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*Testimony before the Senate Committee on Human Services, Children and Families*
*Senator André Jacque*
*February 22, 2021*

Committee Members,

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. I have introduced Ethan's Law, Senate Bill 24, with Representative Tittl to 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 SB 24 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.

Thank you for your consideration of Senate Bill 24.

PAUL TITTL
STATE REPRESENTATIVE • 25TH ASSEMBLY DISTRICT

Senate Committee on Human Services, Children and Families
Senate Bill 24
February 22, 2021

First of all, I would like to thank you for allowing me to testify before you concerning Senate Bill 24 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 wonderful 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 SB 24 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.

SB 24 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.

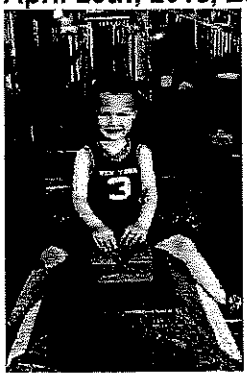
Thanks again for hearing this bill. If you have any questions for Senator Jacques or me, we would be happy to discuss them with you.

**Capitol Office:** Post Office Box 8953 • Madison, WI 53708-8953
(608) 266-0315 • Toll-Free: (888) 529-0025 • Fax: (608) 282-3625 • **Email:** Rep.Tittl@legis.wi.gov

# 2018 WI Deaths

https://domesticviolencehomicidehelp.com/2018-wi-deaths/

**April 20th, 2018, Ethan Hauschultz, Age 7, Manitowoc, WI**



Obituary

Three people charged in the death of a 7-year-old boy who was severely beaten and buried in the snow appeared before a Manitowoc County judge Monday.

The Hauschultzes were arrested after a months-long investigation into the April 20 death of Ethan Hauschultz.

Timothy Hauschultz, Tina McKeever-Hauschultz and 15-year-old Damian Hauschultz appeared in court for bail hearings.

A judge set Timothy Hauschultz's bond at $100,000. The state had asked for $125,000. Damian's bond is set at $150,000.

Tina's bond is set at $75,000. Tina's attorney said she was unaware of what was going on in her home and has been working with social workers since Ethan's death.

"The allegations in these criminal complaints is troubling, to say the least," Judge Jerilyn Dietz said.

On April 20, sheriff's investigators say over the course of an hour or an hour-and-a-half, Ethan was hit, kicked, poked, repeatedly shoved to the ground, and a heavy log was rolled across his chest by Damian Hauschultz, who was 14 at the time. The older boy "stood on (Ethan's) body and head while Ethan was face-down in a puddle. He ultimately buried Ethan completely in snow."

Timothy and Tina, Ethan's court-appointed guardians, took the boy to a hospital where he died after life-saving efforts by medical staff.

According to the sheriff's office, the Milwaukee County Medical Examiner's Office determined Ethan died from hypothermia and blunt force injuries to his head, chest and abdomen.

The sheriff's office says Timothy Hauschultz ordered Ethan to carry the wooden log, which weighed about two-thirds of his own body weight — making it about 40 pounds — as a punishment. The teenage boy was supervising Ethan.

According to criminal complaints obtained by Action 2 News, Ethan and his siblings were put in the Hauschultzes' care in 2017. The siblings told investigators Timothy Hauschultz frequently punishes

them by making them walk laps around the yard carrying heavy logs, which he picks out. The children are allowed to put down the log and take a 5-second rest after each lap. The siblings said that week they were required to carry wood every day for two hours a day for not knowing their Bible verses.

The 15-year-old boy told investigators he was frustrated because the younger boys were dropping the wood every 5 minutes. When Ethan became unresponsive, he thought the boy was just resisting, so he buried him under what he estimated was 80 pounds of packed snow and ice. Deputies say Ethan weighed 60 pounds.

Investigators asked Damian how much snow was covering Ethan. Damian replied by saying Ethan "was in his own little coffin of snow." He then laughed, according to a criminal complaint.

Investigators described Damian Hauschultz as emotional during an interview when he said his home had become "boring" and "prison-like" after Ethan and his brother came to live with them, and he was always angry after they took all the fun out of his life.

Ethan's parents released this statement to Action 2 News: "We are glad that justice is finally starting for our son, and kids. We are happy that there was a cash bail for each defendant. #Justice4Ethan"

Damian Hauschultz is charged with first-degree reckless homicide, physical abuse of a child intentionally causing bodily harm, and substantial battery.

Timothy Hauschultz is charged with party to the crimes of felony murder, intent to contribute to the delinquency of a child resulting in death, physical abuse of a child intentionally causing bodily harm, and misdemeanor battery.

McKeever-Hauschultz is charged with being party to the crimes of contributing to the delinquency of a child resulting in death and failing to act to prevent bodily harm to a child.

Timothy Hauschultz's attorney said her client had no idea the punishment would turn out so tragic.

"Never in Mr. Hauschult'z wild imagination would what happened ever happen. His son was 14 years old, certainly old enough to leave with younger children. There was nothing happening in the home that morning. Everything was normal. No idea that it would rise to the level that it did," attorney Donna Kuchler said.

The judge said based on the criminal complaint, Timothy Hauschultz shares responsibility.
"I do note that the criminal complaint does make allegations that Mr. Hauschultz was the one who determined the punishment to this 7-year-old child who subsequently died, and he put the co-defendant, Damian, in charge of carrying out the punishment," Dietz said.

All three suspects are scheduled to return to court on Feb. 11.

# Years of Alleged Abuse and Neglect from Family of 7 Year-Old Boy Who Died in Manitowoc County

Channel 5 Green Bay
https://www.wearegreenbay.com/wfrv-history/
Jul 6, 2018

A report from the Manitowoc County Human Services Department details years of alleged child neglect and physical abuse by the family of a seven year-old boy who died in April under suspicious circumstances.

The report, detailed here, was mandated by the state after the seven year-old boy, Ethan Hauschultz, died.

The physical abuse and neglect claims involve the father, the mother, the mother's boyfriend, and an "unknown maltreater," and the victims of the alleged abuse and neglect are the seven year-old boy and his siblings. The report also details alleged physical abuse by the seven year-old's great uncle to the boy's cousins.

The report does not identify the alleged perpetrators nor the victims; however, the Local 5 newsroom requested the 90-day summary report for a child death, serious injury or egregious incident relating to the death of seven year-old Ethan Hauschultz from the Wisconsin Department of Children and Families, and were sent documents outlining years of alleged abuse and neglect.

Ethan Hauschultz died on April 20th, 2018 while in the care of his uncle.

Back in April, Local 5 interviewed the mother of Ethan Hauschultz, Andrea Everett, who said her son Ethan was killed because of events that happened at his uncle's house.

Andrea Everett has not responded to Local 5's request for an interview in light of this report.

Local 5 also reached out to the Manitowoc County Human Services Department as well as the Wisconsin Human Services Department asking why children are either left at the home or returned to the home where alleged abuse and neglect is happening, as was the case for Ethan and his siblings. Neither department answered our questions, and said they also cannot answer questions relating to specific cases.

The report includes both substantiated and unsubstantiated claims.

The substantiated claims go back to October 26, 2013, when the boyfriend of Andrea Everett allegedly physically abused Ethan and his twin brother. Child Protective Services said the situation was unsafe, but left the children in the home after a consent decree.

Another substantiated claim was reported on June 11, 2014, when Everett allegedly neglected Ethan, Ethan's twin brother, and Ethan's two older sisters. Child Protective Services found the situation to be unsafe and brought the four children into temporary physical custody.

On February 1, 2016, a report of the father allegedly neglecting the four children was substantiated.

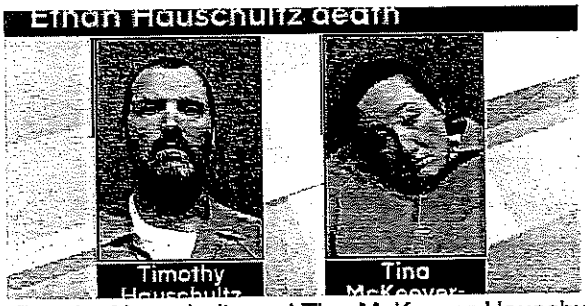
On March 3rd, 2016, a CPS report showed alleged neglect by Everett to Ethan, his twin brother, and one of his sisters. The substantiated claim led to the children being taken into temporary physical custody and brought to their relatives.

Toward the end of the report, the Manitowoc County Human Services Department wrote that in collaboration with medical experts and law enforcement, it found enough evidence of neglect by the relative guardians to Ethan, his siblings, and his cousins. The evidence also showed Ethan was abused by an "unknown maltreater."

The report says Ethan's two biological siblings and two cousins were in an unsafe situation and brought into temporary physical custody and put into care outside of their home. The agency filed children in need of protection and services petitions. The case is still open.

The Manitowoc County Sheriff's Office is still investigating how Ethan died. No suspects have been arrested and no charges have been filed.

# Two adults one teen charged in death of 7-year-old boy



Timothy Hauschultz and Tina McKeever-Hauschultz, along with their teenaged son, are charged in the death of a 7-year-old boy.

February 4, 2019 at 5:34 PM EST - Updated February 5 at 11:04 AM

MANITOWOC COUNTY, WI (WBAY) - Three people charged in the death of a 7-year-old boy who was severely beaten and buried in the snow appeared before a Manitowoc County judge Monday, WBAY reports.

The Hauschultzes were arrested after a months-long investigation into the April 20 death of Ethan Hauschultz.

Timothy Hauschultz, Tina McKeever-Hauschultz and 15-year-old Damian Hauschultz appeared in court for bail hearings.

A judge set Timothy Hauschultz's bond at $100,000. The state had asked for $125,000. Damian's bond is set at $150,000.

Tina's bond is set at $75,000. Tina's attorney said she was unaware of what was going on in her home and has been working with social workers since Ethan's death.

On April 20, sheriff's investigators say over the course of an hour or an hour-and-a-half, Ethan was hit, kicked, poked, repeatedly shoved to the ground, and a heavy log was rolled across his chest by Damian Hauschultz, who was 14 at the time. The older boy "stood on (Ethan's) body and head while Ethan was face-down in a puddle. He ultimately buried Ethan completely in snow."

Timothy and Tina, Ethan's court-appointed guardians, took the boy to a hospital where he died after life-saving efforts by medical staff.

According to the sheriff's office, the Milwaukee County Medical Examiner's Office determined Ethan died from hypothermia and blunt force injuries to his head, chest and abdomen.

The sheriff's office says Timothy Hauschultz ordered Ethan to carry the wooden log, which weighed about two-thirds of his own body weight, as a punishment. The teenage boy was supervising Ethan.

According to criminal complaints obtained by Action 2 News, Ethan and his siblings were put in the Hauschultzes' care in 2017. The siblings told investigators Timothy Hauschultz frequently punishes them by making them walk laps around the yard carrying heavy logs, which he picks out. The children are allowed to put down the log and take a 5-second rest after each lap. The siblings said that week they were required to carry wood every day for two hours a day for not knowing their Bible verses.

The 15-year-old boy told investigators he was frustrated because the younger boys were dropping the wood every 5 minutes. When Ethan became unresponsive, he thought the boy was just resisting, so he buried him under what he estimated was 80 pounds of packed snow and ice. Deputies say Ethan weighed 60 pounds.

Investigators asked Damian how much snow was covering Ethan. Damian replied by saying Ethan "was in his own little coffin of snow." He then laughed, according to a criminal complaint.

Investigators described Damian Hauschultz as emotional during an interview when he said his home had become "boring" and "prison-like" after Ethan and his brother came to live with them, and he was always angry after they took all the fun out of his life. Ethan's parents released this statement to Action 2 News: "We are glad that justice is finally starting for our son, and kids. We are happy that there was a cash bail for each defendant. #Justice4Ethan"

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# The lonesome death of Ethan Hauschultz

## Child-protection workers meant to rescue a boy from neglect. But they placed him with a known child-abuser. The man's record didn't matter.

**Doug Schneider, Manitowoc Herald Times Reporter**

Published 6:08 AM CST Nov. 18, 2019 **Updated 10:42 AM CST Mar. 4, 2020**

ILLUSTRATION BY EMILY NIZZI/USA TODAY NETWORK-WISCONSIN

The boy dropped the log as he finished another lap, earning five seconds of rest as he made his way through the yard "carrying wood."

He fought his way through mud and slush left over from a late-season storm that had dumped nearly a foot of snow on his tiny eastern Wisconsin town. Each step was a struggle.

Five minutes of trudging. Then 10. Fifteen.

Every five minutes or so, he fell as he labored along a trail that ran a little longer than a football field. Sometimes he landed on his back, causing the wood he was carrying, a 44½-pound tree trunk weighing almost as much as he did, to force the breath from his chest.

Twenty minutes. Twenty-five. Thirty.

Kicks, curses and lashes from a belt punctuated each fall. When a metal piece broke off, the belt was replaced with a long stick.

Thirty-five minutes. Forty. Forty-five.

The whacks continued. Dozens became a hundred. The boy endured countless jabs, pokes and other blows.

Fifty minutes passed. Fifty-five.

The taunts came from his tormentor, Damian Hauschultz, the 14-year-old adopted son of his guardian.

Sixty minutes.

The other children in the family said Damian was particularly angry and frustrated that day while supervising the boy's punishment for talking back to a teacher.

Damian ordered the child to lie in a puddle, shoving him face-down into the water when he balked. He pulled off the boy's coat and boots and stood on his back — then grabbed a shovel and buried him beneath an estimated 80 pounds of snow, in what he would later call the boy's "little coffin."

When the guardian returned from an errand in Manitowoc, the boy was slumped over a log in the yard, not moving. He was carried into the house, then driven to Holy Family Memorial Medical Center.

At 9:22 p.m. on April 20, 2018, a doctor pronounced Ethan Hauschultz dead.

He was 7 years old.

## 'We may have made him a bit cold'

Damian Hauschultz told deputies that Timothy, his adoptive father, sometimes punished him, too.

Damian said Timothy had recently made him carry wood for hours, though with a lighter log than the one Ethan carried. Carrying wood meant walking a lap, dropping the wood, resting for five seconds and then continuing.

Damian's offense: failing to memorize 13 Bible verses.

That wasn't the first prophecy of deep troubles inside the five-bedroom, wood-and-stone house on Clover Road in rural Newton, southwest of Manitowoc.

There, Damian and his mother had lived with Timothy and Timothy's daughter from a previous relationship. When Ethan, his brother and a sister arrived, the family of four became a family of seven.

Show caption
This house in rural Manitowoc County was where Ethan Hauschultz, 7, was fatally injured in 2018 while carrying out a punishment his legal guardian had...WM. GLASHEEN/USA TODAY NETWORK-WISCONSIN

Timothy's daughter and Damian were sometimes expected to act like parents to the new arrivals.

Damian's mother stayed in Green Bay during the week to attend community college. Timothy often left the house early to run his barn-whitewashing business. Timothy's daughter was tasked with getting Ethan and his siblings ready for school.

Damian enforced the younger children's punishments. If Ethan or his brother had been ordered outside for two hours, Damian had to be out for two hours, too.

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"It is his responsibility to monitor the children who are carrying wood when (Timothy) is gone," wrote a detective investigating Ethan's death. "Damian said he doesn't say no to Timothy. It is not worth arguing with Timothy."

Life on Clover Road, Damian told deputies, became "boring" and "prison-like" after the younger kids arrived.

The teen acknowledged feeling a "burning anger inside," telling detectives he sometimes punched inanimate objects. In other court papers, he acknowledged significant anger problems as early as first and second grade, and nearly being expelled for breaking the nose of an older student.

"He was very physical," a detective wrote. He "stated it helped if people feared him."

Ethan, on the final day of his life, did not appear to fear Damian — at least initially. Court documents describe a boy who tried to stick up for himself against the punishment, though their differences weren't limited to their ages.

Ethan stood 4-feet 8-inches tall, weighing 60 to 62 pounds. Damian stood 5-feet-11 and weighed 168.

To detectives, Damian admitted striking Ethan nearly 100 times, saying he was annoyed because he had to be outside.

When Ethan didn't rise, the older boy — along with the children in the yard that day — buried him beneath the snow.

Ethan wasn't saying words, Damian told detectives, instead making slight moans or whines. His eyes were "hazy," and he was twitching. Eventually, he stopped moving.

Detectives said Damian told them, "We may have made him a bit cold."

All told, Damian estimated, Ethan was buried for 20 to 30 minutes. When he was unburied — two children told detectives Damian removed him at their insistence — Ethan was stiff and unresponsive.

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Damian realized something might be wrong, he told detectives, and called Timothy to say Ethan was "playing or acting like he's dead."

The doctor who completed Ethan's autopsy said the boy suffered hypothermia, a medical emergency in which a person's body loses heat faster than it can produce it. The boy also suffered blunt-force injuries to his head, neck, chest and abdomen. His 11th rib was broken.

And the doctor found something else: an impression of a boot on Ethan's back.

Damian Hauschultz, now 16, is charged as an adult with reckless homicide, three counts of child abuse and three lesser felonies.

## 'Make sure you don't get anyone else in trouble'

From a recent real estate prospectus, the home where Ethan would be fatally injured seems an ideal place for a large, energetic young family.

"Spacious rural property with over 3,600 square feet. 5 Bedrooms and 3 full baths, large eat-in kitchen with island and tiled floors, living room with fireplace, first floor laundry and formal dining room make for comfortable living. All of this on 1.8-acre lot just minutes south of the city limits."

For Ethan and his siblings, it was meant to be a safe haven offering a fresh start. Six weeks after he turned 3, he suffered physical abuse at the hands of his mother's then-boyfriend, records from the state Department of Children and Families show.

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From July 2014 to March 2016, after caseworkers confirmed three allegations of neglect against Ethan's mother, and one against his father, Manitowoc County Human Services officials decided Ethan and his siblings could not remain in the custody of either parent.

"The children," a report says, "were deemed unsafe." Ethan and two of his siblings were placed with their great uncle, Timothy, in 2016. The fourth was placed elsewhere.

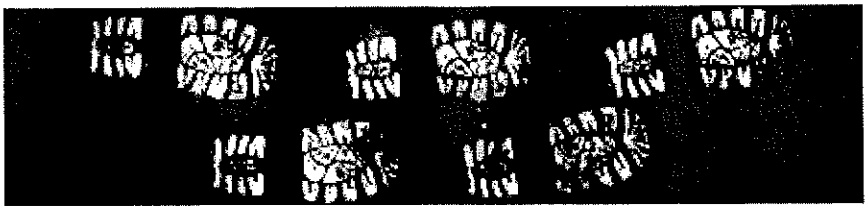
An investigation began almost immediately after Ethan, clinging to life, was brought to Holy Family. In interviews with members of the Hauschultz family, deputies learned more about Timothy's role in delegating and delivering punishment to the children. They noted similarities in the children's stories about discipline.

They also learned Damian called Timothy for advice several times during the afternoon Ethan was killed.

In an interview with deputies, Damian recounted a conversation as the family drove Ethan to the hospital that afternoon: Timothy told him to say Ethan fell out of a tree, or that "nothing happened."

"Make sure," he said, "you don't get anyone else in trouble."

Show caption
Ethan Hauschultz, his brother and two sisters were removed from this home at 1413 N. Sixth St., Manitowoc, in March 2016 and placed with relatives...WM. GLASHEEN/USA TODAY NETWORK-WISCONSIN



## 'I put memories of darkness in people's minds'

Timothy's first recorded run-in with the law was at age 15, when he whacked a man with a tire iron in a bar fight involving older members of his family.

At 18, he helped acquaintances beat a man until the victim required three days of intensive care, joining in when someone said the man had stolen one of Timothy's cassette tapes.

A year later, Timothy grabbed a clerk at a Two Rivers convenience store, flashed a long-bladed butcher knife and made her empty the cash register of $211.

He seemed to enjoy himself, the clerk told police, smirking while pulling the knife.

Before he was sentenced, he asked a judge for help with anger and psychiatric issues, and for alcoholism. He warned he might become violent again.

"I put memories of darkness in people's minds," he said. "I hurt people physically. ... If I don't change my life, they'll have to always be afraid of me or wonder if I'll attack them or anyone else again."

E. James FitzGerald, Manitowoc County's district attorney at the time, told the judge: "The only thing this court can do to protect society from him is to put him in prison."

Timothy was sentenced to 5 ½ years in prison for the robbery and 18 months for issuing bad checks. Judge Fred Hazlewood issued a stern warning to Timothy, who was then a father of one with another child on the way, that he had "no business fathering children."

In 1999, when Timothy was 29, he was in trouble again. Inside the Golden Flame, a Manitowoc family restaurant, he and another man exchanged words. As the argument grew heated, Timothy dove across the man's table, breaking dishes and glassware, and held a steak knife to the man's throat.

When social workers, attorneys and judges went through the process of placing Ethan and his siblings with Timothy, records of those cases were readily available in the Manitowoc County Courthouse.

So too was a file on a 2009 case — nine years before Ethan's death — involving Timothy, violence and children.

The 2009 incident began with an act of youthful defiance. Two boys had taken food into the living room. One had listened to music without asking.

Timothy whacked the older boy, 14, across the arm with a 6-foot carpenter's level, then used it to crack the 12-year-old in the side.

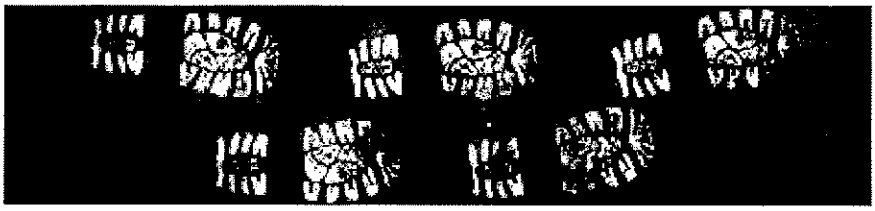
He then grabbed a 3-foot-long piece of wood, backed the older boy into a hallway and hit him on the shoulders and head. Later, he went back to the kitchen and smashed the wood on a table, threw it at one of the boys and broke a window. Pacing, he demanded they clean up the mess.

Prosecutors charged him with felony child abuse.

Timothy insisted he'd done nothing wrong. His then-wife, though, wrote to a judge before sentencing that "his mental status concerns me," regarding "the mind-control tactics he uses with the boys."

The younger boy filled out a form about what he wanted the judge to include in Timothy's sentence, circling "get help from a doctor or a counselor," "stay away from me" and "stay away from other kids."

On a court form asking how he felt, the boy drew faces labeled "sad" and "scared."



## 'The abuser's record didn't matter'

A record listing Timothy's no-contest plea to felony child abuse remains in a file at the courthouse, showing he chose not to contest the allegations. But when it came time for county social workers to decide if he'd be a suitable guardian for Ethan and his siblings, authorities were barred from considering the abuse.

Judge Jerome Fox found Timothy guilty. A conviction could have sent him to prison for six years and cost him $10,000 in fines. But it didn't go on his record as a child-abuse conviction.

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Fox did not enter the conviction into the record because of a plea agreement between Timothy's lawyer and then-District Attorney Mark Rohrer. The conviction entered a kind of legal limbo. If Timothy avoided further trouble for 18 months, the judge would find him guilty of a lesser offense.

In summer 2011, Fox found Timothy guilty of disorderly conduct, a misdemeanor. There's no mention of a child victim in the conviction.

In the eyes of the law, his actions had merely disrupted "good order," and provoked "a disturbance" to "corrupt the public morals or outrage the sense of public decency."

If a person is charged with child abuse but convicted of a lesser crime, caseworkers can't consider the abuse charge, said Tom McCarthy, spokesman for the state Department of Children and Families.

That's true even if the adult did not contest the allegations, and even if those allegations are documented in a public court file.

But Wisconsin law did allow authorities to consider other convictions while they were trying to find a safe guardian for Ethan and his siblings. Timothy had convictions for armed robbery and for conspiracy to commit battery.

Manitowoc County Human Services officials won't say what they knew about Timothy's history when they decided he would be a suitable caregiver for Ethan and his siblings. But they said they always check the criminal records of adults they're considering as guardians or foster parents of vulnerable children.

A state official said that while certain criminal convictions bar adults from becoming foster parents — for example, sexual assault, intentional homicide, kidnapping — lesser convictions may not, particularly if the adult is a relative of the child.

"If you're in a county that doesn't have a lot of placement opportunities (for vulnerable children), you're eventually going to have to start looking at situations where people have a criminal record," McCarthy said.

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In an email responding to questions from the Herald Times Reporter, Manitowoc County officials said that in assessing adults, the county reviews its own child-abuse case records, court records, a sex-offender registry and records from police and the state's justice department. They also conduct home visits to see if children are safe under the adult's care.

As Ethan's great uncle, Timothy had a point in his favor: The county also follows a federal guideline that says states must consider placing a child with an adult relative over a non-relative, though they are not required to do so.

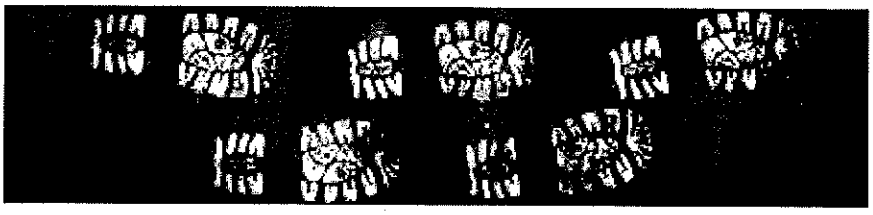
"Kinship Care," as it's known, helps a child maintain family and community ties while reducing the chance he will later commit crimes or become homeless, Human Services Director Patricia Dodge wrote.

Officials generally don't speak with prosecutors about previous cases before placing a child in a new home, Dodge said. But she said the department is "aware of all child-abuse convictions," and would consider "all information," including whether the abuser "participated in therapy that would adequately address an old child-abuse conviction."

Timothy requested therapy after he was jailed following the convenience-store robbery. Court records from the robbery, the restaurant attack and the child-abuse allegation offer no indication that he underwent therapy or counseling.

After a child is in a new home, the county does monthly visits, speaking with the child and checking for signs of abuse. In Ethan's case, caseworkers would have checked him monthly from March 2016 until Hauschultz became his legal guardian several months later.

After that, Dodge said, "the department no longer has involvement in the case."



## 'No statistics available'

Ten months after Ethan's death, prosecutors filed felony charges against Damian, Timothy, 49, and Damian's mother, Tina McKeever-Hauschultz, 36.

A criminal complaint alleges all had a role in the case. It spells out charges that could send each to prison for decades.

Timothy Hauschultz and Tina McKeever-HauschultzCOURTESY OF MANITOWOC COUNTY SHERIFF'S OFFICE

» Timothy is accused of ordering the punishment. He's charged with murder as party to a crime, three counts of felony child abuse as party to a crime, and four lesser charges. He's due back in court Jan. 27.

» Damian, accused of delivering the blows that killed Ethan, is charged with first-degree reckless homicide, three counts of felony child abuse and three of felony battery. He's due in court Dec. 2. His attorney has asked a judge to allow him to be tried as a minor.

» Tina is charged with intentionally contributing to delinquency causing death as party to a crime, a felony, and two counts of child abuse/failure to prevent bodily harm. Her next court appearance is Jan. 6.

But as the people charged in connection with Ethan's killing await their day in court, it's difficult to come by answers from the officials who decided he'd be safe with Timothy.

County Human Services officials won't discuss the specifics of Ethan's death, saying state law bars them from doing so.

"It is devastating to learn that a child was abused to the point of death," Dodge wrote in her letter to the Herald Times Reporter. "Child welfare staff works diligently to protect children from abuse and neglect, and are committed to assisting families to become healthy, (and) well-functioning."

What's also unclear: How often the county places a child with an adult who has been found guilty of child abuse.

"There are no statistics available," she wrote, "to answer your question."

Of the county's answers to 14 questions from the Herald Times Reporter, seven begin: "Manitowoc County cannot comment on a specific case."

Published 6:08 AM CST Nov. 18, 2019 **Updated 10:42 AM CST Mar. 4, 2020**

Wisconsin Department of
Children and Families

Governor Tony Evers
Secretary Emilie Amundson
dcf.wisconsin.gov

**TO:** Honorable Members of the Senate Committee on Human Services, Children and Families

**FROM:** Amanda Merkwae, Legislative Advisor

**DATE:** February 22, 2021

**SUBJECT:** 2021 Senate Bill 24; 2021 Senate Bill 29; 2021 Senate Bill 67

Chair Jacque, Vice Chair Ballweg, and Members of the Committee:

Good Morning. My name is Amanda Merkwae, and I am the Legislative Advisor for the Department of Children and Families (DCF). Thank you for the opportunity to testify about this legislation related to DCF programs and the children and families we serve.

DCF 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 that are also embodied in the federal Family First Prevention Services Act, which Wisconsin must implement before 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 their 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:** Familiar, caring adult relatives play an important part in children's lives as caregivers or ongoing supports and should be used as out-of-home placements whenever possible.

It is through this lens of these principles that the DCF reviewed the bills before the committee today and will be testifying for information regarding Senate Bill 24 and Senate Bill 29 and testifying in support of Senate Bill 67.

**Senate Bill 24**

SB24 prohibits the court at CHIPS disposition from placing a child in the home of a relative other than a parent or non-relative who has been convicted of any crime 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. SB24 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 standards provide a robust process for assuring the safety of children in court-ordered out-of-home placements under Chapter 48 or Chapter 938, including mandatory background checks prohibiting licensure, employment, non-client residency, or Kinship Care approval if the applicant has been convicted of certain offenses, unless a person has been found to be rehabilitated as allowed by law. State standards allow for a child welfare agency to place a child in a foster home or with a relative only when the required safety determinations have been made, and safety is continuously evaluated when children remain placed in out-of-home care.

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

- 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;

- Complete a check of law enforcement records or conduct a Consolidated Court Automation Program (CCAP) check on all individuals seventeen years of age and older residing in the identified placement home;
- Conduct a reverse address Sex Offender Registry check;
- Conduct a check of eWiSACWIS child protective services records on all individuals seventeen years of age and older residing in the identified placement home; and
- 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.

For licensed caregivers, in addition to the mandated background checks discussed earlier, foster care and adoption licensing agencies must conduct 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.

In recognition of this extensive framework for evaluating child safety in out-of-home care placements, DCF has the following concerns about SB24:

1. **Family and familiar placements.** If enacted, this bill would decrease available placement resources that do not present safety concerns, increase the number of children placed in unrelated and unfamiliar 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. The bill would 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. **Placement disruption.** Because Sections 1 – 4 of this bill only apply to placements ordered at the dispositional phase of a CHIPS case, there is potential to disrupt placements of children that are confirmed to be safe and otherwise permitted by the statute under a Temporary Physical Custody Order. Any placement disruption has an impact on the trauma experienced by children in care.
3. **Racial disproportionality.** Research shows that people of color interact with the criminal justice system—including charging and conviction—at a rate disproportionally higher than the general population. By including all crimes under Chapter 948, even if dismissed as the result of a plea agreement, the bill will have implications for racial disparities in the availability of placements.

**Senate Bill 29**

SB29 allows a parent to submit an affidavit of a disclaimer to their parental rights to a child without appearing in court to terminate their parental rights. DCF supports efforts to create an avenue for voluntary termination of parental rights that could reduce complexities and uncertainties in the court process for adoptive parents and help birth parents avoid possible trauma from appearing in court while assuring that this significant decision is informed and free from coercion.

DCF appreciates the changes made in the Senate Substitute Amendment to last session's version of this bill. In light of these changes, DCF has some outstanding concerns about the bill in its current form that we would like to raise for the committee:

1. **Compliance with Indian Child Welfare Act (ICWA) and the Wisconsin Indian Child Welfare Act (WICWA).** DCF recognizes the efforts that have already been made to address concerns related to ICWA and WICWA but wants to ensure that the language in the bill also aligns with language in the ICWA Regulations issued by the U.S. Department of Interior in 2016 that requires state courts to ask each case participant in a proceeding whether they know or have reason to know the child is an Indian child. If there is reason to know that the child is an Indian child, the Regulations require the court to treat the child as an Indian child unless and until it determines that the child is not an Indian child. To more closely align with these 2016 Regulations, DCF recommends the following:

a. Page 2, line 4-5: change language to, "...under one year of age and if no participant in the court proceeding, including the birth parent or parents, knows or has reason to know that the child is an Indian child..."
b. Page 4, line 21: change the language to, "A statement regarding whether there is reason to know the child is an Indian child."
c. Page 7, lines 16-18: In addition to s.48.028, add language to reference ICWA and the 2016 ICWA Regulations.
d. Include language expressly requiring the court to review the affidavit(s) and make findings on the record that the birth parent or parents, as well as the other court participants, have stated they do not know or have reason to know that the child is an Indian child.
e. List the individuals who would be considered participants in the court proceeding or reference the provisions in s.48.41 regarding who must be summoned and receive notice of a TPR petition.

2. **Considerations for Minors.** Minors may be less aware of the full ramifications of a decision to voluntarily terminate parental rights and are particularly vulnerable to coercion or misinformation. DCF appreciates the requirement that a guardian ad litem (GAL) be appointed for minor parents interested in utilizing the out-of-court affidavit process and that they be offered legal counseling. In recognition of the magnitude of the decision, DCF believes the rights of a minor in an out-of-court disclaimer process could be strengthened by the appointment of counsel.
3. **Timeframes.** Due to the significance of the decision to disclaim parental rights, DCF recommends that the timeframe in which a birth parent may withdraw the affidavit for any reason be extended to at least 72 hours.
4. **Procedural Clarity.** The bill provides that a parent may file the affidavit of disclaimer of parental rights with the court; however, provisions explicitly outlining any required court procedures prior to and after the filing of this affidavit could eliminate potential confusion on behalf of courts implementing this new process.

**Senate Bill 67**

SB67 enhances a critical protection for survivors of domestic violence and their children by expanding the types of documentation permitted to provide a landlord with written notice to terminate a tenancy in a residential lease. Under current law, a tenant must provide a certified copy of injunction orders, criminal complaints, or bail conditions along with the notice to the landlord. With this bill, an additional type of documentation is allowed– a form to be developed by DCF containing a written statement signed by a social worker, victim advocate, or child victim advocate who has a reasonable basis to believe that the tenant is a victim of domestic violence, sexual assault, or stalking and has a fear of imminent violence. This bill also contains important confidentiality provisions to ensure the safety of those utilizing this procedure.

Many victims of domestic violence, sexual assault, or stalking do not seek involvement with the criminal legal system or choose to obtain an injunction due to fear that violence will escalate or distrust of systems based on unsupportive past experiences, but may instead seek the services of a trusted victim advocate. This is particularly true of victims from marginalized groups such as immigrants and refugees, communities of color, people with disabilities, and the LGBTQ community.

Considering the profound emotional and social impact that exposure to domestic violence has on children, DCF supports SB67 to allow more victims of interpersonal violence to obtain this needed relief for their safety and that of their children.

February 22, 2021

**To:** Senator Andre Jacque, Committee Chair, Senate Committee on Human Services, Children and Families
Senator Joan Ballweg Committee Vice-Chair, Senate Committee on Human Services, Children and Families
Members of Senate Committee on Human Services, Children and Families

**From:** Oriana Carey, CEO, Coalition for Children, Youth & Families

**Re:** Senate Bill 24

On behalf of the Coalition for Children, Youth & Families, I want to thank the Senate Committee on Human Services, Children and Families for the opportunity to provide written comments regarding Senate Bill 24 (Ethan's Law).

The Coalition for Children, Youth & Families, Inc. (the Coalition) was founded in 1984 by parents concerned about children waiting for adoptive homes. We are a nonprofit organization serving all 72 counties of Wisconsin. A portion of our funding comes from the State of Wisconsin Department of Children and Families, under the Foster Care and Adoption Resource Center project grant.

The Coalition does not provide direct services such as licensing, home studies, or case management services. Instead, what is unique about the Coalition is that it is specifically organized to provide neutral, compassionate, objective, and timely information and support for individuals, families, and professionals. From children, families, and caseworkers to agencies, advocates, and policymakers, there are a lot of people and parties involved with the child welfare ecosystem. The Coalition helps to balance the needs and interests of all those involved. We are Wisconsin's central and comprehensive hub for up-to-date, in-depth, and definitive information about every aspect of foster care, adoption, and kinship care.

As advocates for children and youth who, by no fault of their own, find themselves involved with Wisconsin's Child Protection Services System, we want to take a moment to offer our deep respect for Senator Jacque and esteemed co-sponsors for taking notice and wanting to add additional protective measures to ensure that no child ever experiences what happened to Ethan. We further acknowledge that the loopholes identified that put Ethan in a less than safe, nurturing, and appropriate environment need to be addressed. No child removed from their birth parent should be placed in a situation that leads to even more significant harm than what necessitated their removal.


As an agency, we equally feel we must balance our care and concern that this tragedy never be repeated with the caution for the unintended consequence: limiting placement choices for children and youth in Wisconsin. We appreciate that the esteemed members of the Wisconsin Legislature know and respect the ongoing challenges our state faces as we try to ensure that we have enough quality foster and kinship (relatives) homes to meet each child's unique individual needs.

Following, we have outlined areas in which an unintended consequence of the proposed legislation may occur. While additional action may improve protection for children, on the one hand, it may also create further trauma on the other. For your consideration:

- Potential family members or fixative kin resources who may have been involved in the broad range of legal crimes outlined in Chapter 948,(perhaps as a teen)—and who have long since demonstrated that they have the emotional, intellectual, and economic resources to provide for the individual needs of a child or youth—might be barred or disqualified with no ability to appeal or prove that they are long since rehabilitated. The Coalition strongly advocates that we make sure that we don't limit our children and youth's essential need to provide input into their care when they can't be with their birth parents.
- Within our Tribal communities in Wisconsin, we lack sufficient resources to keep children and youth placed in culturally appropriate settings. This law would have disparate impact on our Native American communities and Indian Child Welfare placement preferences and further limit an already limited pool of available family-based resources.
- When placement resources are limited, we know that one unintended consequence is that children and youth are often placed in more restrictive settings (group homes or residential care) than needed. Being placed in a level of care that does not match children and youth's emotional and well-being needs leads to additional trauma.

The Coalition recognizes that trying to help fill a gap in loopholes that lead to a tragedy like Ethan's is a crucial and challenging task. On the other hand, we know that Wisconsin is rolling out processes and procedures to comply with new Federal legislation, the Families First Act, which will require prioritizing family settings for children and families involved with child welfare. With this in mind, we would like to offer that we believe it is important to consider proceeding with caution and seeking further input from a wide range of stakeholder before moving forward.

Thank you for your time and consideration.

Sincerely,

Oriana Carey, CEO

COALITION FOR CHILDREN, YOUTH & FAMILIES
6682 W. Greenfield Avenue, Suite 310 • Milwaukee, WI 53214-4960 • Phone: 414-475-1246 • V/TDD: 800-762-8063 • Fax: 414-475-7007 coalitionforcyf.org

# Ho-Chunk Nation Legislative Branch

*Governing Body of the Ho-Chunk Nation*

State Sen. André Jacque, Chairman

Wisconsin Committee on Human Services, Children and Families

**RE: Ho-Chunk Nation's Comments in Opposition to SB 24 and SB 29**

February 22, 2021

Dear Chairman Jacque:

On behalf of the Ho-Chunk Nation, thank you Sen. Jacque for this opportunity to provide written comments to the Wisconsin Committee on Human Services, Children and Families on SB 24 (relating to prohibiting the out-of-home placement of a child with a person with a record of a crime against a child) and SB 29 (relating to a disclaimer of parental rights and payments allowed in connection with an adoption).

Once again, the Ho-Chunk Nation must engage the State of Wisconsin in a government-to-government manner to protect the very core of its well-being, its children. Indigenous children worldwide have been ripped from their families, bought and sold, kidnapped and bleached of their beautiful traditional cultures, time and time again, under various state and federal policies. Those very children tend to come back to their indigenous homelands, limping and lost, seeking to be reunited with their tribal families and communities, and loved unconditionally. Our tribal communities must then work to heal the trauma of the separation. We refer to these tactics as policies under old regimes of termination and cultural genocide, and these policies still maintain a ripple effect in our present condition. It must stop.

The Indian Child Welfare Act (the "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] Specifically, the ICWA requires 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 [emphasis added]."[2] 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] Applicable here, Congress recognized that "white middle-class standards" are discriminatory standards that should not be used as they work against the qualification of indigenous homes.[4] Congress recognized that tribes maintain their own standards through social and cultural components, such as kinship and clan structure, and that States should look to these prevailing standards of the Indian community.[5] The Ho-Chunk Nation has twelve (12) traditional clans and an inclusive kinship structure that is pronounced in our community's suitable home standards and practices. We employ a robust set of codes to safeguard our children, including the HOCAK NATION CHILDREN AND FAMILY ACT.[6] Wisconsin is also committed to

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[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. 95-608, 95th Cong. 2nd Sess. 11 (1978).

[5] 25 U.S.C. § 1915(d).

[6] The Hocak Nation Children and Family Act is available at: https://ho-chunknation.com/wp-content/uploads/2019/10/4HCC3-Children-and-Family-Act.pdf.

prevent out-of-home placement and to reunify indigenous children with the Indian family under the state version of the ICWA, the Wisconsin Indian Child Welfare Act (the "WICWA").[7]

SB 24 and SB 29 as currently written will fast-track the separation of indigenous children from their tribal families and tribal communities. The Ho-Chunk Nation hereby requests amending SB 24 and opposes SB 29.

The intent of SB 24, also known as Ethan's Law, is admirable, but would create placement disruption for indigenous children because the bill falls short by only addressing placement at the dispositional phase of the case and will discriminate against low income people. The result is that the child would be subjected to unnecessary separation and trauma. Equally alarming is the bill's language to effectively exclude available resources (placement homes) in our tribal communities. Our tribal families and communities, like other tribal communities across Indian country, have been disproportionately subjected to decades of racial and social injustices, resulting in higher crime rates of individuals and households, generally. SB 24 would cause a disparate impact on indigenous households as replacement resources because of the potential for high rates for crimes by inclusion of a blanket provision for all crimes under Wis. States. Ch. 948 to the prohibition of qualified placement resources. Ho-Chunk families are inherently resilient. Despite the historical trauma and disproportional inequities we have endured, we continue to thrive by instilling our language, culture and traditions in each generation to come. We have adopted and enforce our own criminal code and have developed community resources to include a Wellness Court and clan mother resources to accompany our longstanding Traditional Court, which resolves issues of traditions and customs. Along with these and numerous other community and family resources, we have positioned ourselves to heal, transform, safeguard and revitalize our families. SB 24's application of "white middle-class" standards that eliminates these wonderful Ho-Chunk familial options would exacerbate the availability of resources in our Ho-Chunk communities. Tribes should decide the eligibility of a placement home under their own social and cultural community standards.

For these reasons, the Ho-Chunk Nation recommends SB 24 be amended to exclude Section 948.22 from those crimes prohibiting placement in a home and that language be developed to allow a judge increased discretion during a placement to include consideration of overall availability of placement homes and tribal specific perspectives. Should the bill move forward, the language of the bill must comport, at a minimum, to the ICWA/WICWA spirit, language, definitions, requirements and processes.

We understand that the intent behind SB 29 is to minimize the trauma of parents wanting to engage in a voluntary disclaimer of rights and minimize the adoptive parent's concerns for finality of a voluntary disclaimer of rights. As written, SB 29 is problematic. First, the language used regarding Indian children is inconsistent with the ICWA/WICWA. Eliminating a Termination of Parental Rights (TPR) hearing is most problematic. The adversarial process in court allows the judge to hear information on both sides of the question if placement is in the child's best interests and provides an opportunity for the judge to probe whether the child is, in fact, an Indian child. The affidavit process under the bill opens the floodgates for fraudulent claims that would and often does get resolved before a qualified judge. In other words, SB 29 allows for a backdoor approach by exploiting the process to avoid the ICWA/WICSA altogether. This bill is unacceptable.

Further, while we might appreciate the bill's inclusion of an appointment of a guardian ad litem (GAL) into the process, the scope of "legal counseling" is too vague and unclear in terms of what it means in practice and how it aids the decision-making process. Any legal counseling must include counsel on all ramifications of a child being removed from the specific tribal community. The GAL must be qualified to counsel in this regard. For these reasons, the Ho-Chunk Nation opposes SB 29.

In sum, SB 24 and SB 29 are violative of the ICWA and the WICWA, as well as the Ho-Chunk Nation's various laws, traditions and customs for placing and protecting our children. The bills take away our ability to protect our families, take away our discretion, and constitute an attack on our sovereignty and our identity.

7 *See*: https://dcf.wisconsin.gov/wicwa.

Again, we thank you for the opportunity to provide our written comments and formal objection to SB 24 and SB 29 as written. Should the Committee proceed with any action or discussion on SB 24 or SB 29, the Ho-Chunk Nation requests to be included.

Respectfully,

Hinu Smith, District 1 Representative

Ho-Chunk Nation

LAC COURTE OREILLES TRIBAL GOVERNING BOARD

*Pride of the Ojibwe*

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

February 22, 2021

Senator André Jacque, Chair
Committee on Human Services, Children & Families
7 South Wisconsin State Capitol
Madison, WI 53707

Re: Comments in Opposition to SB 24 and SB 29

Dear Chair Jacque:

We thank Committee Chair Jacque 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 "there is no resource that is more vital to the continued existence and integrity of

[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).

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.

**SB 24 – Currently Oppose**

- **This bill will lead to fewer placement options that meet the placement preferences established within the ICWA/WICWA and will have a disproportionately negative impact on tribal families. As such, we cannot support this bill with the blanket prohibition of all crimes under Ch. 948.**
  **We could potentially support or be neutral if time is taken to go through the bill with experts to fully flush out provisions in Ch. 948 that can be safely exempted, as opposed to blanket prohibition.**

As mentioned above, the Indian Child Welfare Act seeks to keep Indian families together. And this is not just meant to mean the western style nuclear family- albeit reunification and preventative measures should always be considered first. No, when a child is removed from their parent(s) the ICWA seeks to have that child placed in a familial or tribal placement that takes into account "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." The term "familial" within the tribal context extends beyond just Mom/Dad, or Grandma/Grandpa. It encompasses many generations and can at times include clan members depending upon each individual Tribe's familial organization.

By laying out a blanket prohibition as is proposed in SB 24, it removes many wonderful familial options available to Tribes. People who may have had some bumps along the way but have rehabilitated along that way too. People who understand those bumps. And thus, understand what a parent of a removed child is going through and could be a mentor by imparting their knowledge from their own journey on that parent. Or, you could have an older sibling who gets into a fight with a younger sibling many years ago. That older sibling, if charged with one of these crimes, could be completely taken out of the listing of placement options, even though they are a pillar of strength for their family and tribal community now.

We all have anecdotal stories where a tragedy has occurred. And we feel for those families. As Tribal people, who have gone through generations of trauma and loss, we know all too well what that tragedy feels like. However, we have also come out on the other side as resilient people- and to do that we had to implement bigger fixes. This is not to say that we have all come out on the other side, or that our journey there was by any means easy. Our tribal communities have been plagued with self-medication for this trauma. This has unfortunately led to a higher number of criminal convictions. These convictions, coupled with convictions stemming from years of unchecked racial profiling and bias, will lead to a disproportionately negative impact on tribal families seeking to be placement options for their relatives.

The easy fix does not heal or prevent the trauma. It is putting in the emotionally grueling work and using numerous healing modalities that help with the healing process. Similarly, it is the in-depth

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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).

and expansive home study process and tools that federal law, federal policy, state policy, and state standards set forth that will address making safe placement decisions- not the easy blanket prohibition. These systems are already in place. For each anecdotal story we know, there are *many* more safe placements being made. There is not simply a background check completed by just looking at the Consolidated Court Automation Programs (CCAP) and that being the end of it. There is a lengthy process and many factors that are looked at in addition to appropriate criminal background checks. These processes are likely included in oral testimony and/or written comments by the Department of Children and Families, so we will not go into detail and defer to those experts in child development and welfare.

Again, our hearts go out to any child who was placed in a situation that somehow slipped through the cracks. Trust us when we say we understand! Our children were stripped from our arms and placed in schools where they should have been safe. Military run: church run. And we all have the scars in our DNA to this day because they were not safe. And even with this history, we recognize that the systems in place at the state are expansive enough to provide the protections needed that this bill attempts to provide but misses the mark by excluding far too many potentially safe options.

We likewise want to see the safest placement options available for our children. However, we also believe that people should be recognized for rehabilitation. Further, the crimes listed within Ch. 948 are on such a wide-ranging scale from truancy to sexual assault of a child, that we fear the prohibition will have unintended consequences. While we do not condone any of the negative behaviors addressed in 948, we do see areas where safety can still be achieved without this far-reaching rule.

Should the Committee feel that changes are still required despite the in-depth process already in place at DCF, the Tribe believes that additional time and meetings are warranted with the experts in the field of child welfare and licensing to flush out the language. We must ensure potentially safe placements are still available, which requires achieving safety through lesser restrictive means than blanket prohibitions.

**SB 29- 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 currently drafted language.

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.

If this bill is to go forward despite our objection, then the language absolutely must be stronger with regards to Indian children and contain additional ICWA/WICWA cross-referencing. Even then, we believe it is preempted by federal regulation and will not stand on appeal.

**Again, we thank you for the opportunity to provide written comment on these two bills. Please accept this as our objection to both SB 24 and SB 29. 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

TO: The Honorable Members of the Senate Committee Human Services, Children, and Families

FROM: Kathy Markeland, Executive Director

DATE: March 1, 2021

RE: **2021 Senate Bill 24 and 2021 Senate Bill 29**

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Thank you for the opportunity to provide comments and information on legislation 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 200,000 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 and facilitate both public and private adoptions.

We are grateful for the time invested by the legislature over recent 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. Regarding the specific proposals before the Committee this week, we offer the following comments and recommendations.

**SB 24** seeks in part to prevent placement of children with a relative who has been convicted of or pled no contest to a crime against a child as outlined in Ch. 948, Wis. Stats., or who has been charged with an offense in Ch. 948, Wis. Stats., that was subsequently amended or dismissed due to a plea agreement. WAFCA fully supports the focus on prevention and recognizes the bill authors' desire for solutions to keep children safe. WAFCA also seeks to support relative placement options for children involved with the child welfare and youth justice systems, as placement with relatives is proven to be better for most children and aligns with the federal Family First Prevention and Services Act legislation.

As a result, WAFCA requests modifications to the bill to align Sections 4 and 5. Section 5 specifies the crimes in Ch. 948 pertinent to child safety that should prohibit licensure, which allows others who may have other non-safety related crimes on their record, such as failure to support, to remain viable options for placement and/or licensure. If not aligned, the bill could have a disparate impact on children and families of color who are disproportionately impacted by our criminal justice system and limit placement

options considerably. In addition, WAFCA recommends keeping the child's wishes (Section 1) as a consideration in the judge's determination for placement. The decision has a direct impact on the child's health, safety, and well-being and their voice should be heard whenever possible.

**SB 29** seeks in part to establish an alternative for parents wishing to voluntarily terminate their parental rights (TPR). WAFCA supports safe, legal alternatives that make the TPR process less painful for birth parents and expedite permanency for children through adoption. Given the gravity of the decision, WAFCA would encourage an alternative approach when working with minors who are pregnant or parenting. The adolescent brain differs from adult brains considerably, and research highlights three significant differences that could impact their decision-making in this circumstance.

1. They lack mature capacity for self-regulation in emotionally charged contexts.
2. They are exceptionally sensitive to peer pressure and immediate incentives.
3. They are less able to make judgements and decisions that require future orientation.[1]

Pregnancy, childbirth, and periods post-partum are times during which a woman experiences substantial emotional and physical changes. Making decisions during this time in general is difficult for adult woman. It is arguably more difficult for adolescents who are unable to process all of the implications of releasing their rights, or who may be unduly influenced by the wishes of others. To ensure minors have fully considered their options and are proceeding with termination based of their own volition, with the interests their child in mind, additional support should be provided. Such support could be in the form of specialized counseling or advocacy services. In addition, establishing different timeframes for minors to allow for these services and ensure they are making an informed choice is encouraged.

Again, we appreciate the opportunity to share our thoughts with the Committee and value the ongoing commitment of the legislature to engage the complex issues surrounding foster care and adoption in our state.

[1] Mulvey, E. P., Ph.D. (n.d.). *Research on Adolescent Development, Behavioral Health, and Criminal Offending: Why Does It Matter for Juvenile Justice Policy?* Retrieved from https://wisfamilyimpact.org/wp-content/uploads/2020/01/FIS38-Ed-Mulvey-presentation.pdf

LAC COURTE OREILLES TRIBAL GOVERNING BOARD

*Pride of the Ojibwe*

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

March 2, 2021

Senator André Jacque, Chair
Committee on Human Services, Children & Families
7 South Wisconsin State Capitol
Madison, WI 53707

Re: Support for SB 24 and Opposed to SB 29

Dear Chair Jacque:

We thank Committee Chair Jacque for allowing the Lac Courte Oreilles Band of Lake Superior Chippewa Indians the opportunity to update our position based upon several draft changes we have seen shared in the past week.

**SB 24 –Support Substitute Amendment (Sen. Johnson's Recommendations) w/ Minor Additions**

- **Support if cross-references to the best interests of Indian children/juveniles are added.[1]**

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[1] 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):

By having the offenses under Ch.948 removed from SB 24, 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

We recommend the following additions. With such additions LCO could move from neutral to support of SB 24. The locations referenced below are based upon "LRBs0028/P1 EAW:cjs – Preliminary Draft – Not Ready for Introduction Senate Substitute Amendment, to Senate Bill 24".

Page 2- Line 7: child; and in the event of an Indian child, their best interests under 48.01 (2):

Page 3 – Line 3: the wishes of the child and 48.01 (2) if the child is Indian.

Page 3 – Line 17: placement would be in the best interests of the child; and in the event of an Indian child, their best interests under 48.01 (2):

Page 3 – Line 24: the wishes of the child and 48.01 (2) if the child is Indian.

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(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.

Page 4 – Line 23: of the juvenile; and in the event of an Indian juvenile, their best interests under 938.01 (3):

Page 5 – Line 4: the court shall consider the wishes of the juvenile and 938.01 (3) if the juvenile is Indian.

Page 5 – Line 18: evidence that the placement would be in the best interests of the juvenile; and in the event of an Indian juvenile, their best interests under 938.01 (3):

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.

**SB 29- Oppose even with preliminary draft amendments**

- **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.

Upon reading the preliminary draft of the Senate Amendment to SB 29, we continue to have the following concerns:

- 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;
- 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 SB 29's authors consider holding a stakeholders Zoom call to assist in identifying language that will address the concerns that led the authors to draft SB 29 in a manner, but in a manner that will not run afoul of ICWA/WICWA, equal protection, and child welfare best practice.

**We thank you for the opportunity to provide additional written comment on these two bills and their draft amendments. Please accept this as our neutrality on SB 24, again with the ability to be supportive with the addition of best interests of an Indian child/juvenile language, and opposition to SB 29. 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: Senator Andre Jacque, Chair
Members of Senate Committee on Human Services, Children and Families
From: Gunnar Peters, Chairman, Menominee Tribal Legislature, Menominee Indian Tribe
Date: Thursday, February 25, 2021
Re: Comments Regarding 2021 Senate Bill 24 and Senate Bill 29

The Menominee Tribe appreciates the opportunity to submit comments on two bills significant to our Menominee Tribe, our Menominee children, and our Menominee families. The Menominee Tribe would like to provide concerns and comments regarding Senate Bill 24 and Senate Bill 29.

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 Senate Bill 24**, also known as Ethan's law, which prohibits the out-of-home placement of a child with a person with a record of a crime against a child 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. Menominee Tribe requests amending SB24.

Menominee Tribe's concern is related to the fact that the bill would disproportionately impact our American Indian children and families. The concern that by including all of Chapter 948 would preclude 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.

# MENOMINEE INDIAN TRIBE OF WISCONSIN

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**Related to Senate Bill 29**, 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 Senate Bill 29.

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:

**MENOMINEE INDIAN TRIBE OF WISCONSIN**
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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.

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.

The magnitude and breadth of this issue for the Tribe cannot be conveyed in this written comment letter. The Tribe looks forward to working with your office and the rest of the stakeholders.

This letter provides Menominee Tribe's formal objection to SB24 and SB29 as written.

Thank you for your time and attention to this matter.