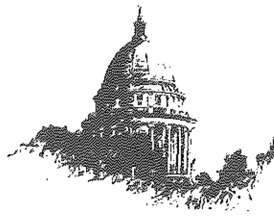

PAUL TITTL

STATE REPRESENTATIVE • 25TH ASSEMBLY DISTRICT

Assembly Committee on Children and Families
Assembly Bill 26
Wednesday 24, 2021

First of all, I would like to thank you for allowing me to testify before you concerning Assembly Bill 26 prohibiting the out-of-home placement of a child with a person with a record of a crime against a child.

This bill is one of those instances in which the statement "It strikes close to home" is especially appropriate. The brutal killing of Ethan Hauschultz which gave rise to the need for this bill took place in Newton, Wisconsin, which is in the 25th district. Prior to moving to Newton, Ethan lived two miles from me in Manitowoc.

I have provided you with some articles about the case, so I will not repeat the facts. Rather, I want bring to mind our role as legislators and the opportunity we have to create and pass legislation that will improve the communities in which we live. This case is one of those instances, because if AB 26 had been in place on April 20, 2018, in all likelihood Ethan Hauschultz would be with us today.

Current law does not allow a person who has been convicted, adjudicated delinquent of a crime against a child, or abused or neglected a child to be licensed for out-of-home placement of children. However, current law has a serious loophole. A person who has pled no contest to those kinds of activities or has had a charge dismissed or reduced by a plea bargain, can receive a license for-out-of-home placement.

AB 26 eliminates the loophole by specifying a licensee cannot have pled no contest or have had a charge dismissed or reduced by plea bargain to any of those child related activities.

While we all have continued shock and sorrow as we think of the death of Ethan Hauschultz, we cannot do anything about the past. However, we can make this simple change in our statutes to close the loophole and provide greater security for children going through protective placement services in the future.

Thanks again for hearing this bill. If you have any questions for Senator Jacques or me, we would be happy to discuss them with you.

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ANDRÉ JACQUE

STATE SENATOR • 1ST SENATE DISTRICT

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Testimony before the Assembly Committee on Children and Families
Senator André Jacque
March 24, 2021

Chairman Snyder and Committee Members,

Thank you for the opportunity to testify before you with Rep. Tittl today as the Senate author of Ethan's Law, strong bi-partisan legislation that Wisconsin needs to protect children and establish a clear standard for Child Protective Services to avoid placing children with those with a record of child abuse that establishes substantial potential for serious harm. Assembly Bill 26 will help ensure that we are not removing children from harm only to put them directly into a situation that presents a major prospect of causing them significant harm.

Some of you may have seen the story "The Lonesome Death of Ethan Hauschultz," by Doug Schneider, the Watchdog Reporter for the Manitowoc Herald Times Reporter. I have attached a copy of the article to my testimony. It is a tragic documentation of the loopholes in state law that helped to allow a 7 year-old Manitowoc County boy to be brutally murdered at the home of a known child abuser and violent criminal where child-protective workers had placed him. Ethan died from hypothermia after essentially being buried alive in the snow… ordered, then shoved face down into a puddle of water, stripped of his coat and boots, stood on, then buried under an estimated 80 pounds of snow, in what his tormentor called his "little coffin". Ethan also suffered blunt-force injuries to his head, neck, chest and abdomen, and a broken rib, an impression of a boot on his back. The system as it currently exists failed Ethan in allowing him to be placed with his great uncle Timothy Hauschultz, who ordered and covered up Ethan's murder, and frequently meted out similar punishments to the other children under his "care".

Timothy Hauschultz had a history of violent run-ins with the law, including whacking a man with a tire iron in a bar fight, helping to beat another man to the point of requiring three days in intensive care in the hospital, armed robbery with a long-bladed butcher knife, and diving across a table at a restaurant to hold a steak knife to a man's throat. Somehow, none of these incidents disqualified him from taking placement of Ethan. Nor did a felony child abuse charge after that which Timothy pled no contest to, after cracking two boys at his home with a 6-foot carpenter's level, then splintering a 3 foot-long piece of wood against the back of one of the boy's heads. Timothy insisted he had done nothing wrong.

If the protections of AB 26 had been in place to close the loophole, Ethan (and two of his siblings) could not have been placed in Timothy Hauschultz's home – and presumably Ethan would still be alive.

Several human services officials have welcomed this proposal because it gives clear guidelines that remove existing gray areas for placement. I am extremely pleased to note for the committee that the Senate companion for Ethan's Law has already passed the Senate Committee on Human Services, Children and Families this session on a unanimous 5-0 vote, and the full State Senate on a voice vote, and I appreciate the assistance of Sen. Johnson and several tribes in advancing this crucial legislation.

Thank you for your consideration of Assembly Bill 26.

Wisconsin Department of Children and Families

Governor Tony Evers
Secretary Emilie Amundson
dcf.wisconsin.gov

TO: Chair Snyder, Vice-Chair Ramthun, and Honorable Members of the Assembly Committee on Children and Families

FROM: Amanda Merkwae, Legislative Advisor

DATE: March 24, 2021

SUBJECT: 2021 Assembly Bill 26

DCF is committed to the goal that all Wisconsin children and youth are safe and loved members of thriving families and communities. Thank you for the opportunity to testify about Assembly Bill 26 related to DCF programs and the children and families we serve. DCF will be testifying for information regarding this legislation.

AB26, if Assembly Substitute Amendment 1 is adopted, prohibits the court at CHIPS or delinquency disposition from placing a child in the home of a relative (other than a parent) or non-relative who has been convicted of enumerated crimes under chapter 948, or who has pled no contest to such a crime, or has had a charge for such a crime dismissed or amended as a result of a plea agreement, unless the judge determines by clear and convincing evidence that the placement would be in the best interests of the child. AB26 also precludes an out-of-home placement provider from receiving a license if the background investigation shows that a licensee, employee, or nonclient resident of the out-of-home placement was charged with enumerated violations of Chapter 948 or a similar law of another state and such a charge was dismissed or amended as part of a plea agreement, or the person has pled no contest to one of those offenses.

Federal statutes and state law and state child welfare standards provide a robust process for assuring the safety of children in court-ordered out-of-home placements under Chapter 48 or Chapter 938. Specifically, under the DCF standards, child welfare agencies must assess and confirm that a placement is safe for the child prior to placing the child, and at various points subsequent to the placement, and this obligation exists for all placement settings. This process,

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called Confirming Safe Environments, requires that the agency case worker do all of the following prior to placement:

1) Conduct a home visit to assess and evaluate the safety of the placement setting and assist the caregiver in obtaining provisions needed for the care of the child;
2) Complete a check of law enforcement records (this includes all police contacts) or conduct a Consolidated Court Automation Program (CCAP) check on all individuals seventeen years of age and older residing in the identified placement home—these records can be utilized to deny placement with an individual regardless of the presence of charges or convictions;
3) Conduct a reverse address Sex Offender Registry check to ensure no registered sex offenders are documented as living in that home;
4) Conduct a check of eWiSACWIS child protective services records on all individuals seventeen years of age and older residing in the identified placement home—these records can be utilized to deny placement with an individual regardless of the presence of a substantiation of child abuse or neglect; and
5) Analyze information from all other available sources, including all known offenses and convictions and records such as police reports, to evaluate the environment of the placement home, determine whether placement danger threats exist, and subsequently decide if the child can be placed in the home safely.

The above assessment applies to all placement decisions, regardless of licensing status. For a caregiver to become licensed, additional requirements apply, including:

- To become a licensed foster parent, to work in a child welfare institution, or to receive Kinship Care payments, a mandatory background check must be conducted. If the applicant has been convicted of certain offenses, he or she is barred from becoming a licensed foster parent, working in a child welfare institution, or receiving Kinship Care payments unless the person has been found to be rehabilitated as allowed by law.
- A home study called the Structured Analysis Family Evaluation (referred to as the SAFE Home Study), which is a robust, valid, and reliable tool used to determine if prospective foster and adoptive parents are fit and qualified to care for a child. Through the home study process, the person performing the assessment evaluates information garnered from interviews, recommendations, background

checks, and home visits to make the final determination to approve or deny the person's application. Outside of background check bars for licensure or adoption approval, the agency is guided through the assessment tool to evaluate concerns that may be present in information and may inform training and support plans for the individual moving forward.

State standards require that a child welfare agency to make all the above safety determinations prior to placing a child in a foster home or with a relative. Additionally, safety is continuously evaluated when children remain placed in out-of-home care.

In recognition of this extensive framework for evaluating child safety in out-of-home care placements, DCF has the following concerns about AB26:

1. **Family and familiar placements.** If enacted, this bill could decrease available placement resources that do not present safety concerns, increase the number of children placed in unrelated foster placements, and increase the number of children placed in congregate care settings. This runs contrary to the aims of the Family First Prevention Services Act to prevent family separation and resulting trauma and reduce placement of children with unfamiliar and institutional caregivers. Additionally, placement in a congregate care setting for this reason would not be reimbursable by the federal government, for FFPSA requirements. The bill could also exacerbate barriers to placing children with individuals who meet the placement preferences under the Indian Child Welfare Act (ICWA) and the Wisconsin Indian Child Welfare Act (WICWA).
2. **Racial disproportionality.** Research shows that people of color interact with the criminal justice system in Wisconsin—including charging and conviction—at a rate disproportionally higher than the general population. By including all *charges* for enumerated violations of Chapter 948 that may have been dismissed outright or amended to a lesser offense that aligns with what actually happened in a particular case, the bill could exacerbate racial disparities in the availability of family placements.

3. **Determining the best interests of a child when a placement resource has dismissed charges.** When an individual is charged with an offense and that charge is later dismissed as part of a plea agreement, there are a number of reasons that could lead to the dismissal. For example, the charge may be dismissed because an individual is innocent of those particular allegations. DCF appreciates the provision allowing the juvenile court judge to grant placements in these instances, however, has some concerns about how this might function within a juvenile court hearing. In circumstances where placement resources are limited and an otherwise safe and appropriate relative caregiver is available but has a dismissed charge as the result of a plea agreement, the presumption against placement with this relative could result in a child being unnecessarily placed in congregate care (or secure detention in a delinquency case) long term or while the proposed placement with the relative is being litigated. Even temporary placement in congregate care settings, coupled with the uncertainty of the court process, can exacerbate trauma and attachment issues experienced by children in the child welfare and youth justice systems.

Thank you again for the opportunity to testify regarding this legislation.

Good morning Members of the Assembly Committee on Children and Families,

My name is Leah Kohlmann. I have been a registered nurse for 24 years and have been on the board for Lakeshore Foster Families and Friends in Manitowoc for over two years.

I stand before you as a voice for Ethan Haushultz and all the other children in foster care past and present. Ethan passed away 14.2 miles from my home. Had I known what was happening to him I would have jumped in my car and immediately drove to the home where he was being tortured and stopped the monsters who eventually murdered him.

Like Ethan, there are numerous children in similar situations to his, right this very moment. We need to put a stop to the abuse! These kids have already been through enough that already removed them from their biological homes.

Today I ask that you put on your basketball jersey. Even if you never played basketball before, today I asked that you put on your jersey. I ask that once you have your jersey on that you take a chance on these kids. Not just a 2 pointer, I ask that you sink a half court or full court shot.

If you pass this law I will stand before you moving forward as your biggest cheerleader and supporter. Thank you for your time and dedication to beginning the journey to overhaul Wisconsin's foster care system.

Leah Kohlmann, RN, BSN
Lakeshore Foster Families and Friends Volunteer and Board Vice President
Phone: (920) 298-8477
lakeshorefosterfamilies.org

Pride of the Ojibwe

13394W Trepania Road. Hayward. Wisconsin. 54843
Phone 715-634-8934. Fax 715-634-4797

March 23, 2021

Representative Snyder, Chair
Committee on Children and Families
Room, 307 North Wisconsin State Capitol
Madison, WI 53708

Re: Comments in Opposition to AB 138 and Neutral Stance on AB 26 (Support if ICWA/WICWA Amendments Made)

Dear Chair Snyder:

We thank you and the Assembly Committee on Children and Families for allowing the Lac Courte Oreilles Band of Lake Superior Chippewa Indians the opportunity to submit written comments on these two bills that will greatly affect the Tribe.

One of the paramount purposes of the Indian Child Welfare Act (hereinafter ICWA) is to ensure "the placement of [ ] children in foster or adoptive homes or institutions which will reflect the unique values of the Indian culture."[1] The ICWA's mandate that an adoptive placement is preferred to be with members of the child's extended family, other members of the same tribe, or other Indian families is "[t]he most important substantive requirement imposed on the state."[2] Further, the ICWA permits Tribes that desire to have a different, more culturally appropriate order of preferences to adopt such preferences to take the place of the standard placement scheme found in the ICWA.[3]

It was the intent of Congress to ensure that "white, middle-class standards" not be utilized in determining whether preferred placements are suitable.[4] "Discriminatory standards have made it virtually impossible for most Indian couples to qualify as foster or adoptive parents, since they are based on middle-class values."[5]

> The importance of unique Indian social and cultural standards cannot be overemphasized – the historical lack of understanding of such standards by state courts and agencies, and the resulting effects on the populations of Indian tribes and the self-identification of Indian children, is precisely why the ICWA was enacted, as

[1] H.R. Rep. No. 95-608, 95th Cong. 2nd Sess. 8 (1978); *see also* 25 U.S.C. § 1902.
[2] *Miss. Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 36 (1989).
[3] 25 U.S.C. § 1915(c).
[4] H.R. Rep. No. 95-1386, 95th Cong. 2nd Sess. 24 (1978).
[5] H.R. Rep. No. 95-608, 95th Cong. 2nd Sess. 11 (1978).

"there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children."[6]

Thus, in determining the suitability of a potential home, the relevant standards must be "the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties."[7] This language illustrates that Congress intended agencies and state courts to look beyond just the reservation boundaries, and focus on social and cultural ties as well.

AB 26 -Neutral on Assembly Substitute Amendment 1

- **Support if cross-references to the best interests of Indian children/juveniles are added.**[8]

The Lac Courte Oreilles Band of Lake Superior Chippewa Indians would be able to support this Substitute Amendment if it were to mirror the Senate Amendment 1, to Senate Substitute Amendment 1, to Senate Bill 24 offered by Senator Jacque on March 2, 2021. That Senate Amendment is included below for quick reference.

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[6] CALIFORNIA INDIAN LEGAL SERVICES, CALIFORNIA JUDGES BENCHGUIDE: THE INDIAN CHILD WELFARE ACT 46 (May 2010 ed.); *see also* 25 U.S.C. § 1901; *Miss. Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 32-37 (1989).

[7] 25 U.S.C. § 1915(d).

[8] Wis. Stat. 48.01(2):

(2) In Indian child custody proceedings, the best interests of the Indian child shall be determined in accordance with the federal Indian Child Welfare Act, 25 USC 1901 to 1963, and the policy specified in this subsection. It is the policy of this state for courts and agencies responsible for child welfare to do all of the following:

(a) Cooperate fully with Indian tribes in order to ensure that the federal Indian Child Welfare Act is enforced in this state.

(b) Protect the best interests of Indian children and promote the stability and security of Indian tribes and families by doing all of the following:

1. Establishing minimum standards for the removal of Indian children from their families and placing those children in out-of-home care placements, preadoptive placements, or adoptive placements that will reflect the unique value of Indian culture.

48.01(2)(b)2.2. Using practices, in accordance with the federal Indian Child Welfare Act, 25 USC 1901 to 1963, this section, and other applicable law, that are designed to prevent the voluntary or involuntary out-of-home care placement of Indian children and, when an out-of-home care placement, adoptive placement, or preadoptive placement is necessary, placing an Indian child in a placement that reflects the unique values of the Indian child's tribal culture and that is best able to assist the Indian child in establishing, developing, and maintaining a political, cultural, and social relationship with the Indian child's tribe and tribal community.

Wis. Stat. 938.01(3):

(3) Indian juvenile welfare; declaration of policy. In Indian juvenile custody proceedings, the best interests of the Indian juvenile shall be determined in accordance with the federal Indian Child Welfare Act, 25 USC 1901 to 1963, and the policy specified in this subsection. It is the policy of this state for courts and agencies responsible for juvenile welfare to do all of the following:

(a) Cooperate fully with Indian tribes in order to ensure that the federal Indian Child Welfare Act is enforced in this state.

(b) Protect the best interests of Indian juveniles and promote the stability and security of Indian tribes and families by doing all of the following:

1. Establishing minimum standards for the removal of Indian juveniles from their families and the placement of those juveniles in out-of-home care placements that will reflect the unique value of Indian culture.

2. Using practices, in accordance with the federal Indian Child Welfare Act, 25 USC 1901 to 1963, this section, and other applicable law, that are designed to prevent the voluntary or involuntary out-of-home care placement of Indian juveniles and, when an out-of-home care placement is necessary, placing an Indian juvenile in a placement that reflects the unique values of the Indian juvenile's tribal culture and that is best able to assist the Indian juvenile in establishing, developing, and maintaining a political, cultural, and social relationship with the Indian juvenile's tribe and tribal community.

SENATE AMENDMENT 1,
TO SENATE SUBSTITUTE AMENDMENT 1,
TO SENATE BILL 24

March 2, 2021 - Offered by Senator JACQUE.

At the locations indicated, amend the substitute amendment as follows:

1. Page 2, line 7: after "child" insert " or, in the case of an Indian child, the best 3interests of the Indian child as described in s. 48.01 (2)".

2. Page 3, line 16: after "child" insert "or, in the case of an Indian child, the best 5interests of the Indian child as described in s. 48.01 (2)".

3. Page 4, line 23: delete "child" and substitute " juvenile or, in the case of an 7Indian juvenile, the best interests of the Indian juvenile as described in s. 938.01 (3)".

4. Page 5, line 18: after "juvenile" insert " or, in the case of an Indian juvenile, 9the best interests of the Indian juvenile as described in s. 938.01 (3)".

By having the offenses under Ch.948 removed from AB 26, with the exception of the crimes listed below, it addresses the concerns we all have regarding unsafe placements, but also LCO's concerns that the blanket approach would prevent potentially suitable placements from being considered.

- 948.02(1) or (2)- sex assault of a child
- 948.025- repeated sex assault of a child
- 948.03(2) or (5)(a) 1, 2, 3, 4- child abuse, causing intentional harm, repeated physical abuse of same child
- 948.05- sexual exploitation of a child
- 948.051- trafficking
- 948.055- causing child to view/listen to sexual activity
- 948.06- incest
- 948.07- child incitement
- 948.08- soliciting child for prostitution
- 948.081- patronizing a child
- 948.085- sex assault of child placed in substitute care
- 948.11(2)(a) or (am)- exposing a child to harmful material
- 948.12- possession of child pornography
- 948.13- child sex offender working with children
- 948.21- neglecting a child
- 948.215- chronic neglect
- 948.30- abduction of a child
- 948.53- child unattended in childcare vehicle

The best interest of an Indian child/juvenile is that the Indian Child Welfare Act/Wisconsin Indian Child Welfare Act are followed- which includes ensuring that placements reflect the unique of the Indian child's/juvenile's tribal culture. This cannot be lost in any discussion involving placement. As such, we believe it is relevant to address at this time.

AB 138- Oppose

- **Without having parents at a hearing, it allows for ICWA/WICWA avoidance.**

Disclaiming parental rights via written affidavit fails to meet the federal standard as set forth in 25 C.F.R. §23.107, and thus the federal regulation would preempt this proposed legislation. The regulation creates an affirmative duty to ask the parties during a voluntary or involuntary child-custody proceeding whether the participant knows or has reason to know that the child is Indian. Beyond that, it establishes how one goes about fulfilling that duty. This standard and the process set forth in regulation warrants more than the drafted language with preliminary draft amendments.

25 C.F.R. § 23.107 How should a State court determine if there is reason to know the child is an Indian child?

(a) State courts must ask each participant in an emergency or voluntary or involuntary child-custody proceeding whether the participant knows or has reason to know that the child is an Indian child. The inquiry is made at the commencement of the proceeding and all responses should be on the record. State courts must instruct the parties to inform the court if they subsequently receive information that provides reason to know the child is an Indian child.

(b) If there is reason to know the child is an Indian child, but the court does not have sufficient evidence to determine that the child is or is not an "Indian child," the court must:

(1) Confirm, by way of a report, declaration, or testimony included in the record that the agency or other party used due diligence to identify and work with all of the Tribes of which there is reason to know the child may be a member (or eligible for membership), to verify whether the child is in fact a member (or a biological parent is a member and the child is eligible for membership); and

(2) Treat the child as an Indian child, unless and until it is determined on the record that the child does not meet the definition of an "Indian child" in this part.

(c) A court, upon conducting the inquiry required in paragraph (a) of this section, has reason to know that a child involved in an emergency or child-custody proceeding is an Indian child if:

(1) Any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that the child is an Indian child;

(2) Any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that it has discovered information indicating that the child is an Indian child;

(3) The child who is the subject of the proceeding gives the court reason to know he or she is an Indian child;

(4) The court is informed that the domicile or residence of the child, the child's parent, or the child's Indian custodian is on a reservation or in an Alaska Native village;

(5) The court is informed that the child is or has been a ward of a Tribal court; or

(6) The court is informed that either parent or the child possesses an identification card indicating membership in an Indian Tribe.

(d) In seeking verification of the child's status in a voluntary proceeding where a consenting parent evidences, by written request or statement in the record, a desire for anonymity, the court must keep relevant documents pertaining to the inquiry required under this section confidential and under seal. A request for anonymity does not relieve the court, agency, or other party from any duty of compliance with ICWA, including the obligation to verify whether the child is an "Indian child." A Tribe receiving information related to this inquiry must keep documents and information confidential.

By having the parents at a court hearing, it allows the Judge to ask the appropriate questions to be able to truly determine whether the court "knows or has reason to know" a child is an Indian child. It is far easier to perpetuate a lie when it comes down to simply checking the box that a child is not Indian. However, when a parent is before a Judge who can fully explain the consequences of lying on

the record and who can ask more detailed and open-ended questions, it allows for a greater level of honesty and ICWA/WICWA compliance.

Disclaiming parental rights solely through affidavit should give everyone pause- not just Tribal folks. The opportunity for abuse and duress is at times far greater than those may be willing to admit. This is always true of women within the days after giving birth, when fluctuating hormones affect cognitive functioning. There are not enough protections within the bill to account for private agency or public agency abuse.

The use of written affidavit alone to disclaim parental rights can be used as a tool for avoidance of ICWA/WICWA in not only voluntary actions, but also in involuntary actions. Perhaps some may argue that stronger language and better cross-referencing could save this bill. Even then, we believe this legislation still lays the groundwork for ICWA/WICWA avoidance. For a number of years, protective plans were utilized by county agencies as a tool to avoid ICWA/WICWA. The contributing factor that allowed for these to be abused was the fact that they are tools used outside of the courtroom processes. We fear that these affidavits could be used in the same manner- as a loophole.

In summation, we have numerous concerns regarding AB 138:

- Affidavits being used as an ICWA/WICWA avoidance tool;
- Federal preemption concerns for failing to set forth a procedural system that adequately follows 25 C.F.R. § 23.107;
- Equal protection under the law with regards to procedural differences between mothers and alleged fathers;
- Legal concerns over non-marital alleged fathers disclaiming rights to which they do not possess until paternity is acknowledged or adjudicated after birth of a child; and
- Lack of procedural clarity on the how the affidavit plays into the normal termination of parental rights and adoption court processes.

It is our recommendation that the authors consider holding a stakeholder Zoom call to assist in identifying ways to address the concerns that led to the bill being drafted, *but* in a manner that will not run afoul of ICWA/WICWA, equal protection, and child welfare best practice. We simply do not believe that termination of parental rights by Affidavit alone is the appropriate tool.

We thank you for the opportunity to provide written comment on these two bills. Please accept this as our neutrality on AB 26, again with the ability to be supportive with the addition of best interests of an Indian child/juvenile language, and opposition to AB 138. Should further discussion be sought we would welcome a seat at the table for that purpose.

Sincerely,

Louis Taylor, Chairman
Lac Courte Oreilles Tribal Governing Board

MENOMINEE INDIAN TRIBE OF WISCONSIN
P.O. Box 910
Keshena, WI 54135-0910

To: Rep. Pat Snyder, Chair
Members of Assembly Committee on Children and Families
From: Gunnar Peters, Chairman, Menominee Tribal Legislature, Menominee Indian Tribe
Date: Tuesday, March 23, 2021
Re: Comments Regarding 2021 Assembly Bill 26 and Assembly Bill 138

The Menominee Tribe appreciates the opportunity to submit comments on two bills significant to our Menominee Tribe, our Menominee children, and our Menominee families. Menominee Tribe expresses to the Committee the need to keep in mind the provisions of ICWA and WICWA and ensure the voices of the Tribes are heard throughout, so we can avoid any changes in procedures or laws related to placement, termination of parental rights or adoption that will negatively impact American Indian children, parents, and Tribes and their rights under ICWA. Under WICWA, Wisconsin is committed to prevent out-of-home placement to reunify Tribal children with the American Indian family. Our Menominee Tribe maintains a robust Children's Codes to assure the safety of our children.

Related to Assembly Bill 26, The Menominee Tribe had concerns with the original bill but Assembly Substitute Amendment 1 addresses some concerns. We will stand neutral on the bill, and with support if the same ICWA best interests language of Senate is adopted.

Menominee Tribe wants to express our concern related to the bill that it may disproportionately impact our American Indian children and families by precluding some Tribal relatives or Tribal people due to crimes that would not be considered dangerous to those caring for children, hence decreasing available tribal family placements and forcing family separation and resulting in children and family trauma. The bill will also increase obstacles to placing American Indian children with family members and tribal members who meet the placement preferences under ICWA and WICWA.

Related to Assembly Bill 138, which would allow a parent to submit an affidavit of a disclaimer to their parental rights to a child without appearing in court to terminate their parental rights. Menominee Tribe opposes Assembly Bill 29.

MENOMINEE INDIAN TRIBE OF WISCONSIN
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Menominee Tribe is concerned the language in the bill related to Indian children is inconsistent with the ICWA/WICWA. Eliminating a Termination of Parental Rights hearing is most problematic. This bill allows a process to avoid ICWA/WISCSA.

Throughout the entire package of adoption bills that have been brought forth, the Menominee Tribe maintains its deepest concern that there is no provision to have a father legally identified prior to a process as monumental as a termination of parental rights and subsequent adoption of a child. Alleged or presumed fathers do not provide the Tribe comfort in achieving the purposes of ICWA and WICWA.

How does a non-legally identified father have the ability to legally terminate rights? Foundationally, that concept is flawed. DNA is now used in almost all aspects of our lives. Why would the State not use it for the identification of a father in a child's life? Exceptions are always noted.

The unintended consequences are significant for Tribes. Without a legally identified father and judicial oversight, the ability for a child to be properly identified as Indian is significantly reduced or next to impossible. Over the course of time, that lack of protection inherently reduces tribal membership. But even greater, removes a child from his/her true identity with all the rights and responsibilities of being a tribal member.

Some more logistical concerns include;

1. The ability of an alleged or presumed father terminate parental rights prior to birth, while the mother is unable to until after birth. If alleged father terminates and mother decides not to, who becomes responsible for that child. There is no one to step into that role. Public policy has spent significant resources to have the father in that role and now it can be abdicated prior to birth.

2. The vague question of that the child is not an Indian child within the affidavit.

Possible solutions to these concerns would include:

1. In order for an affidavit of an alleged or presumed father to be accepted; the party must submit to a DNA swab which would be used for genetic testing upon the birth of the child.

MENOMINEE INDIAN TRIBE OF WISCONSIN
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Keshena, WI 54135-0910

2. Both mother and father would have the same timeframes in which to execute these affidavits. Mother would have to consent the child's genetic testing.

3. The affidavit would have to inquire on a more basic level of whether this is an Indian child (ex. Are you or any family member an enrolled member of a Tribe? Are aware of any native heritage in your family or the other parent's).

Obviously, these concerns and suggestions cannot address every hypothetical, but would significantly reduce them. The Tribe understands that there may be some logistical hurdles like administering and storage of DNA results, costs, and systemic workflow. However, the small upfront costs outweigh long term costs to parents, adoption resources, Tribes, and most importantly, the child.

Due to the magnitude and breath of this issue for the Tribe it is difficult to convey our concerns in these written comments alone. If any of you have any specific questions, we would be interested in discussing with you.

This letter provides Menominee Tribe's neutral stance to Assembly Bill 26 and formal objection to Assembly Bill 138 as written.

Thank you for your time and attention to this matter.