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*Testimony before the Senate Committee on Human Services, Children and Families*
*Senator André Jacque*
*October 14, 2021*

Committee Members,

Foster parents fill a vital role in providing a temporary home for children until they can be safely reunited with biological family or be adopted. Foster care is 24-hour care provided by licensed foster parents for children who cannot live with their parents because they are unsafe, have special care or treatment needs, or other circumstances exist where parents or family are unable to care for them. Wisconsin, like the rest of the country, has a critical need for more foster parents- you have likely seen signs across Wisconsin asking people to consider opening their hearts and homes for this crucial responsibility.

Many states have focused on attracting and retaining foster parents by building trust through statutory enactment of a formal Foster Parent's Bill of Rights, providing guarantees of state commitment to respect and support current and potential caregivers and informing foster parents of their rights within the child welfare system. Foster Parents' Bill of Rights have now been enacted in over 20 states, including Michigan, Illinois, and Iowa.

Senate Bill 402, the Wisconsin Foster Parents Bill of Rights, ensures that the State of Wisconsin and all county departments and licensed child welfare agencies establish and respect the following basic rights for all foster parents, as already recognized in other states:

1.) Be treated with dignity, respect, and consideration as a member of the child welfare team.
2.) Be notified of and be given appropriate education and continuing education and training to develop and enhance foster-parenting skills.
3.) Be informed of how to contact the appropriate agency in order to receive information on and assistance in accessing supportive services for any child in the foster parent's care.
4.) Receive timely financial reimbursement commensurate with the care needs of a foster child in the foster parent's care as specified in the foster child's permanency plan.
5.) Be provided a clear, written understanding of the permanency plan and case plan of a child placed in the foster parent's care to the extent that those plans concern the placement of the foster child in the foster parent's home.
6.) Receive information that is necessary and relevant to the care of a foster child placed in the foster parent's care at any time during which the foster child is placed with the foster parent.
7.) Be notified of scheduled review meetings, permanency-planning meetings, and special staffing concerning the foster child in order to actively participate in the case planning and decision-making process regarding the child.
8.) Provide input concerning the case plan of a foster child placed in the foster parent's care, have that input given full consideration in the same manner as information presented by any other professional member of the child welfare team, and communicate with other professionals who work with the foster child within the context of the child welfare team, including therapists, physicians, and teachers.

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9.) Be given, in a timely and consistent manner, information, as allowed by law, regarding the child and the child's family that is pertinent to the care and needs of the child and to the development of a permanency plan for the child.

10.) Be given reasonable notice of any change in, or addition to, the services provided to the child pursuant to the child's individual permanency or case plan.

11.) Be given written notice, except in emergency circumstances, of plans to terminate the placement of the child with the foster parent and the reasons for the changes or termination of the placement.

12.) Be notified in a timely and complete manner of all court hearings and of the rights of the foster parent at the hearing.

13.) Be considered as a preferred placement option if a foster child who was formerly placed with the foster parent is to reenter foster care and if that placement is consistent with the best interest of the child and any other children in the home.

14.) Be provided a fair, timely, and impartial investigation of complaints concerning the licensing of the foster parent.

15.) Be provided the opportunity to request and receive a fair and impartial hearing regarding decisions that affect licensing retention.

16.) Provide or withhold permission, without prior approval of the caseworker, department, child welfare agency, educational advocate, or court, to allow a child in his or her care to participate in normal childhood activities based on a reasonable and prudent parent standard in accordance with the provisions of part E of title IV of the federal Social Security Act.

17.) Have timely access to any administrative or judicial appeals process and be free from acts of harassment and retaliation by any other party when exercising the right to appeal.

Under Senate Bill 402, the Department of Children and Families, county department, or licensed child welfare agency shall provide a foster parent with a written copy of the foster parents' bill of rights when the department, county department, or licensed child welfare agency issues or renews a foster care license.

Thank you for your consideration of Senate Bill 402.

# BARBARA DITTRICH

STATE REPRESENTATIVE • 38th ASSEMBLY DISTRICT


October 14, 2021

**Senate Committee on Human Services, Children and Families**

**RE: Rep. Dittrich Testimony on AB 402** – relating to: creating a foster parents' bill of rights.

Hello Senate Committee Vice-Chair Ballweg and members of the committee. I am pleased to share with you today information regarding Senate Bill 402, creating a foster parents' bill of rights.

First, I wanted to thank Senator Jacque for introducing this much needed legislation. Although he cannot be here to join us today, his leadership on this bill has been helpful to move it through the legislative process.

Foster parents are uniquely compassionate in filling a vital role of caring for at-risk or otherwise endangered children until they can be reunited with their biological family or be settled into other permanency. Foster parents are tasked with the challenge of caring for the mental, emotional, social, and physical wellbeing of the child in an emergency situation. However, they are not always provided the information by the social workers that might assist in making the best care decisions for the child. The foster parents' bill of rights has already been passed in over 20 states and details what information needs to be shared with the foster parents so they can assist in the proper care of the child.

Currently, foster parents are in the dark on what information they can or should receive when caring for a child. This disclosure of information, or lack thereof, can and does vary from county to county, a reoccurring problem with foster care and permanency cases. Under this legislation, the foster parents' bill of rights would be distributed to foster parents by the Department of Children and Families, the respective county department, or licensed child welfare agency when a foster care license is issued or renewed. By codifying the information that should be received, the ambiguity involved with the child's needs is removed. Additionally, as shared in this legislation, the foster parents would be provided an opportunity to inform the court of what they perceive to be the best plan for the child going forward, as the delineated in the child's permanency plan.

As Wisconsin joins the rest of the nation in a desperate need for more foster parents willing to share their homes with children in need, we as a legislature can ensure they are provided with basic information and input in the child's care plan so they can provide that care to the best of their ability.


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Wisconsin Department of Children and Families

Governor Tony Evers
Secretary Emilie Amundson
dcf.wisconsin.gov

**TO:** Chair Jacque, Vice-Chair Ballweg, and Honorable Members of the Senate Committee on Human Services, Children, and Families

**FROM:** Wendy Henderson, Administrator, Division of Safety and Permanence
Amanda Merkwae, Legislative Advisor

**DATE:** October 14, 2021

**SUBJECT:** 2021 Senate Bill 402

The Department of Children and Families is committed to the goal that **all** Wisconsin children and youth are safe and loved members of thriving families and communities. To support this goal, the Wisconsin child welfare system is guided by the following priorities, which are also embodied in the new federal child welfare law, the Family First Prevention Services Act, which Wisconsin must implement beginning in October 2021:

- **Prevention:** Child welfare increasingly focuses on preventing children from being removed from their homes by strengthening families to raise their children.
- **Relatives:** Relatives play an important part in children's lives as caregivers or ongoing supports and should be used as out-of-home placement resources whenever possible.
- **Reunification:** The primary goal is to reunify a child with his/her family whenever it is safe to do so.
- **Permanence**: The child welfare system strives to transition children placed in out-of-home care (OHC) safely and quickly back with their family, whenever possible, or to another permanent home.

For children who do enter out-of-home care, supporting foster parents and relative caregivers as families work toward reunification is critical. This is especially true as the system prioritizes keeping children with their relatives or in other family-like settings, shifting away from placing children in congregate (group) care. It is through the lens of these priorities that DCF reviewed SB-402 and will be testifying for information.

This bill would require DCF, county departments, and licensed child welfare agencies to provide foster parents with a written copy of the foster parents' bill of rights when the department, county department, or licensed child welfare agency issues or renews a foster care license. This bill also requires that these rights be provided in the primary language of the foster parent, if possible.
SB-402 recognizes the important role of foster parents in the lives of children and youth. Foster parents open their homes to provide a safe, stable place for children in out-of-home care while parents work to enhance their protective capacities so those children can safely return home. It is also important to note that the relational dynamics and decisions in a child welfare case—including the daily decisions made by the out-of-home care provider regarding the needs of a child—can be complicated. As a team supporting a child works towards reunification, the trust that is established between the child, caseworker, biological parent, out-of-home care provider, and tribe (in a case where the Indian Child Welfare Act (ICWA) and Wisconsin Indian Child Welfare Act (WICWA) applies) is critical for co-parenting to occur.

Foster parents, family caregivers, and any other person or provider involved with the care of a child in out-of-home care should **always** be treated with dignity and respect. Under current statutes and administrative rules, child welfare agencies are required to provide foster parents and family caregivers with information about a child, including the child's developmental, medical, cultural, emotional, behavioral, and educational needs; the child's placement history and permanence goal(s); considerations for making reasonable and prudent parenting decisions about normal childhood activities; and any additional information critical to the care of the child. Foster parents and family caregivers must also be given notice of permanency reviews held every six months and their right to be heard at these reviews in addition to notice and the right to be heard in a change of placement proceeding. Further, current law gives foster parents or relative caregivers the right to appeal decisions or orders made by a child welfare agency.

DCF agrees that providing foster parents and relative caregivers with information about their rights in an easily digestible format would be a valuable practice to help support foster parents and relative caregivers in their role. However, as currently drafted, the language in several provisions of the bill is challenging to reconcile with existing law. This ambiguity could result in litigation delays that also delay permanency for children in care. DCF proposes two potential avenues that capture the spirit of SB-402, ensure family caregivers are also apprised of their rights, and provide necessary clarity to the child welfare team and court partners responsible for operationalizing these rights:

1) **Require DCF to create and maintain a foster parents' and relative caregivers' bill of rights that encompasses all rights provided under state child welfare laws; or**

2) **Amend the bill to resolve any ambiguity between the bill language and state and federal law.**
   - **a.** DCF recommends the bill apply to both foster parents and relative caregivers, defined as relatives other than a parent who fall within the definition of "out-of-home care provider" under s. 48.02(12r) or s. 938.02(12r).
   - **b.** DCF recommends removing the term "case plan" from the bill, as "case plans" in Wisconsin practice are used only for families being served in-home.
   - **c.** DCF recommends including language that information sharing between foster parents or relative caregivers and professionals who work with the foster child must be consistent with state and federal confidentiality laws.
   - **d.** DCF recommends language clarifying that the enumerated rights regarding payments for the care and maintenance provided for a child, information sharing, notice requirements, parenting decisions, and appealing decisions of the agency apply as required by law.
   - **e.** DCF recommends adding language that protects the rights of the Indian child, their parents, and their tribe within the bill.
   - **f.** DCF recommends changing the phrase "preferred placement option" to "placement option." Under federal claiming statutes, consideration must be given to a preference for relative placements. Further, specific placement preferences must apply for Indian children under ICWA and WICWA.
   - **g.** DCF recommends citing directly to the prudent parenting standard outlined in state law.
   - **h.** DCF recommends that in addition to clarifying that s. 48.649 should not be construed to create a private action or claim, that the bill should not be construed to confer party status upon a foster parent or relative care provider.

Proposed language for these amendment options is attached to this testimony.

Thank you for the opportunity to testify about this legislation. DCF recognizes and appreciates the dedication of legislators to issues affecting children and families involved in the child welfare system. We would be pleased to respond to any questions.

**Proposed Amendments to SB-402**

**Option 1**

**SECTION 1.** 48.649 of the statutes is created to read:

**48.649 Foster parents' and relative caregivers' bill of rights.**

**(1)** The department and all county departments and licensed child welfare agencies shall respect the rights of all foster parents and relative caregivers, defined as relatives other than a parent who fall within the definition of "out-of-home care provider" under s. 48.02(12r) or s. 938.02(12r). All foster parents and relative caregivers shall be treated with dignity, respect, and consideration as members of the child welfare team.

**(2)** The department shall maintain a foster parents' and relative caregivers' bill of rights containing all rights held by foster parents and relative caregivers under state child welfare laws.

**(3)** The department, county department, or licensed child welfare agency shall provide a foster parent or relative caregiver with a written copy of the foster parents' and relative caregivers' bill of rights in their primary language, if possible, at the time a foster child is placed in their home.

**Option 2**

**SECTION 1.** 48.649 of the statutes is created to read:

**48.649 Foster parents' and relative caregivers' bill of rights. (1)** The department and all county departments and licensed child welfare agencies shall respect the rights of all foster parents and relative caregivers, defined as relatives other than a parent who fall within the definition of "out-of-home care provider" under s. 48.02(12r) or s. 938.02(12r).These rights shall include the right to all of the following:

(a) Be treated with dignity, respect, and consideration as a member of the child welfare team.

(b) Be notified of and be given appropriate education and continuing education and training to develop and enhance foster-parenting skills.

(c) Be informed of how to contact the appropriate agency in order to receive information on and assistance in accessing supportive services for any child in the foster parent or relative caregiver's care.

(d) Receive payments for the care and maintenance provided for a child as required by and in the timeframes established by s. 48.57(3m) or (3n) or s. 48.62(4) and (8)~~timely financial reimbursement commensurate with the care needs of a foster child in the foster parent, as specified in the foster child's permanency plan.~~

(e) Be provided notice of the time, place, and purpose of a permanency plan hearing or review for a child placed in the care of the foster parent or relative caregiver, the issues to be determined as part of the review, and the right to be heard at the review, as provided in ss.48.38(5)(b),(5m)(b) or 938.38(5)(b), (5m)(b), and a written summary of the determinations made by the court or panel as part of the review, as required by s.48.38(5)(e), (5m)(e) or 938.38(5)(e), (5m)(e). ~~a clear, written understanding of the permanency plan and case plan of a child placed in the foster parent to the extent that those plans concern the placement of the foster child in the foster parent's home.~~

(f) Receive information that is necessary and relevant to the care of a foster child placed in the foster parent's care at any time during which the foster child is placed with the foster parent or relative caregiver, as required by s.48.371 or 938.371 and DCF 37.

(g) Be notified of scheduled review meetings, permanency-planning meetings, and special staffing concerning the foster child in order to actively participate in the case planning and decision-making process regarding the child, to the extent appropriate.

(h) Provide input concerning the ~~case~~ permanency plan of a foster child placed in the foster parent or relative caregiver's care, as provided in 48.38(5)(bm), (5m)(c) or 938.38(5)(bm), (5m)(c) ~~have that input given full consideration in the same manner as information presented by any other professional member of the child welfare team,~~ and communicate with other professionals who work with the foster child within the context of the child welfare team, as provided by law. ~~including therapists, physicians, and teachers.~~

(i) Be given, in a timely and consistent manner, information, ~~as allowed~~ as provided by law, regarding the child and the child's family that is pertinent to the care and needs of the child and to the development of a permanency plan for the child.

(j) Be given reasonable notice of any change in, or addition to, the services provided to the child pursuant to the child's individual permanency ~~or case~~ plan, as required by law.

(k) Be given written notice, except in emergency circumstances, of plans to terminate the placement of the child with the foster parent or relative caregiver and the reasons for the changes or termination of the placement, as required by law.

(L) Be notified in a timely and complete manner of all court hearings and of the rights of the foster parent at the hearing, as required by law.

(m) Be considered as a ~~preferred~~ placement option if a foster child who was formerly placed with the foster parent or relative caregiver is to reenter foster care and if that placement is consistent with the best interest of the child and any other children in the home. The wishes of the child shall be considered in making that determination. If the child is an Indian child, the department, county department, or child welfare agency shall comply with the order of placement preference under s.48.012(7), unless there is good cause, as described in s.48.028(7)(e), for departing from that order.

(n) Be provided a fair, timely, and impartial investigation of complaints concerning the licensing of the foster parent, as required by law and any existing agency complaint process.

(o) Be provided the opportunity to request and receive a fair and impartial hearing regarding licensure decisions ~~that affect licensing retention~~, required by law.

(p) ~~Provide or withhold permission, without prior approval of the caseworker, department, child welfare agency, educational advocate, or court, to allow a child in his or her care to~~ Allow a child in the care of a foster parent or relative care giver to participate in normal childhood activities, in accordance with the ~~based on a~~ reasonable and prudent parent standard under s.48.383 and ~~in accordance with the provisions of~~ part E of title IV of the federal Social Security Act.

(q) Have timely access to any administrative or judicial appeals process ~~and be free from acts of harassment and retaliation by any other party when exercising the right to appeal~~, as required by law.

**(2)** The department, county department, or licensed child welfare agency shall provide a foster parent with a written copy of the foster parents' bill of rights in their ~~his or her~~ primary language, if possible, when the department, county department, or licensed child welfare agency issues or renews a foster care license or when a child is placed with a relative caregiver.

**(3)** Nothing in this section shall be construed to confer party status upon a foster parent or relative caregiver in proceedings under this chapter or create a private right of action or claim on the part of any individual, group, department, or other state agency.

## CHILDREN & THE LAW SECTION

| | |
|---|---|
| To: | Senate Human Services, Children and Families Committee Members |
| From: | Children & the Law Section, State Bar of Wisconsin |
| Date: | October 14, 2021 |
| Re: | Opposition to SB 402 – foster parent bill of rights |

The Children & the Law Section of the State Bar of Wisconsin opposes AB 412, creating a foster parents' bill of rights. The Section believes that existing laws and regulations address the concerns of foster parents and allow them to fully participate in the actions that affect the children placed with them. The creation of a "Bill of Rights" for a non-party to an action under Chapter 48 creates ambiguity and imbalance which could negatively affect and distract from the best interests of children.

Being a foster parent is one of the most difficult roles in the child welfare system. It is important to maintain good homes for children that have been abused or neglected. However, a bill of rights for foster parents is unnecessary. Current law allows for what is listed in the legislation including training, education and financial reimbursement consistent with a child's needs. A foster parent is also presently allowed to attend court hearings, staff meetings, and communicate with professionals treating the foster child in their home.

The additional allowances granted to foster parents in this legislation include concerning provisions, such as requiring an agency to give notice to a foster parent when there is a change in case plan, thus, providing them with information a child's lawyer or a party would not be privileged to, and providing information about the child's parent or family, such as AODA, mental health issues or domestic violence, to the foster parent. The section is concerned that sharing confidential information about the parent/family creates the possibility that this information could be used by the foster parents to harm the relationship between the child and his/her family.

Another concern is that this legislation proposes mandating a particular foster parent to be the preferred placement option on re-entry. This may contradict other parts of the statute which requires the consideration of family or a child's Native American heritage.

Lastly, the section is concerned that this legislation creates an imbalance of rights towards foster parents. It potentially gives foster parents more rights than the children themselves and certainly differentiates foster parents from relatives. Relatives may not be licensed caregivers for a number of reasons, but should not have less rights than any other caregiver, including foster parents, whom this legislation benefits. This imbalance of power within a particular case could create a more adversarial system and delay permanency while these issues are dealt with by the court system.

For these reasons, the Children & the Law Section opposes SB 402.

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

*The State Bar of Wisconsin establishes and maintains sections for carrying on the work of the association, each within its proper field of study defined in its bylaws. Each section consists of members who voluntarily enroll in the section because of a special interest in the particular field of law to which the section is dedicated. Section positions are taken on behalf of the section only.*

*The views expressed on this issue have not been approved by the Board of Governors of the State Bar of Wisconsin and are not the views of the State Bar as a whole. These views are those of the Section alone.*

STATE BAR OF WISCONSIN

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**Kelli S. Thompson**
State Public Defender

**Jon Padgham**
Deputy State
Public Defender

Senate Committee on Human Services, Children & Families
Senate Bill 402
Thursday, October 14, 2021

Mr. Chairman and members,

The State Public Defender's Office (SPD) offers the following comments on Senate Bill (SB) 402, which creates a foster parents' bill of rights.

Foster parents are vital to the child welfare system by providing care for children in need of protection or services. That said, as stated in Chapter 48, one of the guiding principles of the Children's Code is to "...preserve the unity of the family, whenever appropriate by strengthening family life through assisting parents..." Ensuring that the rights of parents to remain the guardian of their children is vital to the best interests of the child.

Of course, there are times that a child welfare agency determines that the best interests of the child warrant the engagement of the judicial system and the temporary removal of the child from the home or even termination of the parent's rights. The SPD is authorized to provide representation in those cases; Children in need of Protection and Services (CHIPS) and Termination of Parental Rights (TPR) cases.

These are incredibly complex and important cases. Courts have even referred to TPR cases as the "civil death penalty." The statute and case law is difficult to follow and involves many different individuals such as attorneys for the parents and children, a guardian ad litem, expert witnesses, and child welfare department personnel. Trying to navigate all of this in the context of a judicial proceeding can be difficult in the best of circumstances.

SB 402 is well-intentioned legislation that will have serious unintended consequences. This bill is very similar in content and structure to the constitutional amendment known as "Marsy's Law" which took effect in May 2020. The purpose of the amendment was to place the crime victim's rights detailed in Chapter 950 into the Wisconsin Constitution. The implementation of Marsy's Law has had a significant impact on the criminal justice system.

Though it was stated repeatedly that the intent of the bill was not to give alleged victims standing in criminal proceedings, that is what has functionally happened. The day-to-day impact of Marsy's Law on the operations of courts statewide has had a significant effect. Having hearings to ensure that the victim is included in scheduling of future court appearances, the redaction of discovery material, and the non-identification of the complaining witness in direct contradiction of the federal and state constitutions have been just a few of the issues that have come up.

SB402 provides many of the same rights from Marsy's Law for foster parents in child welfare cases. This will insert significant additional delays in a system that the Legislature has gone to great lengths to try and streamline, often to the detriment of birth parents. It will create another party to the case that has standing in the proceedings. Even if that is not directly authorized in the legislation, we know from experience with Marsy's Law that a legal argument will be made for just that. In short,

despite the best of intentions with SB 402, it has the very real prospect of leading to an increase in the amount of children who are removed from the home and ultimately have their parents' rights terminated.

Thank you for the opportunity to provide these comments. If you have additional questions, please feel free to contact Adam Plotkin at plotkina@opd.wi.gov or 608-264-8572.

# MENOMINEE INDIAN TRIBE OF WISCONSIN

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


To: Senator Andre Jacque, Chair
Members of the Wisconsin Senate Committee on Human Services, Children and Families

From: Gunnar Peters, Chairman, Menominee Tribal Legislature, Menominee Indian Tribe of Wisconsin

Date: October 14, 2021

Re: Wisconsin State Senate Public Hearing Committee on Human Services, Children and Famiies
Menominee Tribe's Comments on Senate Bill 402 and Bill 601

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

Chairperson and members of the Committee on Human Services, Children, and Families. The Menominee Tribe of Wisconsin thanks you for the opportunity to provide written comments regarding the proposed bills before the Wisconsin State Senate on Human Services, Children, and Families.

The Tribe has submitted written testimony that was eloquently provided by its former Vice-Chair, Joan Delabreau in July of 2019 before the Assembly Speaker's Task Force on Adoption hearing that was held in Green Bay. This testimony is attached to this written testimony.

It is the Tribe's belief that everyone in the State of Wisconsin and this Committee is concerned about the length of time it takes to establish permanency for a child. There are multiple committees currently within the system reviewing procedures to highlight the inefficiencies and develop methods to reduce those inefficiencies. The Tribe's concerns with specific bills, SB402 and SB601, that fundamentally changes the goals of Chapter 48, WICWA and ICWA, interferes with the fundamental rights of parents and would inevitably cause litigation that would not reduce the time to permanency.

In regards to SB402and SB601, the Menominee Tribe strongly opposes both these bills, and offer the following comments:

1) These bills would interfere with the objectives of Chapter 48 which is ultimately reunification.
2) If parents and foster parents have competing interests, it would interfere with Ch. 48.
3) Parents have a fundamental right to parent unless it is determined otherwise.
4) Foster parents are a valuable resource but not an agent of the government within the court system while parents are going through this process
5) There is not an equal contractual relation between birth parents and adoptive parents.
6) It could be used as promise for termination by the parents but not enforceable by the birth parents after.

We thank you for your consideration.

# MENOMINEE INDIAN TRIBE OF WISCONSIN
# MENOMINEE TRIBAL LEGISLATURE

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


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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- Consider capping the fees attorneys can charge per adoption.

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

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

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

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

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

FROM: Emily Coddington, Associate Director

DATE: October 14, 2021

RE: **SB 402 – Foster Parents' Bill of Rights**

Thank you for the opportunity to provide testimony regarding SB 402, which seeks to establish a bill of rights for Wisconsin foster parents. We appreciate the bill author's acknowledgement that more can and should be done to honor those who care for children and families in our state. Relative and fictive kin caregivers, as well as foster and adoptive parents, all deserve support and recognition for the work they do. They deserve to be treated with dignity and respect, and to be provided with information and opportunities to be heard. They deserve to be valued members of the team, and to receive compensation commensurate with their time and dedication.

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, so ensuring those they serve are respected and supported is of utmost importance.

The principles outlined in SB 402 generally align well with Wisconsin's Foster Parent Handbook[1] and administrative rules, and there is a desire among WAFCA members for these concepts to be more deeply embedded in statewide practice. There is concern, however, that incorporating the language into state statute may not be an effective tool to achieve this end and may generate confusion or conflict between current law and administrative rules and the rights proposed here. On a more practical level, embedding this language in statute would inhibit our ability to keep a foster parent bill of rights updated and aligned with current best practice, open to periodic review and amendments.

At the heart of the issue seems to be a desire to ensure shared power and decision-making, which will only come with true collaboration among the team members entrusted with a child's care. For this reason, WAFCA recommends an amendment to this proposal directing the Department of Children and Families to collaborate with foster parents, birth parents, other caregivers, youth, county and tribal child welfare agencies, and licensing/placing agencies to create a foster parents' bill of rights for Wisconsin. In addition, we would support the allocation of resources for training to effectively implement these values

[1] Retrieved from: https://dcf.wisconsin.gov/fostercare/handbook

in practice so that the workers who have the most contact with foster parents grow in their understanding of their role and actively engage them as core members of a child's team.

WAFCA also believes that for the vision of the bill to truly be accomplished, structural and financial changes are needed within our foster care system. As our member agencies have prepared for the new expectations under the federal Family First Act, we continue to gather input regarding the system changes needed to improve recruitment and retention of the highly skilled foster families we need. The following are examples of policy changes suggested by our members in consultation with their foster and kin families that the legislature could consider when taking steps to improve the experience of, and honor, foster parents, and other caregivers including relative caregivers ("in-home caregivers").

- Reimburse in-home caregivers according to the type of service they are expected to provide.
- Establish a baseline that in-home caregivers serving children with complex needs are not expected to hold other employment.
- Remove the current rate determination process that may result in a decrease in a foster care rate when a child has improved.
- Provide BadgerCare+ coverage for in-home caregivers who need it.
- Create more resources for childcare, respite, training, mentoring, and group support. Provide support, training, and resources for building relationships with biological family.
- Create advanced caregiver training to encourage highly trained caregivers and areas of specialization to better serve youth with complex needs.
- Have children in out-of-home care identified as a priority services population. There should be no waitlist for children in out-of-home care who need mental health services, including crisis services and respite.

These systemic changes for foster parents and other in-home caregivers would bring us one step closer to responding to the federal and state transformations currently underway.

As always, we appreciate the opportunity to share our thoughts with the Committee and value the ongoing commitment of the legislature to lift up issues related to foster care. We would be happy to work with bill authors should revisions be considered, and/or to discuss the additional recommendations for systemic change provided.

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HO-CHUNK NATION LEGISLATURE
Governing Body of the Ho-Chunk Nation

**Written Comments**
**SB Bills 395, 402, 491, 601**
**Wisconsin State Senate**
**Committee on Human Services, Children and Families**
**October 14, 2021**

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Thank you, Senator Jacque and the Committee on Human Services, Children and Families, for accepting these written comments from the Ho-Chunk Nation Legislature on a set of bills that will have an impact on tribes, tribal children, and tribal families.

> *"The fundamental constitutional right to family integrity extends to all family members, both parents and children." O'Donnell v. Brown, 335 F.Supp.2d 787, 820 (W.D. Mich. 2004), citing Wallis v. Spencer, 202 F.3d 1126, 1136 (9th Cir. 2000). The "right of a child to be raised and nurtured by his parents" is "fundamental. . ." Brokaw v. Mercer County, 235 F.3d 1000, 1019 (7th Cir. 2000).*

**SB 395 – Responses to reports relating to adults-at-risk and elders**

- **Support Bill**

For years, staff at the Ho-Chunk Nation could not understand why the requirement of investigating reports of neglect, abuse, and exploitation of adults-at-risk and elders was never mandatory, as it is for children. Ho-Chunk pays tremendous respect and reverence to our elders. They are proof that even through the most traumatic experiences, we will be resilient and continue the traditions and culture on to future generations.

As such, changing the requirement to complete an investigation after receiving an intake from a "may" to a "shall" is greatly supported by the Ho-Chunk Nation. This is an important step towards ensuring that that tribal elders and adults-at-risk are better protected.

**SB 402– Creating foster parent bill of rights**

- **Oppose Bill**

The ambiguity of SB-402 presents opportunities for foster parents to be errantly raised to the level of party status and on the same footing as a biological parent. The purpose of foster care is to provide a temporary home to ensure a child's safety while biological parents are provided support and services to develop the necessary protective parenting capacity needed to ensure their children's safety. Foster parents play an important role in providing this safety, but the primary goal is and should always be – except in those very rare and statutorily expressed egregious circumstances –

reunification. To lose sight of this creates imbalance that will circumvent a biological parent's constitutionally protected fundamental right to parent and a child's constitutionally protected fundamental right to be with their parent.

Tribal attorneys are in a unique situation in that many have participated in contested hearings/trials in states where foster parents are granted party status. They have experienced firsthand how this imbalance negatively affects biological parents, but it also creates an imbalance as it pertains to the rights of Indian Tribes and Indian children established by the federal and Wisconsin Indian Child Welfare Act (ICWA/WICWA). For Tribes that do not have the financial ability to fight the cases themselves or find local counsel in states where pro hac vice is too difficult or denied, it creates an insurmountable barrier to protecting their actual party status rights when facing legal attacks by foster parents.

Further, there is serious concern with language that proposes to create a preferred placement upon reentry. This is in direct conflict with ICWA placement preferences (unless the family was initially a preferred ICWA placement- but ICWA placement preferences already provide that potential protection if the family is still available and willing to take placement). ICWA/WICWA's placement preferences apply at reentry, just as they did when the first case opened/first removal occurred. A county social services agency has an ongoing duty up until the date of reunification/closure or termination of parental rights to provide active efforts, which includes seeking family members for placement and/or support. *Again, an ongoing obligation to continually seek out placements that meet ICWA/WICWA's statutory placement preferences through the entirety of the case, and every case thereafter.*

One of the most important parts of ICWA/WICWA is the establishment of standards that require that Indian children be placed in foster care, pre-adoptive, or adoptive placements that reflect the unique values of the Indian child's tribal culture. It is not enough that a non-Indian couple takes a child to a pow wow. Pow wows are, often, simply intertribal social gatherings. They are not necessarily a place in which to fully learn a particular tribe's culture- principally language and tribal roles. These types of learnings are only established through placement within one's tribal family, clan, or other tribal family.

It should never be forgotten when addressing the placement of Indian children, that Wisconsin unanimously voted to create a best interests of an Indian child standard. Wis. Stat. § 48.01(2) clearly sets forth that the best interests of an Indian child is to be placed "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."

Lastly, there are built in protections within ICWA and WICWA that allow for an adoption to be overturned if it is found that a parent consented to a termination of parental rights, but did so through fraud or duress. This can happen up to two (2) years later. Further, a case can be invalidated if the minimum standards set forth in ICWA are not complied with. That is why Tribes always push for ICWA/WICWA compliance. Simply put, do it right from the beginning and you will not have to redo the whole thing causing additional trauma to a family.

Sometimes other parties think we "don't care about children" because we push for compliance that can result in changes in placement or invalidation of cases. In fact, we love our children that much, which is why we push for compliance. Our children deserve a chance to be

reunified with their parents. In order for our families to have a chance, the minimum standards must always be complied with.

It is not the Tribes that cause changes of placement and invalidation of cases through ICWA. Failing to comply with ICWA standards is what leads to invalidation of cases.

**SB 491 - Subsidized Guardianship Payments**

- **Support Bill**

  **As to the Amendment, the Nation is less concerned with who makes the payments, and more concerned with the need for increased appropriations and infrastructure for these valuable forms of permanency to be utilized more often across the state.**

The reason we submit our support for this bill is that by removing the Subsidized Guardianship language from the beginning section, it should free up some money for tribal high-cost pool needs. It is our understanding that the subsidized guardianship monies are skimmed off the top first by the counties. By removing subsidized guardianship from this section, it should return the high-cost pool to what it was meant to be- just a high-cost pool.

However, we would like to take this opportunity to stress the importance of subsidized guardianships, particularly for the Ho-Chunk Nation that has an expansive traditional kinship system. Many Tribes prefer guardianship as the primary permanency option, as opposed to adoption. This is particularly true for the Ho-Chunk Nation. The Ho-Chunk Nation does not support the permanent severance of parental ties, and as such explicitly bans the use of termination of parental rights in tribal court and likewise does not support such in state courts.

Guardianship ensures parents' rights are not severed and leaves the door open for parents to come back once they get back on their feet. This is important because addiction typically prevents reunification within the 15-to-22-month timeframe set forth by the Adoption and Safe Families Act (ASFA). Therefore, this is a helpful tool to support families in reunifying once a parent can overcome their addiction. Due to the historical trauma inflicted upon tribal peoples, there is unfortunately a high rate of addiction within our communities. However, extended family members or tribal members can at times step in and provide the safety, love, and support to not only the children, but to their parents as well. Thus, nurturing the traditionally communal system of raising of a child through extended familial and clan relationships.

Some counties have pushed back on subsidized guardianships because some of those funds come from the county's coffers. Therefore, some of the smaller and poorer counties have claimed in the past to not have the funding to utilize subsidized guardianships when they are needed and appropriate. Whether the funding comes directly from DCF or through appropriations to the counties from DCF, does not matter as much as the need for more funding for these important forms of permanency. This aligns with the goals of the Family First Prevention Services Act, that being to increase and promote familial placements when a child cannot remain safely within their home after preventative services are exhausted.

While one of the main goals of the 2018 federal Family First Prevention Services Act is to ensure children can remain safely in their homes and avoid unnecessary removals, it recognizes that there will at times be a need for necessary removal. In that event, the counties should be looking

towards identifying kinship/relative caregivers instead of foster homes to which the children have no relation to. If children are appropriately placed with kin in the event of removal, and a case needs to progress to permanency, then subsidized guardianship is the ideal form of permanency.

**SB 601 – Duty to participate in an appeal of order terminating parental rights**

- **Neutral**

While the Ho-Chunk Nation does not support termination of parental rights, this bill makes sense on its face. We have not seen or heard of this being an actual issue. As such, it certainly does not seem to be a widespread issue that requires any sweeping change. However, while we never support termination of parental rights, we stand mute and will not actively oppose this bill.

**Conclusion**

We say it every time we present comments, but it is because it holds that much truth and meaning to tribal peoples. As such, our final words are as they should always be:

***There is nothing more important to a tribe than its children.***
***They are our future,***
***and they will ultimately be the links to our past.***

And because we have the added topic of adults-at-risk and elders, we would be remiss to not mention again the reverence we have for our elders.

***Equally important to a tribe are its elders.***
***They bring us the knowledge of our past,***
***and they will ultimately be what continues to make us resilient into the future.***

Thank you for taking the time to listen to how these bills will impact our tribal community. We would be happy to meet with any legislator to answer questions or elaborate on any information provided herein.