



Wisconsin State Assembly

P.O. BOX 8952 MADISON, WI 53708

TO: SPEAKER ROBIN VOS

FROM: Members of the Assembly Speaker's Task Force on Foster Care

RE: Interim Report of the Speaker's Task Force on Foster Care

DATE: November 28, 2017

This report contains the legislative recommendations of the Assembly Speaker's Task Force on Foster Care. The Task Force focused on the following key areas:

- Efforts to support families, to reduce contact with the child welfare system, and to prevent the removal of children from their homes.
- Improvements to the child welfare system, broadly, including support for child welfare agencies, caseworkers, and foster parents.
- Provision of services and resources to children who are placed in out-of-home care, both during placement and, for those children who age out of the system, after placement.

The report contains a brief description of hearings held by the Task Force throughout the state and explains the recommended legislation that was drafted in response to the testimony and discussion at those hearings. A list of Task Force members is attached as an Appendix to the report.

TASK FORCE HEARINGS

The Task Force held six public hearings throughout the state for the purpose of receiving testimony regarding and generating ideas to improve the child welfare system. The hearings were held on the following dates and in the following locations:

- **July 27, 2017, Madison.** The Task Force held a public hearing at the State Capitol at which it received testimony about the child welfare system, overall, only from invited speakers.
- **August 23, 2017, Wausau.** The Task Force held a public hearing at the Marathon County Public Library, at which it received testimony from the public and from invited speakers.

- **September 20, 2017, Dodgeville.** The Task Force held a public hearing at the Iowa County Health and Human Services Community room, at which it received testimony from the public and from invited speakers.
- **September 28, 2017, La Crosse.** The Task Force held a tour of the La Crosse Family and Children’s Center. The Task Force held a public hearing at the La Crosse County Administrative Center, at which it received testimony from the public and from invited speakers.
- **October 11, 2017, Milwaukee.** The Task Force held a hearing at Centennial Hall of the Milwaukee Public Library, at which it received testimony from the public and from invited speakers.
- **October 25, 2017, Green Bay.** The Task Force held a hearing at the Brown County Central Library, at which it received testimony from the public and from invited speakers.

RECOMMENDED LEGISLATION

Based on information and recommendations received at the public hearings, members of the Task Force propose to introduce the following package of bills, collectively referred to as “Foster Forward.” The bill descriptions below are loosely organized according to the major policy goal that each bill draft is intended to address, although some of the bill drafts may be appropriately placed in more than one policy category.

Prevention Efforts

The following bill drafts are recommended to support families, to reduce their contact with the child welfare system, and to prevent the removal of children from their homes.

LRB-4645/1: A Parent’s Right to Counsel in a CHIPS Proceeding

Background

Under current law, a parent does not generally have a statutory right to be represented by counsel during a child in need of protection or services (CHIPS) proceeding. The law explicitly prohibits the court from appointing counsel for anyone other than the child, an Indian parent, or an Indian custodian in a CHIPS proceeding. Therefore, the court may not refer such a parent to the State Public Defender (SPD) for possible representation.

However, the statutory prohibition was ruled unconstitutional by the Wisconsin Supreme Court in *Joni B. v. State*, 202 Wis. 2d 1 (1996), on the grounds that the prohibition constitutes a violation of the separation of powers doctrine of the Wisconsin Constitution. Therefore, although state law does not authorize referral of a parent to the SPD, the juvenile court may appoint counsel at its discretion, in which case the parent’s legal representation is provided at the county’s expense.

The Bill Draft

LRB-4645/1 removes the statutory prohibition against the appointment of counsel for parties other than the child, an Indian parent, or an Indian custodian in a CHIPS proceeding, aligning the statutes with current case law. The bill also establishes a three-year, five-county pilot program under which all nonpetitioning parents who appear in court in a CHIPS proceeding have a right to counsel, unless knowingly and voluntarily waived. If such parents are deemed indigent, counsel will be provided by SPD at state expense. The pilot program will begin operation in Brown, Outagamie, Racine, Kenosha, and Winnebago Counties no later than July 1, 2018, and will sunset on June 30, 2021. By January 1, 2021, SPD and the Department of Children and Families (DCF) must each submit a report to the Joint Committee on Finance and to each house of the Legislature regarding costs and data from implementing the program. The bill appropriates \$739,600 to the Public Defender Board for implementation of the program.

LRB-4850/1: Funding for Court Appointed Special Advocates

Background

Current law permits judicial districts to establish Court-Appointed Special Advocate (CASA) programs, via which trained and supervised volunteers, who meet certain qualifications, may be appointed to provide child welfare related services to the court. In any CHIPS proceeding, a court may appoint a CASA if the court determines that it would be in the best interests of a child. In general, a CASA maintains regular contact with a child and his or her family and periodically reports back to the court regarding several things, including the appropriateness and safety of the child's environment, the extent to which the child and the child's family are complying with any consent decrees, orders, or plans, and the extent to which an agency is providing the services required under any consent decree, order, or plan. Overall, a CASA is to promote the best interests of a child.

The Task Force heard testimony regarding the positive and cost effective impact that CASA programs have on children involved in the child welfare system. The testimony suggested that expanding the CASA programs throughout the state could improve outcomes for children and families, including by reducing the amount of time families spend engaged with the system.

The Bill Draft

Under current law, the Department of Justice must provide \$80,000 per fiscal year in grants to the CASA Association. The grant program sunsets on July 1, 2019. LRB-4850/1 increases the funding for CASA grants to \$250,000 per fiscal year and eliminates the sunset date. The bill draft also requires that the CASA Association annually submit a report to the Governor, to the Joint Committee on Finance, and to the appropriate standing committees of the Legislature describing the use of the funds.

LRB-4576/1: Statewide Network for Referrals to Community-Based Services

Background

2-1-1 Wisconsin is a statewide community services information and referral resource, overseen by the nonprofit organization 2-1-1 Wisconsin, Inc. By dialing 2-1-1 or visiting the organization's website, individuals can be quickly connected to local resources, including health services, crisis intervention services, and a variety of social services. 2-1-1 is available 24 hours a day. 2-1-1 Wisconsin has been receiving funding for several years from a federal Center for Disease Control (CDC) grant administered by the Wisconsin Public Health Emergency Preparedness Program at the Department of Health Services (DHS). However, the CDC grant has been declining, and, as a result, the amount of funding provided to 2-1-1 has been reduced over the past few years, so that, beginning in fiscal year 2017-18, the funding is no longer available.

The testimony suggested that providing families with the resources and services they need may reduce the number and severity of family contacts with child protective services and may reduce the number of children placed in out-of-home care.

The Bill Draft

LRB-4576/1 appropriates \$210,000 per fiscal year, on a continuing basis, to be distributed by DHS as a grant to a nonprofit organization for the purpose of operating a website and telephone-based system that, among other services, provides information on and referrals to community-based services. As a condition of receiving a grant, the nonprofit organization must allocate some of the funds to promoting and marketing the system to the public.

LRB-4925/2: Child Abuse and Neglect Prevention Grants

Background

The Task Force heard testimony suggesting that counties, nonprofit organizations, and tribes could expand and improve the resources and services available to families if additional financial resources were made available to them. Specific requests were made for funding that could be used to encourage innovation in the provision of child abuse and neglect prevention services.

The Bill Draft

LRB-4925/2 directs DCF to administer a child abuse and neglect prevention services grant program. Specifically, DCF must award grants to counties, nonprofit organizations, and tribes for the purpose of encouraging innovative practices aimed at reducing the contact that families have with the child welfare system and preventing the removal of children from their homes. Grant recipients must provide matching funds equal to 9.89% of the grant amount awarded. DCF must evaluate the effectiveness of the grant program in achieving its stated goals and must, by June 30, 2021, and each odd-numbered year thereafter, submit a report on that evaluation to the appropriate standing committees of the Legislature. The bill draft appropriates

\$500,000 in federal funding, under the Temporary Assistance for Needy Families (TANF) program, for the grant program each fiscal year.

Improving the Child Welfare System

The following bill drafts are recommended to generally improve the child welfare system.

LRB-4767/1: Committee to Study Child Welfare Worker Caseloads

Background

The Task Force heard testimony from numerous individuals and organizations, including counties and licensed child welfare agencies, that the number of children placed in out-of-home care over the past few years has increased exponentially, primarily from increased parental drug use. Caseworkers are struggling to manage the demands of their increased caseloads, which leads to high rates of turnover and negative impacts on children and families. Counties and licensed child welfare agencies are, in turn, struggling to retain their current workforce and cannot afford to hire the additional staff needed to manage the increased caseload.

The testimony suggested that establishing a maximum caseload standard for caseworkers could improve the situation by relieving some of the burden from individual caseworkers so that they may provide higher quality service to children and families. However, it was also recognized that implementing any standard would require hiring additional staff, which, in turn, requires additional financial support from the state.

The Bill Draft

LRB-4767/1 proposes to address this concern by establishing a committee, called the Wisconsin Task Force to Create Effective Child Welfare Caseloads, that would be responsible for studying the issue and making recommendations regarding: (1) the maximum number of cases that a caseworker may be reasonably expected to effectively manage; (2) the maximum ratio of supervisors to caseworkers at which a supervisor may be reasonably expected to provide effective guidance and direction; and (3) the amount of funding that would be necessary to implement those standards.

The committee must be comprised of a total of 16 representatives, including from the Wisconsin County Human Service Association, DCF, and the tribes. It must begin meeting no later than three months after the effective date of the bill and must submit a written report to the Governor, to the Joint Committee on Finance, and to the appropriate standing committees of the Legislature by April 1, 2019.

LRB-4468/1: Foster Home Licensing

Background

Under current law, counties and child welfare agencies that are, themselves, licensed by DCF, are authorized to license and supervise foster homes. DCF may also enter into contracts with child welfare agencies for the provision of services, including the provision of foster home licensing services. However, current law provides no provision for the transfer of a foster home's license to the supervision of any other agency in the event that the license of the child welfare agency, itself, is revoked or surrendered or if the contract under which the agency provides foster home licensing services is terminated. As a result, when a licensed child welfare agency's license is revoked or surrendered or its service contract is terminated, foster homes that had been licensed by the agency must repeat the licensing process with DCF, a county, or with another licensed child welfare agency.

Current law also provides that a county may generally license foster homes located only within the geographic boundaries of the county, except in limited circumstances. When a county is permitted to license a foster home located in another county, the license is child-specific and terminates when the children identified in the license are removed from the foster home. In order for a county to place additional children in that foster home, it must re-license the home. According to the testimony, the re-licensing requirement is unnecessarily burdensome, and modifying the law to allow the license to remain in effect for additional placements could improve foster home retention.

The Bill Draft

Under LRB-4468/1, if DCF revokes or suspends, or if a child welfare agency surrenders, its license or if DCF terminates a contract under which a child welfare agency provides foster home licensing services, DCF may transfer each foster home license issued by that child welfare agency to a county, to DCF, or to another licensed child welfare agency that consents to the transfer. The transferred license will remain valid until it expires or 180 days after the date of transfer, whichever is later.

If DCF notifies a child welfare agency of its intent to revoke or suspend a license or terminate a contract, or if the child welfare agency notifies DCF of its intent to surrender a license or terminate a contract, then, under the bill, DCF may obtain and transfer certain records and may prohibit the child welfare agency from accepting new placements or issuing new foster care licenses. The bill also changes the standard for when a foster home license may be revoked, allowing revocation if a licensee has violated any provision of the Children's Code or DCF rules rather than only if the licensee substantially and intentionally violated the Children's Code or DCF rules.

LRB-4468/1 also provides that when a county licenses a foster home in another county, as permitted under current law, that license is not child-specific unless the foster home is that of a relative or guardian of the child to be placed in the home or the county issuing the license has a population of at least 750,000 and the placement is for adoption. Because the license is not

child-specific, it does not terminate when the child is removed from the home; rather, the license would terminate at the end of the licensing period or up to six months after the child returns home or is placed elsewhere, whichever occurs first. However, such a license is only valid if there is a written agreement between the two counties.

LRB-4466/1: Involuntary Termination of Parental Rights Based on Continuing Need of Protection or Services

Background

Under current law, in order to terminate a person's parental rights (TPR), a court or jury must find that one or more statutory grounds exist. One of the grounds under which an involuntary TPR may be filed is if a child is in continuing need of protection or services. This ground may be established by proving several elements, including that there is a substantial likelihood that the parent will not meet the conditions established for the safe return of the child to the home within the next nine months after the TPR fact-finding hearing.

The Task Force heard testimony that proving this element is extremely difficult due to constantly changing life-circumstances, which creates significant delays in providing children with permanency. This results in children remaining in out-of-home care for extended periods of time, which is inconsistent with the timely permanence goals of federal law.

The Bill Draft

LRB-4466/1 deletes the requirement of showing that the parent is substantially likely to fail for the next nine months to meet the conditions for the safe return of the child to the home. However, if the child has been placed in out-of-home care for less than 15 of the last 22 months, the petitioner must show that there is a substantial likelihood that the parent will not meet the conditions at the time the child reaches the 15th of the last 22 months of placement outside the home.

LRB-4564/1: Appellate Procedure for TPR

Background

The Task Force heard testimony suggesting that, when deemed the necessary next step in the child's best interest, the TPR process is overly burdensome and unnecessarily protracted, which creates uncertainty for the child and delays permanency. One suggestion for reducing the time it takes to make a TPR final was to modify certain appellate procedures relating specifically to TPRs.

Under current law, in order to initiate an appeal of a TPR, a person must file a notice of intent to pursue postdisposition relief. In practice, counsel of a parent will often file such a notice of intent on behalf of the parent, whether or not the parent actually requests that the notice be filed, to preserve his or her client's appellate rights. However, in situations where the parent

cannot be found or never intended to seek appellate relief, filing the notice unnecessarily delays finalization of the termination.

Current law also provides an opportunity for postjudgment fact-finding as part of an appeal of a TPR order. The person appealing the termination must file a motion with the court of appeals raising the issue and requesting that the court of appeals retain jurisdiction over the appeal and remand the case to the circuit court to hear and decide the issue of additional fact-finding. The testimony suggested that courts of appeals, in practice, tend to remand cases without first determining whether additional fact-finding is necessary, creating more work for the circuit courts and, in cases where additional fact-finding is not necessary, unnecessarily delaying finalization of the termination.

The Bill Draft

LRB-4564/1 requires that a notice of intent to pursue postdisposition relief include the signature of the person on whose behalf the notice is filed. A parent's counsel may not file the notice without the parent's signature; therefore, appeals that were not likely to proceed due to client absence or lack of interest will not be initiated.

The bill draft also requires that, when a motion for remand to the circuit court for postjudgment fact-finding is filed, it must include an affidavit in support of the motion that specifically states why additional fact-finding is necessary. This may reduce the number of cases that are automatically remanded to circuit court even though additional fact-finding is not necessary.

LRB-4582/1: Notice to Schools and School Districts and Transfer of Pupil Records

Background

The Task Force heard testimony regarding the important role that school's play in a child's life, including as a resource for normalcy. Both at the federal and state levels over the past few years, the law has increasingly required collaboration between child welfare services and schools. The testimony suggested that additional modifications could be made to state law so as to improve communication between child welfare services so as to promote normalcy and consistency for children placed in out-of-home care.

The Bill Draft

LRB-4582/1 makes three changes to the law regarding schools and foster youth. First, under current law, when a child is removed from the home, a permanency plan is created for the child. A court periodically reviews and holds hearings on the plan. When a plan is up for review or hearing, certain entities and individuals are notified and offered the opportunity to submit written comments. The bill draft adds a child's school to the list of entities that must be notified of a permanency plan review or hearing and given an opportunity to submit written comments regarding the plan.

Second, current law requires that the clerk of a school district be notified when a foster home or group home is licensed within the district and when a child is placed in out-of-home care within the school district. Based on testimony that not every school district actually has a clerk, LRB-4582/1 requires that notice of foster home or group licensing be submitted to the school district without specifying to whom within the district the notice must be directed. The bill draft also requires that notice of placement of a child in out-of-home care within a school district be given to the school district and the school in which the child is enrolled. If the child will remain enrolled in his or her school and school district of origin, then notice that the child has been placed in out-of-home care must be given to the school and school district of origin.

Third, current law generally requires that a school district or private school in which a child was previously enrolled transfer all pupil records to another school upon receiving written notice that the child intends to enroll or has enrolled in that school. Transfer must occur within five working days. LRB-4582/1 requires that the records be transferred no later than the next working day after receiving such notice.

Support for Foster Care Providers

The following bill drafts are recommended to provide additional resources to foster care providers and to reduce the barriers they face in providing care to the youth placed under their supervision.

LRB-4929/2: Grant for Foster Parent Education and Support

Background

The Task Force heard testimony highlighting a significant statewide need for more licensed foster homes. Invited speakers and members of the public expressed concern about the shortage of licensed foster homes and explained the difficulties faced by agencies charged with recruiting and retaining licensed foster homes. The Task Force heard several recommendations for creating statewide awareness about the need for additional foster homes and for incentivizing families to become and to remain licensed foster families.

The Bill Draft

LRB-4929/2 directs DCF to administer a grant program that generally supports foster parents and children. Specifically, DCF must award grants to counties, nonprofit organizations, and tribes for the purpose of supporting foster parents and providing normalcy for children placed in out-of-home care. The grants may be used for a broad range of activities and expenses that serve those purposes, including for incentives to retain foster parents, enhancing foster parent education, and reimbursing foster parents for foster care-related expenses. DCF must evaluate the effectiveness of the grant program and must, by June 30, 2021, submit a report on that evaluation to the appropriate standing committees of the Legislature. The bill draft appropriates \$400,000 for the grant program in fiscal year 2018-19.

LRB-4766/1: Limited Release of Mental Health Information to Out-of-Home Care Providers and Child Welfare Agencies

Background

Under current law, mental health treatment records are confidential and, except in limited circumstances explicitly described in the law, may be released only with the informed written consent of the subject of the record. The Task Force heard testimony that this confidentiality requirement prevents mental health treatment providers from communicating with a foster parent about a foster child who is receiving treatment, which may create problems to the extent that certain aspects of a child's treatment may be impacted by interactions in or care given in the home.

The Bill Draft

LRB-4766/1 permits a health care provider to disclose a portion, but not a copy, of a child's mental health treatment records to an out-of-home care provider or to a child welfare agency without informed written consent if the health care provider reasonably believes it is necessary for the proper care of the child, including for the diagnosis, treatment plan, or medication management plan.

LRB-4764/1: Defining Routine Dental Care

Background

Under current law, when a child is removed from the home, legal custody of the child is transferred to a "legal custodian" who is a person or agency, other than a parent or guardian. Subject to the rights, duties, and responsibilities of a guardian, to any residual parental rights and responsibilities, and to any court order, a legal custodian has the right and duty to provide certain things to the child, including ordinary medical and dental care. In practice, this means that the legal custodian can consent to certain medical and dental care without obtaining parental consent. However, the Task Force heard testimony that, because "dental care" is not defined, the types of dental services provided in each county without parental consent varies significantly, resulting in some children only receiving certain care after the need first sends them to the emergency room.

The Bill Draft

LRB-4764/1 defines "dental care" for the purpose of providing ordinary medical and dental care so as to standardize the basic level of dental care which may be provided without parental consent to children placed in out-of-home care. Under the bill draft, "dental care" means routine dental care, including diagnostic and preventive services, and treatment including restoring teeth, tooth extractions, and use of nitrous oxide.

Support for Foster Care Youth

The following bill draft is recommended to provide foster care youth with additional resources to pursue post-secondary education.

LRB-4562/1: University of Wisconsin and Technical College Tuition Remission

Background

Under current law, there are financial resources available to former foster youth, in the form of scholarships and grants, to help defray the cost of higher education. However, the Task Force heard testimony suggesting that such financial resources, and other available services, are not well known to former foster youth, nor are they sufficient to make seeking higher education a realistic financial possibility for many former foster youth. The Task Force was also informed that certain institutions, including the University of Wisconsin-Stout, made use of past grants from DCF to establish on-campus programs in support of former foster youth.

The Bill Draft

LRB-4562/1 directs the University of Wisconsin System (UW System) and the Wisconsin Technical College System (WTCS) to grant tuition remission to eligible former foster youth who satisfy certain conditions. A former foster youth is initially eligible for tuition remission if the youth resided in out-of-home care in one of the following circumstances:

- On his or her 18th birthday.
- On his or her 13th birthday, after which the youth was adopted or appointed a non-agency guardian.
- For at least one year on or after his or her 13th birthday, after which the youth returned home to live with his or her parent.

A former foster youth who satisfies one of the conditions above may be granted full tuition remission for each semester or session that the youth completes the Free Application for Federal Student Aid (FAFSA) and is enrolled in an associate's degree, bachelor's degree, or technical diploma program, up to a maximum of 12 semesters or sessions. The remission amount will be reduced by the amount of any federal assistance awarded to the youth. Remission may not be granted after the youth is awarded a bachelor's degree by the UW System, a diploma or degree from WTCS, or after the youth turns 25 years old, whichever occurs first. The UW System and WTCS may apply to the Higher Educational Aids Board for reimbursement of the remissions paid, up to a combined maximum of \$410,000 per fiscal year.

LRB-4562/1 also directs DCF to administer a grant program to support former foster youth in higher education. Specifically, DCF must award at least four grants to the UW System institutions or the WTCS technical colleges for the purpose of providing resources, programs, and activities for former foster youth enrolled in those institutions. The bill draft appropriates \$120,000 for such grants for every two years. No individual grant may exceed \$30,000.

MEMBERS OF THE SPEAKER'S TASK FORCE ON FOSTER CARE

Representative Doyle (Co-Chair)

Representative Snyder (Co-Chair)

Representative Ballweg

Representative Rodriguez

Representative Neylon

Representative Novak

Representative Kitchens

Representative Katsma

Representative Pronschinske

Representative Subeck

Representative Billings

Representative Meyers

Representative Crowley