ANDRÉ JACQUE
STATE SENATOR • 1ST SENATE DISTRICT

Phone: (608) 266-3512
Fax: (608) 282-3541
Sen.Jacque@legis.wi.gov

State Capitol - P.O. Box 7882
Madison, WI 53707-7882

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

Committee Members,

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

Senate Bill 29, The Adoption Process Reform Act, makes a significant reform to Wisconsin's adoption system at the request of birth parents, adoptive parents, adoption attorneys and adoption agencies, and in consultation with the Department of Children and Families and Wisconsin's Native American Tribes:

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

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

By allowing parents to voluntarily disclaim their parental rights after 120 hours from the birth of the child, Senate Bill 29 bring more consistency to Wisconsin's adoption process instead of variability from county to county and judge to judge, while reducing unnecessary court time and costs for the completion of the adoption. A minor may use an affidavit of disclaimer only after the TPR petition has been filed, they have been offered legal counseling, and they have been appointed a guardian ad litem, and only if the guardian ad litem approves the disclaimer.

2. Expanding parental options by allowing payments to be made to a licensed out-of-state private child placing agency for services provided in connection with an adoption.

Both components of the bill require compliance with the federal Indian Child Welfare Act.

ANDRÉ JACQUE
STATE SENATOR • 1ST SENATE DISTRICT

Phone: (608) 266-3512
Fax: (608) 282-3541
Sen.Jacque@legis.wi.gov

State Capitol - P.O. Box 7882
Madison, WI 53707-7882

Senate Bill 29 does not impact the other requirements of the domestic adoption process in Wisconsin, including selecting an agency and completing a home study, which encompasses background checks, home inspections and interviews about family, background, finances and reasons for wanting to adopt. Wisconsin law requires that women considering adoption be provided counseling and certain living expenses up to $5,000.

Thank you for your consideration of Senate Bill 29.

JANEL BRANDTJEN

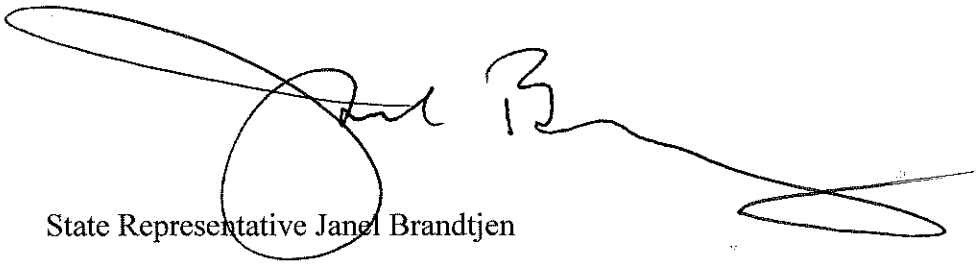
STATE REPRESENTATIVE • 22ND ASSEMBLY DISTRICT

Thank you Chairman Jacque and the members of the Senate Committee on Human Services, Children and Families for hearing SB 29. Wisconsin is known throughout the adoption community as a difficult state to adopt children in and SB 29 will go a long way to correct that perception. Promoting an environment where children can grow up with loving and caring parents, who have the will and the means to raise healthy children, is a worthy endeavor. Although we should all realize that the perfect solution does not exist, eliminating unnecessary obstacles will help thousands of Wisconsin children live happier, more productive lives.

SB 29 was written to help birth parents avoid the stress and anxiety of appearing in court and consent to the termination of their parental rights (TPR). Appearing in court is often traumatizing for parents who have decided to terminate their parental rights. This bill creates a system for birth parents to terminate their parental rights through a witnessed and notarized affidavit versus testifying in court. This reduces the court process but still provides protections for the father, or alleged father, and biological mother. A disclaimer of parental rights may be executed before the birth of the child by the father, or alleged father, but not the mother, and may not be executed by either parent between the child's birth and 120 hours after the child's birth, or on or after the child's first birthday. If not revoked by the applicable time limit, the disclaimer is irrevocable unless obtained by fraud or duress. A minor may use an affidavit only after a TPR petition has been filed, or he or she has been offered legal counseling and appointed a guardian ad litem with the disclaimer approval of the guardian ad litem. SB 29 also allows payments to be made to an out-of-state private child-placing agency that is licensed in the state and certified by the Department of Children and Families. This affidavit process that is used in other states allows the children in these situations to make a swift and uncomplicated living change without a vicious back and forth cycle.

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

Thank you,



State Representative Janel Brandtjen

State Capitol: P.O. Box 8952 • Madison, WI 53708-8952
Office: (608) 267-2367 • Toll-Free: (888) 534-0022 • RepBrandtjen.com

Home: N52W16632 Oak Ridge Trail • Menomonee Falls, WI 53051
Home: (262) 455-8311 • Rep.Brandtjen@legis.wi.gov

In Support of 2021 Senate Bill 29

Cody Foss & Jillian Camara-Foss
1801 Fieldcrest Drive
Kaukauna, WI 54130
(920) 574-8069
jmcfoss@yahoo.com

We would first like to thank you for welcoming us back to the Capitol to allow us to testify in support of Senate Bill 29. Some of you may remember our heartbreaking story that we first publicly shared on December 4th, 2019 in support of what was then Senate Bill 232. For those of you who missed it, we would like to share with you our story of a disrupted adoption which was, in part, a direct result of what many believe to be Wisconsin's unreasonable adoption laws, specifically the termination of parental rights (TPR) process.

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

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

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

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

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

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

Losing our daughter was undoubtedly the most painful experience of our lives, but was also genuinely heartbreaking for our families, friends, coworkers, and neighbors. Nearly every person that learned of our story was flabbergasted as to how such a tragedy could legally occur. Many compared it to a Lifetime movie, but without a happy ending. Although we will never stop grieving for our first daughter and the life we had envisioned for her, we have since welcomed another baby girl into our family through adoption, but under extremely different circumstances.

We chose to pursue adoption again because we still yearned to love and care for a child, but were understandably terrified to attempt another adoption in Wisconsin. This led us to seek out an adoption consulting agency who shared our profile with dozens of agencies across the United States, but only in states that were considered "adoption friendly". This means that under most circumstances, TPR is legally and irrevocably completed between 24 and 96 hours after the baby's birth. Further, because of the in-depth legal preplanning and birth parent counseling and education, these states do not require a birth family to appear in court to complete the TPR proceedings. This can be hugely empowering to the birth family because it eliminates most scheduling conflicts, the fear that some individuals have of arrest for unrelated crimes or warrants, and the shame that many birth families endure while publicly declaring their voluntary termination of parental rights.

Although it will never change our story, we are testifying in support of Senate Bill 29 in honor of our first daughter. If this bill was already in place, we would have likely finalized her adoption. There are several variables, but it is possible that our first daughter's birth mother could have discussed with the birth father terminating his rights on the day that she requested and was denied money from him for an abortion. She also could have signed the TPR documents before leaving the hospital, thereby eliminating her fear of appearing in court because of her longstanding legal troubles. We sincerely hope that our voices may be able to help enact legislation to prevent a similar situation from happening to any other child and their adoptive family. Please consider these types of situations as you decide on how to vote for the proposed bill. Thank you.

Respectfully,

Cody Foss

Cody Foss

Jillian Camara-Foss

Jillian Camara-Foss

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 29

On behalf of the Coalition for Children, Youth & Families, I would like to thank the Senate Committee on Human Services, Children and Families for the opportunity to provide written comments regarding Senate Bill 29 (Adoption Process Reform Act).

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.

The Coalition has watched the evolution of Senate Bill 29 from similar adoption process reform legislation previously proposed within the Assembly. We are pleased to see the revisions made and believe we are close to balancing the needs of all. There are still two areas where we would respectfully request more consideration be given:

1. Not all childbirth experiences are equal. There are times when a mother might experience complications that would hinder her from fully providing an informed affidavit. With this in mind, we ask consideration be given to extending the 24 hours post-birth to 72 hours.

2. As an agency that interacts with families and professionals daily who engage with or involved with child welfare and adoption, we recognize that for many, the processes seem daunting and endless. We also know that we still have too many children in Wisconsin who go for extended periods without an adoptive resource. We also know that the resources needed to continue to enhance and maintain the quality of our programs are stretched. With these points in mind, we ask that consideration be given to having requirements in place ensuring that families have exhausted all opportunities for adopting a child from the state of Wisconsin before offering state funding to support out-of-state agencies.

In closing, please allow us a moment to commend Senator Jacque on his persistence on championing these changes through the Wisconsin legislature in an effort to bring Wisconsin's processes in line with the majority of other states.

Thank you for your time and consideration,
Sincerely,

Oriana Carey
Chief Executive Officer
Coalition for Children, Youth & Families

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

2/21/21

To the Committee:

We are Tim and Jill Damrow, and we would like to share our thoughts and personal experience on the laws pertaining to termination of parental rights in Wisconsin.

In September of 2017, we were chosen by a birth mother to adopt her child, due in November. There was a potential complication in that the birth father was refusing to speak with anyone at the adoption agency. The birth mother had obtained a restraining order against the birth father because of a history of abuse. The birth father was allowed however, to speak with the attorneys and the adoption agency involved with the potential placement of the child. Multiple attempts were made to contact the birth father, and all attempts were unsuccessful. He refused all correspondence and failed to return voice messages left for him.

Our daughter was born on November 1st that year, and a phone call was immediately placed to the birth father to inform him of the birth. Throughout the next couple of weeks, multiple calls were placed to the birth father in an attempt to work through a possible adoption placement. Again, none of these attempts were successful. Wisconsin law states that a termination of parental rights hearing shall take place around 30 days from the date of birth. We waited over 30 days to even get a court hearing on the schedule and it was scheduled for early January of 2018, over two months from the date of birth. The adoption attorneys explained to us that the birth father would be served papers to appear at the hearing, and if he failed to do so, a judge would grant a default judgment against him, terminating his rights. It was believed by all that the birth father would not appear in court as he had refused all previous attempts to contact him.

The day of the hearing came and, of course, the birth father appeared out of nowhere. He had decided to contest the adoption. The birth mother strongly believed that the birth father was doing this out of spite, and was a danger to the well being of the child. She indicated many times that it was ***in the child's best interest*** to be placed for adoption. She decided to move forward with an involuntary termination of parental rights case against the father, on the grounds of failure to assume parental responsibility. Over the next couple of weeks, multiple court hearings were scheduled, and the birth father appeared at each hearing without an attorney present, until the judge became fed up with his behavior and issued a court appointed attorney. The trial was finally scheduled for late April, when our daughter was nearly six months old. During this long drawn out process, our child was bonding and attaching with us as parents, and we were obviously doing the same with her.

The trial came, and inexplicably, the judge sided with the birth father. We were forced to surrender our daughter back to her birth mother (who had made the decision that if an adoption were not allowed, she would parent the child in an effort to shield her from her birth father, ***acting in her next best interest***.) In the months following the trial, no effort was made by the birth father to visit or communicate with the child. He went so long without an effort in fact, that the birth mother discussed the idea of a new involuntary termination case, this time on the grounds of abandonment. This was discussed at length with our attorneys, all at the expense of us (the hopeful adoptive parents, who also paid every expense related to the previous trial) and ultimately the birth mother chose not to go through with another trial. We were left with nothing. We will not go into detail on how wrong this decision was, because that is not the purpose of this hearing. The worst part of this for us as adoptive parents was that this was allowed to drag on for six long months following the birth of our daughter. She knew us as her parents, she had a safe and comfortable home, and at the point when we should have been finalizing her adoption, she was taken from us by a social worker to be delivered back to her birth mother who did not want to parent her in the first place. Can you see what is wrong with that? If somebody could explain to us how that was in ***anybody's best interest***, we would be willing to listen.

We fought through the pain of loss, and eventually decided to enter back into the world of adoption. We signed on with a new adoption agency, hoping for a fresh start and our social worker strongly encouraged us to look at adoption in other states. She explained to us that there were states that were far more concerned with the ***best interest of the child***, and that Wisconsin was a state whose adoption law was far more archaic than those states. She encouraged us to look into adopting in Texas as they had a sister agency that they worked with. In the fall of 2019, we were given the news that a birth mother in Texas had chosen us to adopt her child, due in the winter of 2020. We were fortunate in this situation in that the birth father had been told about the adoption plan, and had agreed to it. In Texas, a birth father who agrees to an adoption plan may sign a legally binding termination of parental rights document before the child is born. When the child is born, the birth mother is allowed to voluntarily terminate her rights after a 48 hour waiting period. Further, she is allowed to do this without an attorney present and does not have to appear before a judge in an intimidating courtroom.

In February of 2020, the birth mother gave birth to our daughter. We spent two days in the hospital with both the birth mother and our daughter, and 48 hours after birth, right on cue, the social worker came to the hospital with the termination papers. We left the birth mother with our daughter in their hospital room to have some final alone time together, and she signed her papers. We returned to the room, and had an extremely emotional experience. We cried from joy that our adoption journey had just cleared the largest necessary hurdle, and that it was so easy. The birth mothers tears I'm sure were a mixture of sadness and relief.

Our daughter just turned one year old this month, and we thank God every day for her. We have a wonderful relationship with her birth mother and her other children. We communicate a lot, often weekly and she gets as many updates on our daughter as she can handle. We are so thankful that the laws in Texas allowed her to make such a difficult decision, and to follow through with it in the most humane way possible.

An adoption is an extremely difficult, expensive and emotionally draining process for all involved parties; birth parents, adoptive parents and especially the children. If you have a copy of this letter, you will see that the words ***"best interest of the child"*** are written in bold. That is because this is the most important aspect of an adoption. Why shouldn't it be? The ***child's best interest*** should be first and foremost in all decisions relating to an adoption. Please ask yourself how the ***child's best interest*** was taken into account in our first, unsuccessful adoption? It was not. That is because the disposition phase, also referred to as the ***best interest*** phase of a termination of parental rights hearing, can only take place in Wisconsin if sufficient grounds for termination are met in phase one of a termination hearing. This leaves the decision up to a court or jury, and sadly, as proved in our case, those decisions can be wrong. The birth father in our case checked every single box for "failure to assume parental responsibility" and the judge still decided to rule in his favor, ignoring the ***best interest of the child***.

Please think of the babies who have to wait for a trial, while attaching and bonding with their prospective adoptive parents, only to be taken away from the only parents they have ever known, to be returned to a birth parent or parents who did not want to parent that child in the first place. Please think of the young children, or those all the way into their teenage years, who have bounced around the foster care system, never having permanence or a stable family life. Please stop letting birth fathers use the system as a form of harassment. The laws in this state allow this to happen, because they simply do not care about the ***child's best interest***, until it is too late. Let's stop putting hurdles in place and let's bring Wisconsin into line with other states in this country when it comes to adoption law.

Please, when deciding how to vote on these bills, we ask that you have the ***child's best interest*** at the front of your mind.

Respectfully,

Tim and Jill Damrow

February 22,2021
Re: SB 29

Written Testimony on behalf of Senate Bill 29 from Brian & Addie Teeters, Appleton, Wisconsin

To the distinguished Committee Members:

We are grateful for the opportunity to submit our written testimony today on behalf of Senate Bill 29.

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

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

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

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

Our key learnings and request for consideration include:

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

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

Thank you for your consideration.

Memorandum

STATE OF WISCONSIN
DIRECTOR OF STATE COURTS

DATE: February 22, 2021

TO: Senator André Jacque, Chair
Senate Committee on Human Services, Children and Families

FROM: Bridget Bauman, Director
Children's Court Improvement Program

SUBJECT: Senate Bill 29 regarding Disclaimer of Parental Rights

---

Please accept the following written comments regarding 2021 Senate Bill 29 for information only. The Wisconsin court system administration takes no position on the policy aspects of SB 29, but rather seeks to highlight court procedures that may be impacted by the bill and technical drafting issues that may require attention.

The Children's Court Improvement Program (CCIP) provides policy, procedural, and technical support to judges, clerks, attorneys, and child welfare stakeholders, as well as staffs several judicial and multi-disciplinary committees. CCIP aims to improve the handling of child abuse and neglect, termination of parental rights, and adoption cases in the court system. We greatly appreciate the opportunity to provide comments and hope the information is helpful to the committee as it deliberates.

Our comments and suggestions are focused on Section 1 of the bill, which allows a parent to voluntarily consent to terminate his or her parental rights by executing an affidavit of disclaimer.

1. Under current law, s. 48.41(1) states, "The court may terminate the parental rights of a parent after the parent has given his or her consent as specified in this section. When such voluntary consent is given as provided in this section, the *judge may proceed immediately to a disposition* [emphasis added] of the matter after considering the standard and factors specified in s. 48.426."
   - This language will need to be modified or additional language will need to be added to the statute to clarify that the court cannot go immediately to disposition after an affidavit of disclaimer of parental rights is executed. Instead, the court will need to wait until 24 hours after execution or 120 hours after the birth of the child, whichever is later.

2. The committee may want to consider requiring the time that the affidavit of disclaimer of parental rights is executed under s. 48.41(2)(bm)3. on the written affidavit. The time limit for revoking the affidavit of disclaimer is expressed in hours, so this would assist in determining the deadline for a parent to revoke the disclaimer of parental rights.

3. While the bill specifies that a minor parent cannot consent to termination of parental rights (TPR) through an affidavit prior to the TPR petition being filed, it permits adult parents to execute an affidavit of disclaimer prior to a TPR case being initiated in circuit court.
   - The Committee may want to consider clarifying the procedure for filing the affidavit of disclaimer with the court when it is executed prior to the petition to terminate parental rights, including when it is obtained prior to the birth of the child.

4. Section 1, page 6, lines 1-3: Under the bill, the affidavit of disclaimer of parental rights will include a statement that the parent is giving up "the right to notice of proceedings under this chapter [Chapter 48]".
   - If it is the Committee's intention to exclude the parent from being summoned and receiving notice of hearings in the TPR case, s. 48.41(2)(d) should be expanded to include consents provided under s. 48.41(2)(bm) or s. 48.42(2)(a) should include a cross-reference to s. 48.41(2)(bm).

5. Section 1, page 6, lines 4-8: The bill states, "If a guardian has not been appointed under s. 48.977, an affidavit under subd. 1. may contain the nomination of the department, a county department authorized to accept guardianship under s. 48.57(1)(e) or (hm), or a child welfare agency licensed under s. 48.61(5) to accept guardianship to serve as guardian of the child and the nominated guardian's address."
   - The Committee may want to consider changing "If a guardian has not been appointed under s. 48.977..." to "If a guardian has not been appointed under s. 48.977 **or s. 48.979**..." Both of these sections provide for the appointment of a guardian of the person for a minor.

Thank you for allowing us to submit this testimony. If you have questions, please do not hesitate to contact our Legislative Liaison, Nancy Rottier. Thank you.

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

---

[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

---

[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**

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]**

---

[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.

---

(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

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

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

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.