanism for a court-approved postadoption contact agreement. We support the establishment of a more formal open adoption process in Wisconsin - an option that is available in many other states. We know that connecting children with their history and family increases their ability to form a strong sense of identity. We understand that there are concerns regarding some of the specific elements of this proposal as currently drafted, especially with regard to public versus private adoptions, and we welcome the opportunity to work with the authors and others who value building family connections to continue advancing open adoption options for Wisconsin children.

Thank you, again, for the opportunity to share our thoughts with the Committee. We appreciate the ongoing commitment of the legislature to engage the complex issues surrounding foster care and adoption in our state. We are hopeful that additional engagement of stakeholders around the specifics of these proposals and others, such as increasing funding for post-adoption support, will result in better outcomes for the children and families of Wisconsin touched by the foster care and adoption systems in our state.