STATE SENATOR
Eric Wimberger
DISTRICT 30

Testimony on Senate Bill 601

Senate Committee on Committee on Human Services, Children and Families
Thursday, October 14, 2021

Chairman Jacque and Committee Members,

Thank you for taking the time to hear testimony on Senate Bill 601, which would create a duty for a parent who has filed an appeal of an order terminating his or her parental rights, to participate in that appeal.

Permanently terminating a parent's rights to his or her children is a serious and life-changing event for both parent and child. The decision to remove these rights is not taken lightly and there is a rigorous process in place before a decision is made. If a parent does lose their parental rights, they may file an appeal of the decision.

The goal of this legislation is to eliminate some potential time delays in reaching permanency for a child when a parent files an appeal, but decides not to participate in the appeal process. It allows for any person who received a notice of intent to appeal to request a finding that the parent has abandoned the appeal process if the parent fails to fulfill their duty to participate in the appeal.

There are a multitude of reasons why a parent may file an appeal but later abandon the process – leaving everyone in limbo. Ensuring a parent participates in an appeal will help safeguard against frivolous filings, provide certainty to a child in a timelier manner, and conserve resources for the court.

Thank you for taking the time to hear our testimony this morning.

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BARBARA DITTRICH

STATE REPRESENTATIVE • 38th ASSEMBLY DISTRICT

October 14, 2021

Senate Committee on Human Services, Children and Families

RE: Rep. Dittrich Testimony on SB 601 –duty to participate in an appeal of an order terminating parental rights

Hello, Committee Chair Jacque and members of the committee. I appreciate the opportunity to speak to you on a topic that rarely gets the coverage it should, but is incredibly important to the children of Wisconsin.

Many not be aware that the majority of adoptions in Wisconsin are public adoptions. This typically means that children arrive at a place of permanency through our child welfare system. It is messy. And there is trauma. What is very apparent is that we have come to shift from total disregard for parents to favoring parents over the children who are not safe in their care.

Under current law, an appellant who has filed an appeal on an order terminating his/her parental rights is not required to participate in that appeal. Currently, the appellant MAY but is NOT REQUIRED to file a notice of abandonment. Due to this unmerited, unfair legal maneuvering, the child is kept in limbo for much longer than necessary, and their wellbeing is neglected resulting in more ambiguity and trauma.

SB 601 creates a duty for the appellant to participate in that appeal. Additionally, any person who receives a notice of intent to file an appeal of an order in a termination of parental rights (TPR) proceeding to petition the court to find that the appellant has abandoned the proceeding if the appellant does not fulfill his or her duty to participate.

Who of us here want these children languishing in hopelessness longer than need be? Who of us wants to increase the trauma they face? How many chances are birth parents supposed to be afforded before we put their suffering child first? This bill gives us a chance to make Wisconsin an "adoption friendly"… and dare I say child friendly state. Thank you for the opportunity to testify on this very simple, but necessary, legislation. I welcome any questions.

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

DATE: October 14, 2021

SUBJECT: 2021 Senate Bill 601

The Department of Children and Families (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 priorities of prevention, reunification, connection to relatives, and permanence. It is through the lens of these priorities that DCF reviewed SB-601 and will be testifying for information.

SB-601 creates a duty for an appellant who has appealed an order terminating their parental rights to participate in that appeal. Further, any person who receives the notice of intent to appeal a TPR may petition the court to find that the appellant has abandoned the proceeding if they do not fulfill their duty to participate. In examining the potential impact of the language proposed in this bill, it is important to:

(1) Highlight the social and legal implications of TPR decisions and the historically disproportionate impact the legal severance of familial bonds has had on particular communities;
(2) Describe the existing procedural requirements regarding appellant participation in a TPR appeal;
(3) Identify the challenges facing a pro se appellant that can lead to delays in resolution of the appeal; and
(4) Propose a solution that could address permanency timeliness, protect due process rights of parents, and reduce TPR litigation at the trial and appellate level.

(1) Terminating parental rights has monumental consequences for children and families.
TPR implicates not only a parent's fundamental liberty interest to direct the care and custody of their child under the Fourteenth Amendment but also a child's constitutional right to familial association under the First Amendment. To terminate parental rights—to legally sever the relationship between a child and their parent—is a profoundly significant act. Terminating parental rights also severs any legal relationship a child has with their siblings, their aunts, their uncles, their cousins, their grandma, their grandad, and so on. After a parent has exhausted their appeal rights in a TPR case, the judge's order at the final dispositional phase of the case terminating those legal relationships cannot be reversed.

Through interaction with the child welfare system, family separation can be compounded over generations. Imagine that my parents' rights were terminated when I was a child, and I was adopted. Imagine I grow up, and I find out that a biological family member of mine is going through a difficult time that led to CPS removing their children. Imagine I decide I would like to open my home to those children in my family. Yet, they are **not** my family in the eyes of the law. In addition to creating barriers to becoming a child welfare placement resource for birth family members or cutting off access to inheritance through intestate succession, severing these relationships makes it challenging for children to stay tied to their cultural identities.

Since the inception of organized child protection systems in the United States over 150 years ago, Black and Indigenous children have been removed from their homes and families by various iterations of child protective services at astronomically higher rates than white children. These disparities persist in Wisconsin's recent data regarding removal, the out-of-home care population, and children who are the subject of termination of parental rights proceedings.

Decades of research illuminating the profound harms caused by removal and the legal severing of familial bonds culminated in Congress passing the Family First Prevention Services Act, signed into law by President Trump in February 2018. This bi-partisan effort incentivized states to fund evidence-based prevention efforts, curtail the use of congregate or group care for children, and reduce traumas related to removal and family separation. These changes to the Title IV-E funding structure aims to free up dollars from the deep end of the child welfare system for more upstream efforts to prevent child abuse and neglect in the first place, a policy priority of the Trump Administration's child welfare team.

Through Wisconsin's child welfare strategic transformation and Family First implementation, underway since 2018, DCF continues to work towards a system that serves more children in-home and in family settings whenever safely possible; strengthens local communities and cross-agency collaboration for services; improves our group care settings; and supports our child welfare workforce.

(2) Current law already requires appellant parents to sign off on each phase of a TPR appeal. Under SB-601, the ambiguous concept of "participation" in a TPR appeal is likely to create confusion as parties and courts try to interpret whether or not that obligation has been met. In April of 2018, significant statutory changes related to TPR appeal procedures became effective following the enactment of 2017 Wisconsin Act 258. In part, Act 258 requires an appellant to personally sign (1) a notice of intent to pursue post-disposition or appellate relief from a TPR judgment or order, which must be filed within 30 days after the entry of final judgment; (2) a notice of appeal for an appeal to the court of appeals, which must be filed within 30 days after service of the transcript or circuit court case record; and (3) a petition for review for an appeal to the Wisconsin Supreme Court, which must be filed with 30 days of the date of the court of appeals' decision.

Compared to filing deadlines in other civil and criminal appellate matters, the timelines established for TPR appeals are expedited. In a case where a parent appellant is represented by the State Public Defender (SPD) or other attorney, each of the three key filings listed above cannot occur without the parent expressing a position to their attorney and literally signing off. As is the case for TPR appeals and appellate practice generally, it is the role of the attorney (and not the client) to review transcripts and the trial record, identify any legal issues to raise on appeal, and draft appellate briefs. It is unclear how a parent could be expected to participate further in this process.

(3) Pro se appellants can face insurmountable burdens to comply with TPR appeal procedures. In light of the monumental rights at stake for a parent and child, it is understandable that a pro se parent appellant strongly desires to appeal a TPR decision but does not have the resources or legal background to navigate the appellate procedure without the assistance of a trained advocate.

After the personally signed intent to pursue post-dispositional relief is filed, a parent who is not appointed an attorney through SPD is on their own to review the trial record and identify legal issues worth raising, file the notice of appeal with the circuit court, pay the filing fee, draft an appellate brief, and follow the procedures outlined in s. 809.107 regarding filing documents with the court and effectuating proper service of documents upon the other parties.

SB-601 could potentially be amended to address circumstances involving a pro se appellant who fails to meet the deadlines outlined in the statute, providing an avenue for a party to file a motion requesting a hearing on the issue of whether the appellant has abandoned the appeal or whether the appeal will proceed. However, under current law there is nothing that precludes another party from filing a request for a hearing before the court on the issue of missed statutory deadlines.

(4) Codifying a parent's right to counsel in CHIPS cases could result in more positive outcomes for children and families and reduce TPR litigation at the trial and appellate level.
Guaranteeing the right to counsel for parents in child in need of protection or services (CHIPS) cases in Wisconsin could get at the root causes of challenges SB-601 may intend to address: for parents—ensuring they are afforded due process and can meaningfully participate in court proceedings from the beginning of a case. For children—lessening the time spent in out-of-home care before achieving permanency.

The bipartisan legislation signed into law by Governor Walker, 2017 Wisconsin Act 253 repealed a statutory prohibition on appointing counsel for a parent in a CHIPS proceeding and created a pilot program in five counties (Brown, Outagamie, Racine, Kenosha, and Winnebago) to provide counsel to parents in CHIPS proceedings.

In a preliminary review of data illustrating the impact of the pilot since its inception in July 2018—even when accounting for the tremendous impact the pandemic has had on court operations—the pilot is a success. Three goals of the child welfare system as it relates to children in out-of-home care are to increase permanency, decrease children re-entering out-of-home-care after achieving permanency, and reduce the length of time that a child spends in out-of-home care. In comparing these metrics for counties included in the SPD pilot versus non-SPD pilot counties between July 1, 2018 and December 31, 2020, SPD pilot counties had a higher permanency rate for children, a lower rate of children re-entering out-of-home care, and a lower median length of time children spent in out-of-home care.

Anecdotally, SPD has noted several successes and challenges during the pilot program. Challenges have included delays in the appointments of counsel due to several factors, pushback in pilot counties from a new process, challenges navigating the advocacy on clients' behalf, and specific challenges related to the pandemic. Successes included changes to the allegations in the petition, increased understanding of the process by parents, consent decrees instead of formal disposition orders, increased reunification, and increased placement with relatives.

In an examination of parent representation models in other states, it is clear that access to counsel for parents in CHIPS proceedings has demonstrated similar favorable results: reduced time in out-of-home placements, reduced time to final disposition, and fewer contested petitions for termination of parental rights. Moreover, advocate counsel for parents allows for earlier intervention, which increases the chances of family reunification or, at times, prevents the separation of families entirely prior to removal and entering the judicial process.

Ultimately, DCF appreciates the commitment of the sponsors to the wellbeing of children and families who touch Wisconsin's child welfare system as they strive towards reunification or other permanency outcomes. The department is pleased to engage with sponsors, this Committee, and others in further discussions regarding the issues that prompted this legislation and work to identify solutions to root causes of these issues.

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Senate Committee on Human Services, Children & Families
2021 Senate Bill 601
Thursday, October 14, 2021

Mr. Chairman and members,

Thank you for allowing us to speak today on Senate Bill (SB) 601, which creates a "duty to participate" in appeals of termination of parental rights cases. The State Public Defender (SPD) understands the goals of the bill but has concerns with the language that is used to achieve those goals.

The SPD provides representation for parents in termination of parental rights (TPR) cases in circuit court as well as in appellate proceedings. After a circuit court reaches disposition in a TPR case, there is a defined statutory timeline for the various stages of the appellate process. At the end of that process is a statute that allows for the appellant to provide "notice of abandonment" of the case (s. 809.107(5)(am)). There are many reasons that an individual may wish to initiate the appellate process but then choose not to file additional material. Especially for an unrepresented person, following the complex appellate process can be challenging, including knowing about the notice of abandonment provision. Even when the appellant does not file a notice of abandonment, the direct appeal ends when the statutorily mandated deadlines in s. 809.107 lapse. However, it is understandable that the child welfare agency and any out-of-home guardian want to ensure finality before proceeding to adoption.

The bill as proposed includes language, particularly in Section 1, that raises concerns related to definition and attorney-client privilege. The phrase "duty to participate" is not defined. This leads to the possible outcome under the proposed language of SB 601 that the only way to inquire about whether a client has been participating in their appeal is to ask their attorney which is privileged information.

We have had initial conversations with the bill authors who are open to a conversation about a possible amendment to achieve the goal of the bill without legislatively creating ethical problems for attorneys. Broadly, our suggestion is to remove Section 1 from the bill. Then amend Section 4 to, in plain language, allow the appellate timeline to come to a conclusion first, then allow the corporation counsel or parent's attorney (in a private TPR) to file a motion with the court asking that the case be declared abandoned. The court would give notice to the appellant that the motion has been filed and give them 10 days to respond. If they do respond, a hearing is set. If they do not, the court can conclude the appeal has been abandoned.

This allows a process for formally concluding the appellate process if nothing has been filed to give finality and allow the next steps of the process to move forward, but does it in a way that does not negatively affect attorney-client privilege and also creates little additional work.

Again, it is our understanding that the authors are open to this possible amendment and we will work with them to get it drafted and introduced for the committee's consideration. Thank you again for the opportunity to appear today.

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

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.

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

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

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