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STATE REPRESENTATIVE • 38th ASSEMBLY DISTRICT

December 4, 2019

Senate Committee on Universities, Technical Colleges, Children and Families

RE: Rep. Dittrich Testimony SB 531/AB 563 – providing permanency plan and comments to foster parents and foster children over the age of 12 in advance of a permanency plan review or hearing.

RE: Rep. Dittrich Testimony SB 532/AB 562 – the rights of a foster parent or other physical custodian of a child on removal of the child from the person's home.

RE: Rep. Dittrich Testimony SB 533/AB 564 – eligibility for adoption assistance.

RE: Rep. Dittrich Testimony SB 534/AB 561 – postadoption contact agreements.

RE: Rep. Dittrich Testimony SB 548/AB 565 – placement of a child with a relative under the Children's Code or the Juvenile Justice Code.

Good Morning Senate Committee Chair Kooyenga and members of the committee. I appreciate the opportunity to share with you the importance of the legislation regarding the adoption process before the committee today. The five senate bills being considered were drafted as a direct response to the testimony shared by various agencies, professionals, lawyers, judges, and families at the hearings held by the Speaker's Task Force on Adoption, of which I was pleased to serve as chairperson.

At the beginning of this process, Speaker Vos set forth guidelines for our task force that included shortening the timeline for adoption, lowering the cost, and providing awareness and resources. This summer, the task force held 7 hearings around the state to learn about current challenges in the adoption process and steps the legislature can take to address them. As chair of the task force, I was committed to ensuring that we could meet our mandate and improve the process for all involved. We want kids thriving in loving homes, not languishing in hopelessness. They deserve no less. We are dedicated to making Wisconsin an adoption friendly state.

To this goal, the task force has introduced eight bills; five of them are before the committee today. I am hopeful we can pass all eight bills into law in order to make needed changes, benefitting our children and families. However, I would be remiss if I did not acknowledge the fact that issues, both from a technical and political perspective, were raised in the Assembly hearing. We have been in conversations with stakeholders and are seeking to ensure these bills will accomplish our goals while addressing any concerns. To that end, I would like to take a

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moment to briefly explain the five bills before the committee today and answer any questions you and members may have surrounding the bills.

Senate Bill 531 addresses one of the difficulties encountered by foster parents: a lack of information regarding the child. This situation impedes foster parents' ability to provide the best care possible. Within the past few years, some county corporation counsels have found that there is no explicit, statutory authority in the Wisconsin Children's Code to distribute needed information to foster parents, creating an inequitable compliance with DCF Administrative Code. Concerned about liability, several counties have reluctantly stopped sharing the information with foster parents. Senate Bill 531 would correct that oversight and provide needed information to foster parents while removing the fear of liability for counties.

Senate Bill 532 allows a foster parent who has had placement of a child for 6 months or more, to be party in a change of placement proceeding. Under current law, foster parents can only submit their position to the Department of Children and Families (DCF) as it relates to a proposed change in placement hearing. DCF does not have to take this into account when making a decision. Foster parents, especially ones that have had placement of a child for an extended period of time, bear all of the cost for the child without a mechanism to express their position as it relates to the best interest of the child. SB 532 would allow them to be party to the change in placement hearing, exclusively.

Senate Bill 533 expands the eligibility for adoption assistance. Currently, assistance is available to families adopting children that meet specific criteria including but not limited to, sibling groups of three or more or children 10 years or older. SB 533 would change those criteria to include sibling groups of 2 or more or children 7 years or older.

Senate Bill 534 implements post adoption agreements. It is important to note these agreements are completely voluntary for both parties. By allowing open adoption agreements to be put in place, Wisconsin could be considered an open adoption state. Implementing this idea could attract more organizations to operate in Wisconsin, helping more kids find stable homes, especially kids at risk of aging out of the system. It may also encourage birth parents to voluntarily terminate parental rights with a greater level of comfort, knowing that they may be able to implement a post adoption agreement.

Senate Bill 548 seeks to mitigate trauma to children due to instability by providing relatives four months from the date of notice of the child's removal from home to indicate their willingness to participate in the care of the child. By establishing a timeline, this legislation aims to preserve the value and priority of kin placements, while reducing the likelihood that a child is re-traumatized by a custody transfer. It also allows a judge to consider best interest of the child overall when making a decision regarding placement, not just defaulting to placement with a relative, as often perceived as best practice.

I appreciate the committee considering these bills today and would be happy to answer any questions.

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Testimony
Of

Nancy Rottier, Legislative Liaison,

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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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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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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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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

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.

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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,

MENOMINEE INDIAN TRIBE OF WISCONSIN

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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
MENOMINEE TRIBAL LEGISLATURE
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To: Representative Barbara Dittrich, Chair
Members of the Speaker's Task Force on Adoption
From: Joan Delabreau, Vice Chairwoman, Menominee Tribal Legislature
Date: Tuesday, July 2, 2019
Re: Wisconsin State Assembly
Public Hearing - Speaker's Task Force on Adoption
University of Wisconsin-Green Bay
Testimony of Joan Delabreau, Vice Chairwoman, Menominee Tribal Legislature

Madam Chair and members of the Speaker's Task Force on Adoption, thank you for the invitation to appear before the Task Force and provide information regarding the Menominee Indian Tribe and its views on the important assignment given to this Task Force to investigate how to make adoption more accessible. Here with me today is Mary Kramer, Assistant Director of Menominee Tribal Social Services, and Connie Peters, Lead Tribal Social Worker. The Menominee Tribal Social Services employs four (4) ICWA specific social workers. These social workers provide services related to Menominee children under involuntary custody proceedings throughout the State of Wisconsin, and the entire country.

Tribal Social Services is involved in these cases throughout the State and country because Menominee children reside throughout the State and country. Menominee has over 9,200 members, approximately half of which live outside the Reservation. Menominee have always resided throughout what is now the State of Wisconsin, and parts of Illinois, Minnesota and Michigan. Menominee originated at the mouth of the Menominee River less than 60 miles from where we sit today, and have been here for thousands of years. Over the course of the 19th Century the United States took from Menominee over 10,000,000 acres of land. By the time of the last treaty in 1856 Menominee was left with approximately 240,000 acres of four ancestral lands.

In 1954, the federal government passed the Menominee Termination Act. The purpose of termination was to eliminate Menominee as a Tribe and assimilate Menominee Tribal members into the greater society. We were no longer Indian. Termination was a disaster for the Menominee people, and through great effort of dedicated Menominee and their allies, the Menominee Termination Act was repealed, and Menominee regained their status as a federally recognized Tribe in 1973. However, the damage was done. 41% of our members between the ages of 19-45, were forced to relocate in order to support their families. Those that remained were primarily the young and the old. Currently, we have members residing in all 50 states.

Efforts to destroy Tribal governments and assimilate Tribal members into mainstream society were not limited to federal acts terminating Tribes. Tribes have also been threatened with destruction through the separation of their members from the Tribe through the process of termination of parental rights and adoption of Tribal children by non-members of the Tribe. In the 1970s, the adoption rate of Indian children nationwide was 8 times higher than that of non-Indian children. Ninety percent of those Indian

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children were adopted by non-native parents. In Wisconsin, an Indian child was 1600% more likely to be separated from their family than a non-Indian child. Eighty-Five percent of Indian children placed out of the home were placed with non-native families. In Minnesota in 1971 and 1972 a quarter of all Indian children in the State under one year of age were adopted.

In the 50s, 60s, and 70s Child Welfare Agencies and Courts often failed to recognize the cultural norms and social standards that prevailed in Indian communities and families. An overwhelming majority of Tribal children were removed for reasons such as "social deprivation" or "neglect". Social Workers tended to apply external social standards that ignored the realities of Indian societies and cultures, such as the extended family and its role in raising children. As a result, workers often removed or threatened to remove children because the children were placed in the care of relatives, citing determinations of neglect or abandonment where they did not exist.

Additionally, the term "best interests of the child" was referenced to demonstrate that families with financial means would be better able to care for and raise an Indian Child. Workers all but ignored the fact that there is always someone with greater or fewer financial assets, and that there is no evidence that having less money leads to a less robust life for a child.

In 1978, Congress passed the Indian Child Welfare Act to address the problems stated above regarding removal of Indian children from their homes and their Tribes. In passing ICWA, Congress found that:

- "there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children" and,
- "an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions".

The Indian Child Welfare Act ensures many things, including requiring that Native American children be placed in foster or adoptive homes that reflect Native American culture and that Indian family environments receive preference in adoptive or foster care placement.

ICWA requires that tribes be notified of child custody proceedings involving their children, that Tribes be solicited for their ongoing input throughout the life of a case, authorizes Tribes to make the transfer of an Indian Child Custody proceeding from State to Tribal Court and authorizes a Tribe's intervention in State Court Indian Child Custody proceedings. One of the most important provisions of the Act states:

> "Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that **active efforts** have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful."

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This requirement of **active efforts** is meant to avoid the unwarranted removal of Indian children from their homes and their Tribes.

We urge this Committee to keep in mind this **active efforts** standard, and all the other provisions of the Indian Child Welfare Act. I think we can all agree that can and should be improvements to the adoption process. However, a worthy goal like identifying ways to "shorten the timeline for adoptions" can, without due scrutiny, result in minimizing the rights of Tribes, Tribal parents and custodians, and Tribal children provided for in the Indian Child Welfare Act.

An example of how a law passed with the best of intentions can undermine the ICWA rights of Tribes and its members is Wisconsin's Safe Haven Law. The purpose of the Safe Haven Law is to reduce the abandonment of infants by allowing a parent to anonymously relinquish a child without any fear of prosecution. Unfortunately, such a law also essentially strips Tribes of their rights under the Indian Child Welfare Act as the Indian Child Welfare Act only applies to Indian children, and the Safe Haven law makes it impossible to determine whether an abandoned child is an Indian child.

It is our belief that if this Committee keeps in mind the provisions of ICWA and ensures that the voice of Tribes are heard throughout this process, we can avoid any changes in procedures or laws related to termination of parental rights or adoption that will negatively impact Indian children, parents, and Tribes and their rights under ICWA. There is a good basis for this belief. I just mentioned Menominee's concerns regarding the State's Safe Haven Law, but I would be remiss if I did not also mention some of the areas where the State has been a good partner with the Tribes in regard to these issues including:

- The State Legislature and Governor in 2009 passing the Wisconsin Indian Child Welfare Act which imported the federal Indian Child Welfare Act into state law for the purpose of ensuring ICWA protections would be applied to Indian children;
- The decision by the State to file an amicus brief in the *Brackeen* case in the 5th Circuit Court of Appeals in support of Tribes and the constitutionality of the Indian Child Welfare Act;
- The efforts of the State Department of Children and Families to maintain a close relationship to the Tribes and consult with the Tribes;
- The work of the State – Tribal Relations Committee chaired by Representative Mursau which provides an ongoing mechanism for the State and the Tribes to work through issues of mutual concern; and finally
- Your invitation to Menominee and other Tribes to share our views with the Committee, for which I again thank you.

The Menominee Indian Tribe recognizes that the cost of adoption is high, and that fostering a child is a potential route to an adoption. However, the Tribe also wishes to note that the primary purpose of placing children in a foster home is to provide families a safe way to work on developing and/or rebuilding a healthy family structure so that the child (ren) and parents can be re-united. Too often, prospective foster care/adoptive parents are told that by fostering a child, they may find a quicker and less expensive route to adoption. This mindset develops an adversarial position between the foster

parents and the biological parents working to be reunited with their children and should not be promoted as a convenient, low-cost alternative to private adoptions.

The Tribe does not presume to direct private adoption agencies on how to conduct their business and fees for adoption. We do recommend specific consideration be given to reducing costs and improving the adoption process in the following ways:

- Current practice set by ASFA (Adoption Safe Families Act) is that a county is to seek termination of parental rights for a child who has been placed in out of home care for 15 of 22 most recent months. We suggest that counties and tribes continue to assess TPR (Termination of Parental Rights) readiness on a case-by-case basis and consider moving to TPR at an earlier date only if deemed appropriate.

- Allocate additional fiscal dollars to specifically address the shortage of staff that can file and process cases in a timely manner.

- Similar to Tribal practice, when extended family adopts a relative child, the requirement and/or fee for a home study could be waived.

- Personal and/or Paper Service is costly. While notification of court proceedings is critical, the responsibility of the parent to be available and/or provide current residence also needs to be considered. Define the number of service attempts required in a more concise way and inform the courts of the decision.

- Consider capping the fees attorneys can charge per adoption.

- Place Indian children in ICWA compliant homes as their initial placement so that if/when a child become available for adoption, tribes can support the current placement as the adoptive home.

- Be more proactive in soliciting and licensing Indian Foster and Adoptive Homes.

- Review the costs of public versus private adoptions and seek to equalize the cost of services associated with each.

Mary, Connie, and I are happy to answer any questions you may have today.

WISCONSIN COUNTIES ASSOCIATION

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MEMORANDUM

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

FROM: Sarah Diedrick-Kasdorf, Deputy Director of Government Affairs

DATE: December 4, 2019

SUBJECT: Bills from the Speaker's Task Force on Adoption

Thank you for the opportunity to comment on the legislation brought forward by the Speaker's Task Force on Adoption. Changes affecting Wis. Stats. Ch. 48 and Ch. 948 tend to be complicated on a number of levels; a change in one area could have unintended consequences elsewhere. The Wisconsin Counties Association (WCA) has asked several of our county partners to review this legislation and provide feedback. That process is still ongoing. However, concerns have been raised to date with regard to some of the bills that this memo will attempt to highlight. It is our hope that the process for passing these bills slows down, allowing all affected parties the appropriate time to review the legislation and discuss the ramifications of implementation in detail.

It is our hope that the authors of the legislation pull together a group of interested parties to discuss the bills in further detail to identify areas in which a compromise could be reached. WCA is happy to recommend county corporation counsel and human services directors to participate in discussions related to the bills currently before the committee.

<u>Senate Bill 534: post-adoption contact agreements. WCA is monitoring this bill.</u>

Concerns raised:

- This proposal received mixed reviews.
- Agreements between birth and adoptive parents can be helpful in some circumstances but harmful in others. There could be unintended consequences with this change.
- Many parents may seek an agreement because they believe it may look bad if they do not seek one.
- Terminated parents could potentially argue that if they understood the agreement they would not have voluntarily terminated their rights. The judge will have to be

upfront and clear that a violation of this agreement will not allow for the TPR to be void.
- If these agreements are going to be brought into court to be enforced, what role will the county departments play and/or the corporation counsel/district attorneys? The departments will no longer be in touch with the families, yet they are to get notice of the proceedings. A judge could order a county to investigate and make recommendations to the court.
- Could lead to unnecessary litigation and destabilize the children.

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. WCA opposes this bill.

Concerns raised:
- Section 6 of the bill provides foster parents the right to be heard and represented by counsel, seemingly at county expense. WCA is strongly opposed to these increased costs.
- It seems counties will also be on the hook for expert costs as well.
- This bill gives foster parents too many rights to impact a child and his/her change in placement. Foster parents should not be afforded the same rights as parents. Foster parents are a placement provider.
- Foster parents should not be privy to the confidential information that may be used to make a decision about placement. Parents should be allowed confidentiality. Foster parents should not have the right to **all** records related to the child (as opposed to just those relevant to the proceeding).
- Foster parents care about the children in their care and may have useful information to share regarding the change in placement and the treatment plan for the child, but they should not have the ability to dictate that plan on the same level as the parent.
- Children should not have to be subject to further/additional examination because the foster parents want their expert to evaluate them.
- The new rights afforded foster parents will prolong cases, especially those moving toward reunification.
- When counties are aligned with foster parents, the counties already do the heavy lifting for them. This could become a huge issue if a county believes a child should be removed from a foster placement.

Senate Bill 531: providing permanency plan and comments to foster parents and foster children over the age of 12 in advance of a permanency plan review or hearing. WCA is monitoring this bill.

Concerns raised:

- Children over the age of 12 have a right to their information; however, with the current permanency plan requirements, parent information that is not appropriate for the child may be in the permanency plan. A more appropriate solution would be for an adult to share what information is appropriate with a child over the age of 12 versus the child reading the information as it is written in the permanency plan (if the amendment is adopted this concern would be resolved).
- Foster parents should not be privy to confidential information about the biological parents.
- Ongoing case managers already provide foster parents with the information they need. Foster parents could use this information to further drive a wedge between the parties.

Senate Bill 533: eligibility for adoption assistance. WCA supports this bill.

No concerns were raised with regard to this bill. WCA supports this legislation.

Senate Bill 548: placement of a child with a relative under the Children's Code or the Juvenile Justice Code. WCA is monitoring this bill.

- Concern has been raised that this legislation conflicts with federal policy and federal funding requirements.

Please let us know how we can be of assistance as conversations occur with regard to these bills.

Thank you for your consideration.

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.

Alberta Darling
Wisconsin State Senator
Co-Chair, Joint Committee on Finance

Senate Committee on Universities, Technical Colleges, Children, and Families

Senate Bill 532

12/4/2019

Thank you Chair Kooyenga and committee members for taking the time to hear Senate Bill 532. This important bill will empower foster parents to continue providing high quality care and support for the youth in their homes.

In Wisconsin, we have approximately 8,000 children living in out-of-home care. According to the Department of Children and Familes' 2017 Out-of-Home Care Report, 47.2% of these kids are served by foster homes. Foster parents provide an essential service to our state by opening their homes to kids who need a safe and supportive environment. Senate Bill 532 will give foster parents a standing in change in placement proceedings.

On average, children in out of home care go through 2.5 placements in Wisconsin. Change in placements are very traumatic for kids, particularly considering foster youth typically have experienced multiple adverse childhood experiences before the initial removal from their home. According to the Department of Public Instruction (DPI), 34% of 17-18 year olds in the child welfare system have experienced 5 or more schools changes. Per the same report by DPI, students lose 4-6 months of academic progress with each school change.

Under current law, foster parents are not party to a proceeding for a change in placement. Senate Bill 532 expands the rights of foster parents by enabling them to become a party in a change in placement proceeding or appeal for a child who has been living with them for at least six months. After six months, kids can develop real attachments and stability with their foster parents. Senate Bill 532 will empower foster parents in the event that a youth who has been with them for a substantial amount of time is subject to a change in placement.

I hope to count on your support for this reform.

JON PLUMER

STATE REPRESENTATIVE • 42nd ASSEMBLY DISTRICT

Testimony on **SB 532**
Senate Committee on Universities, Technical Colleges, and Children and Families

Public Hearing
Wednesday, December 4, 2019
9:30 a.m.

Chair Kooyenga and members,

Thank you for allowing me the opportunity to come before you today to discuss SB 532, which is aimed at expanding the rights of a foster parent or other physical custodian in connection with a "change-in-placement proceeding". Under current adoption laws, if a child is subject to exercise jurisdiction under the Children's Code and the Juvenile Justice Code, the child's parent, guardian, or legal custodian, or any agency bound by the disposotional order may request a change in placement of the child.

There are three procedures that go about this process under current law.

First, is that if the agency requests the placement change, they must provide notice ahead of time to the child, the child's parent, or their respective guardian as to why the new placement is more appropriate than the current placement, as well as how the new placement satisfies the objectives of the child's treatment plan. The person who has received the notice of such a change may obtain a hearing through the filing of an objection to the placement change.

Second, in the case where it is the child, the child's parent, or respective guardian that requests the change in placement instead of the agency, the party must state what the new information is that is the reason for why the current placement does not satisfy its intended objectives.

Third, when an agency is to be appointed, the juvenile may decide whether to hold a hearing on the change in placement only after the guardian of the child has their parental rights terminated.
The current laws, even though well intentioned and allows for all parties involved to have the child's best interests at heart, we believe are in dire need to be streamlined and to expanded for contemporary situations. This bill expands the rights of a foster parent or other physical custodian in connection with a change-in-placement proceeding. It also provides that, if a hearing is held for a change in placement when the child was placed for six months or more, the party has a right to be represented by counsel, request the child be cross examined or assessed by an expert in order to present evidence, including expert testimony, to cross-examine the witness and present alternative placement recommendations.

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Senate Bill 532 makes the right of a **foster home, group home, or home of a relative** other than a parent with an appeal of an agency decision or order removing a child from the person's home.

Currently, any decision issued by an agency that affects the head of a foster home, group home, or head of home of a relative may be appealed to the Department of Children and Families. They may also file a petition with the circuit court for the county where the child is placed that is alleging that the decision of the child's placement is not in their best interest. It provides that, if a hearing is held for a change in placement when the child was placed for six months or more, the party has a right to be represented by counsel, request the child be cross examined or assessed by an expert in order to present evidence, including expert testimony, to cross-examine the witness and present alternative placement recommendations.

In giving both said parties the opportunity the right for counsel, cross examining witnesses, provide potential review by the circuit court, as well as present alternative placement recommendations, not only will both parties be able to have the child's best interest at heart, but will expand how current law is read in order to face contemporary issues our state's adoption system faces.

Again, thank you for the opportunity to testify and I look forward to answering any questions you may have.

Oneida Nation
Oneida Business Committee
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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.

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

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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.