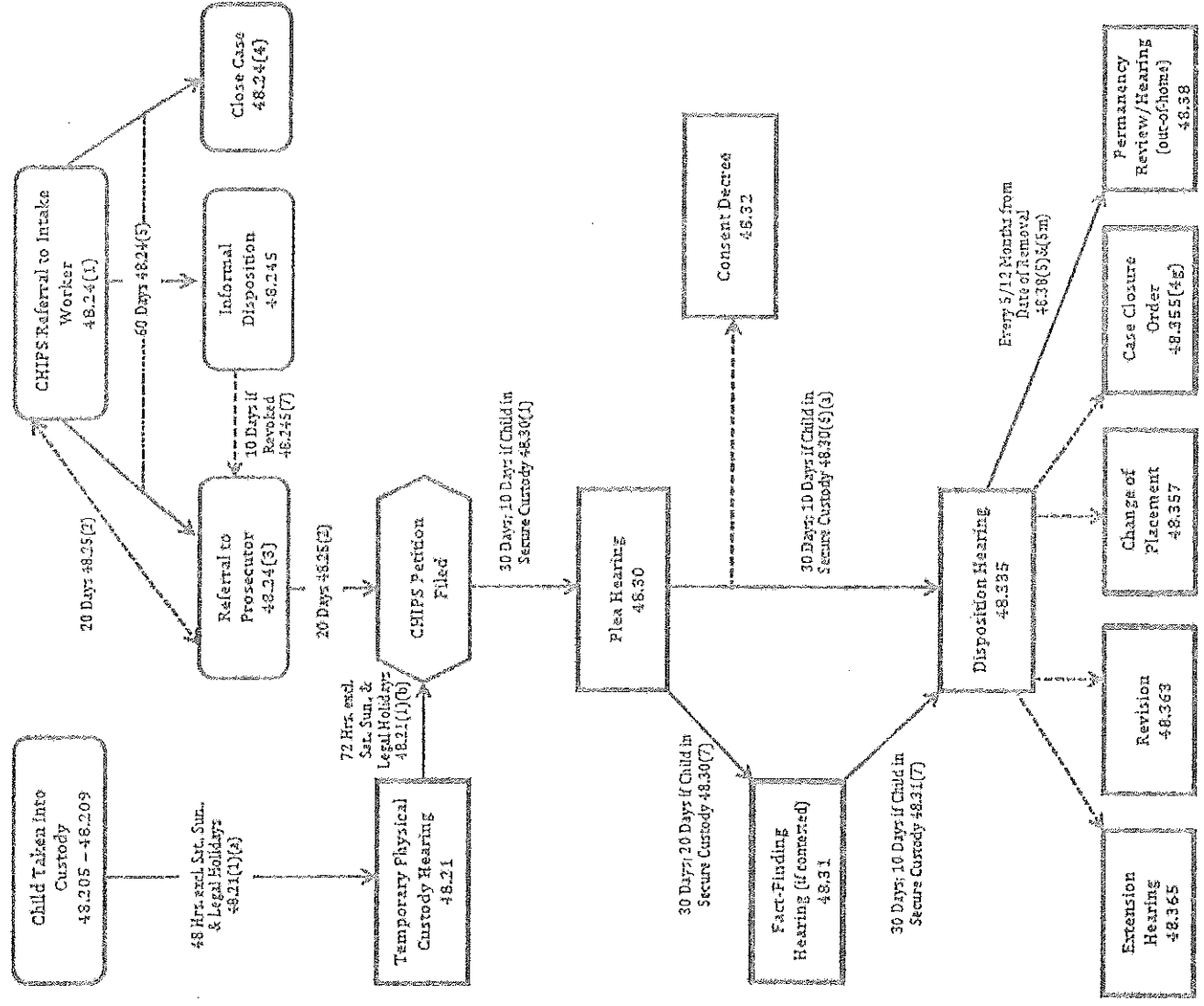


SPEAKER'S TASK FORCE ON ADOPTION
PUBLIC HEARING
AUGUST 19, 2019

Nancy Rottier
Legislative Liaison, Director of State Courts Office

Bridget Bauman
Director, Children's Court Improvement Program

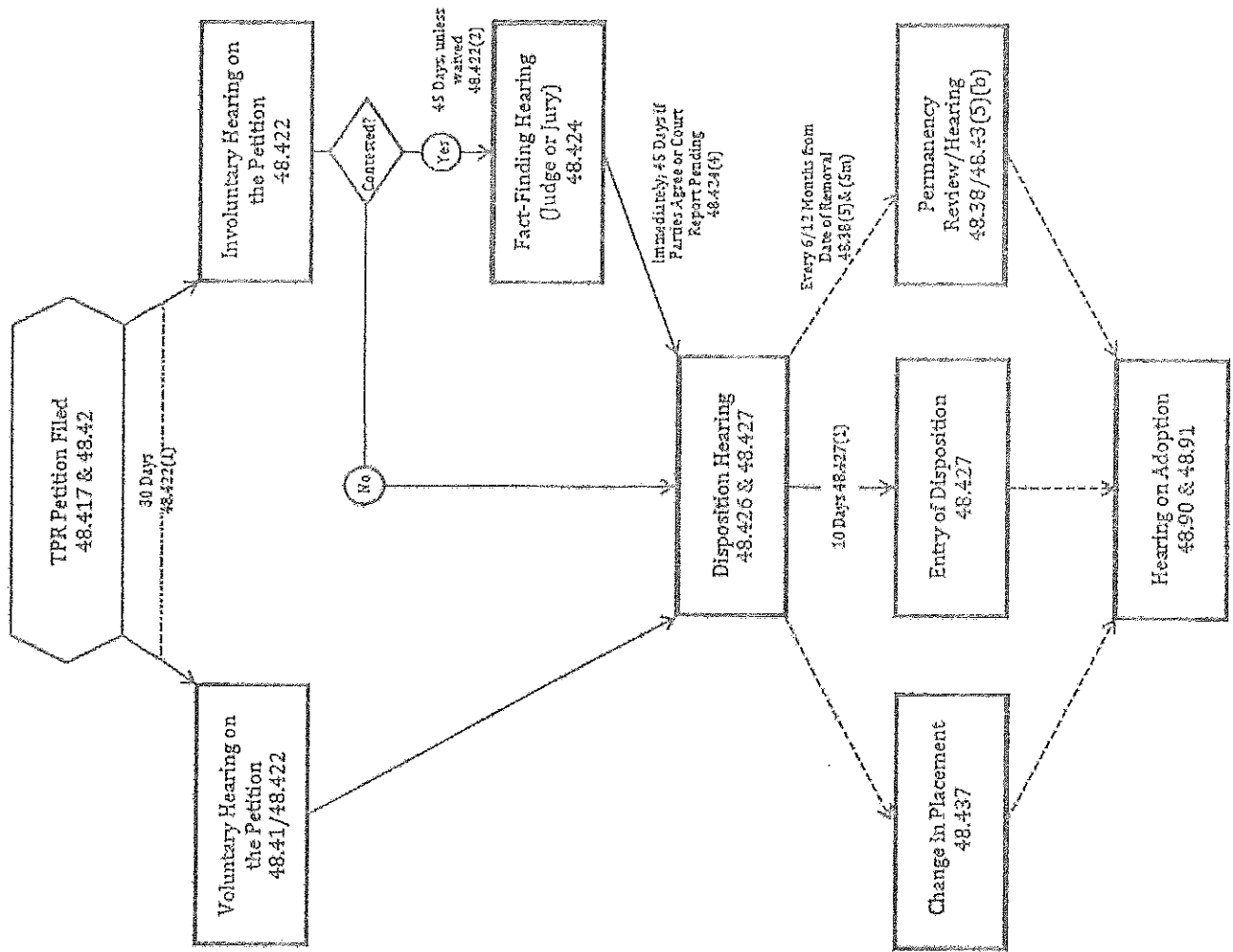
CHIPS Proceedings Flow Chart



NOTICE OF TPR PROCEEDING

1. Summons
 - Parents, alleged father, child (age 12+), GAL, guardian, legal custodian, and Indian custodian
 - Personal Service at least 7 days prior to hearing
2. Constructive Notice/Publication
 - Party cannot be personally served
 - Child was relinquished
 - Identify of father is unknown
3. Registered Mail Notice
 - Parents and tribe in involuntary TPR cases subject to WICWA
4. Notice Not Required
 - Father of child conceived as result of sexual assault
 - Alleged father, parent in foreign jurisdiction, or step-parent waives notice

TPR Proceedings Flow Chart



VOLUNTARY CONSENT - §48.41

1. Consent Before Judge
 - Mother
 - Adjudicated or Presumed Father
2. Notarized Statement
 - Alleged father of a nonmarital child
3. Affidavit
 - Step-parent adoption
 - Parent is resident of foreign jurisdiction
4. Parents of an Indian child
 - Executed in writing, recorded before a judge, and accompanied by judge's written certification

INVOLUNTARY GROUNDS FOR TPR - §48.415

- Abandonment
- Relinquishment
- Continuing Need of Protection or Services
- Continuing Parental Disability
- Continuing Denial of Periods of Physical Placement or Visitation
- Child Abuse
- Failure to Assume Parental Responsibility
- Incestuous Parenthood
- Homicide or Solicitation to Commit Homicide of Parent
- Commission of a Felony Against a Child
- Prior Involuntary Termination of Parental Rights to Another Child

TPR Bifurcated Process

Grounds

- Voluntary Consent
- Admission/No Contest to Involuntary TPR Grounds
- Default in Involuntary TPR
- Fact-Finding Hearing in Involuntary TPR
 - Burden of clear and convincing evidence (beyond a reasonable doubt in WICWA cases).
 - Decision made by judge or jury.

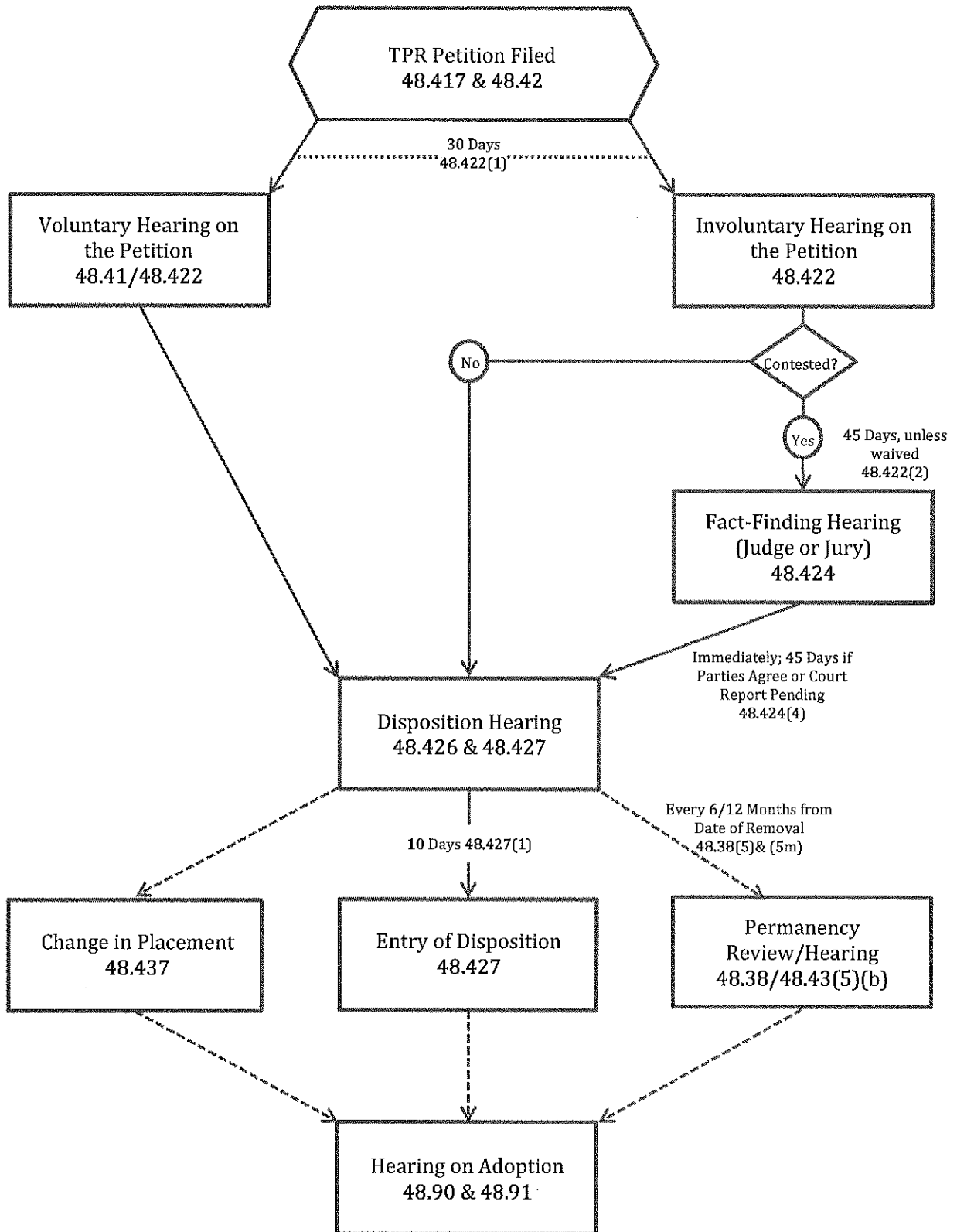
Disposition

- Child's Best Interests
- Court considers six factors in s. 48.426
 - Likelihood of child's adoption after TPR.
 - Age and health of the child (time of disposition and any removal).
 - Whether substantial relationship with parent or other family members and whether harmful to sever relationships.
 - Wishes of the child.
 - Duration of the separation of the parent from the child.
 - Whether child will enter into more stable and permanent family relationship.

NUMBER OF COURT & JURY TRIALS IN CHIPS AND TPR CASES

- See memo from Nancy Rottier dated 8-15-19

TPR Proceedings Flow Chart



TPR Bifurcated Process

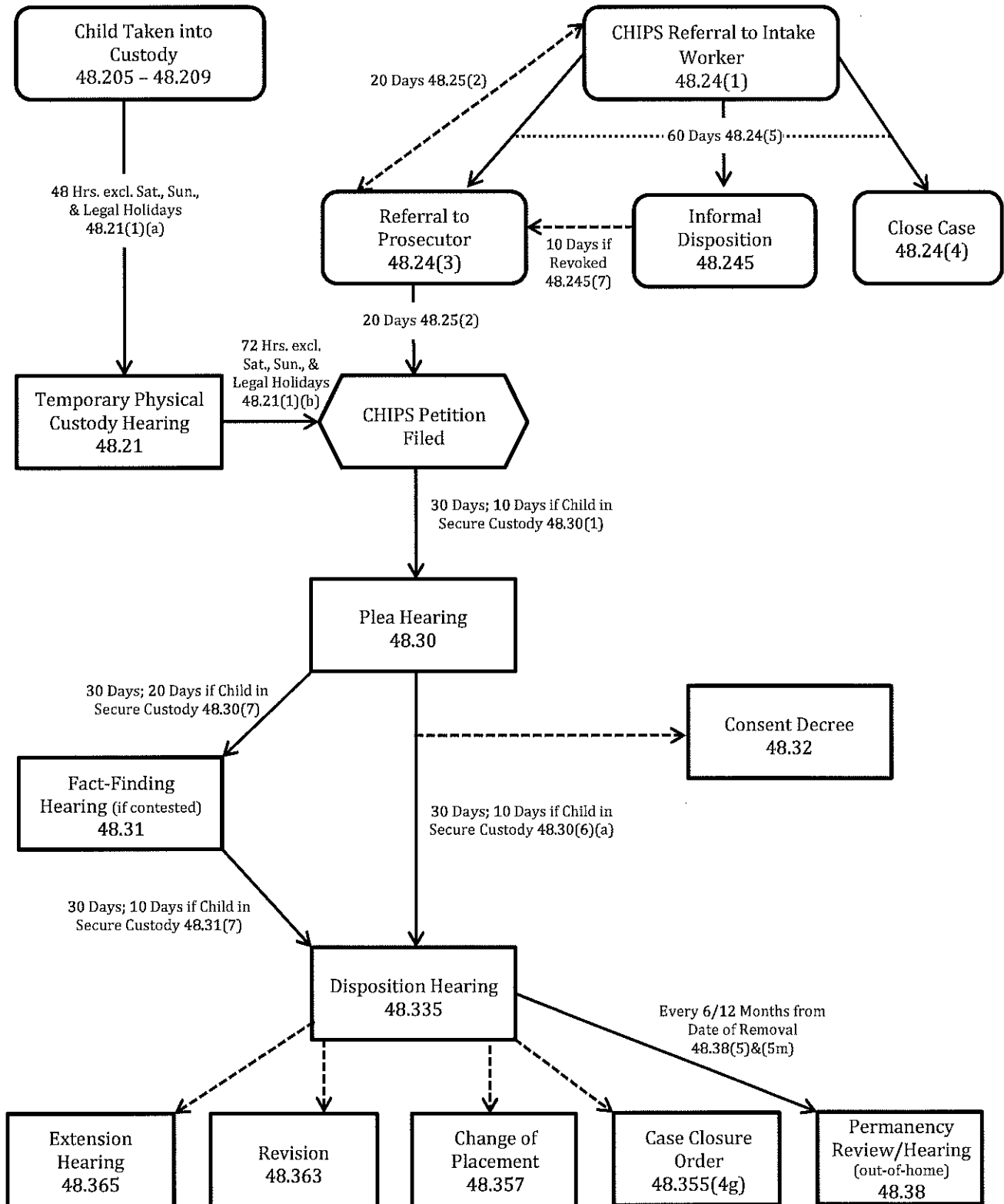
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CHIPS Proceedings Flow Chart



Memorandum

STATE OF WISCONSIN
DIRECTOR OF STATE COURTS



VIA Electronic Mail

DATE: August 15, 2019

TO: Representative Barbara Dittrich, Chair
Speaker's Task Force on Adoption

FROM: Nancy Rottier, Legislative Liaison

SUBJECT: Court and Jury Trials for Child in Need of Protection or Services (CHIPS) and Termination of Parental Rights (TPR) Cases

Thank you for the opportunity to provide data on trials for CHIPS and TPR cases in Wisconsin's circuit courts. The data covers each calendar year for the time period of 2014 - 2018. This memorandum provides a brief description of the jury trial process under Chapter 48, along with the statewide data.

Jury Trial Process

A parent, child, guardian, or legal custodian has the right to request a jury trial in the fact-finding phase of both CHIPS and TPR cases under Wis. Stats. § 48.31. If a timely jury request is not made, the court remains the fact-finder. Chapters 756 and 805 govern the selection of jurors. In CHIPS cases, a jury of six individuals makes findings of fact as to whether the allegations in the petition that the child is in need of protection or services are proven. In TPR cases, a jury of twelve individuals (unless parties agree to a lesser number) makes findings of fact as to whether grounds for termination of parental rights exist. If TPR grounds are established, either by the court or a jury, the judge conducts the disposition phase of the TPR case.

Statewide Data

The statewide data in the charts to follow was obtained through the Consolidated Court Automation Programs (CCAP). CCAP was developed as a case management system, not an information management system. As such, CCAP's applications are primarily designed to assist the courts in efficiently managing and processing its cases. It was not designed to gather information for research purposes, although it is possible to extract data that may assist in some projects.

When reviewing the statewide data, please keep in mind the following limitations:

- Throughout this memo, sibling groups are counted as separate cases in the data, even when cases are opened or trials for the siblings are conducted at the same time.
- It is not possible to separate privately-filed petitions from the publicly-filed petitions, which means that the statistics include both cases that are part of the public child welfare system and private cases.
- Variances in county data entry practice may impact the ability of statewide statistics to fully capture a single, consistent measurement of a specific court event.

In the vast majority of CHIPS and TPR cases, the allegations or grounds are established through a no contest plea, admission, or default judgment with court, with jury trials occurring in only a small percentage of CHIPS and TPR cases. There are also a number of TPR cases where the parent voluntarily consents to the termination of parental rights.

Chart 1: Total Number of CHIPS and TPR Cases Filed and Disposed Per Calendar Year¹

The data below compare the statewide annual number of CHIPS or TPR cases filed with the circuit court and the number of cases disposed of per calendar year. A case is counted as “opened” when a petition is filed with the court and a case is “disposed” when disposition is entered. For purposes of this data, disposition is reached when: 1) a dispositional order or consent decree is entered in a CHIPS case, 2) a TPR order is entered, or 3) a CHIPS or TPR petition is dismissed. Note that although a case is disposed, there are significant post-dispositional court activities that may continue to occur such as permanency hearings, changes in placement, and revision hearings to name a few.

Calendar Year	CHIPS Cases Opened	CHIPS Cases Disposed	TPR Cases Opened	TPR Cases Disposed
2014	4,977	4,905	1,562	1,547
2015	4,942	4,930	1,574	1,527
2016	5,048	4,940	1,554	1,560
2017	5,387	5,468	1,550	1,540
2018	5,278	5,084	1,554	1,510

¹ The number of CHIPS cases disposed and TPR cases disposed are taken from the CCAP statistical reports posted on the court system website: <https://www.wicourts.gov/publications/statistics/circuit/circuitstats.htm>.

Chart 2: Total Number of CHIPS Cases with a Court Trial or Jury Trial²

The data in Chart 2 below reflects the number of statewide CHIPS cases with a court trial or jury trial for the calendar years 2014-2018. Again, sibling groups are counted as separate cases in the data, even when the trials for the siblings are conducted at the same time. In addition, there may be some cases included in the totals where a hearing was held, but the court or jury trial did not occur (e.g., parent was found in default or changed his or her plea).

Calendar Year	Court Trial	Jury Trial
2014	194	38
2015	197	40
2016	208	33
2017	278	51
2018	280	61

Chart 3: Total Number of TPR Cases with a Court Trial or Jury Trial³

The data in Chart 3 below shows the number of statewide TPR cases with a court trial or jury trial for the calendar years 2014-2018. Sibling groups are again counted as separate cases. Some cases included in the totals may have a hearing, but the court or jury trial did not occur (e.g., parent was found in default or changed his or her plea). For the jury trials, the jurors make findings of fact as to whether grounds for TPR exist but not about the disposition of the TPR case.

Calendar Year	Court Trial	Jury Trial
2014	55	103
2015	70	138
2016	65	152
2017	53	145
2018	45	122

If you require more information, please do not hesitate to contact me.

² In CCAP, a case is identified as having a jury trial once a jury is impaneled. There may be some cases included where the jury was impaneled but did not make the final decision.

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CHILDREN AND THE LAW SECTION
STATE BAR OF WISCONSIN

To: Members, Speaker's Task Force on Adoption
From: State Bar of Wisconsin, Children & the Law Section
Date: August 19, 2019
Re: Speaker's Task Force on Adoption

The Children & the Law Section of the State Bar of Wisconsin is a group of lawyers who have a special interest in the fields of law that particularly affect children, including such fields as CHIPS, JIPS, TPR, guardianship, child welfare, education and family law. The purpose of our section, in part, is to further the development and improvement of laws affecting children.

On behalf of the section, Henry and I thank you for the opportunity to provide you with some of our thoughts concerning the TPR process and adoption from the section Board members. Our Board and section members are a diverse group of lawyers and represent the interests of the people most affected by TPR and adoption legislation. We are lawyers who represent parents seeking to adopt children in both the private and public arenas, we are District Attorneys and County Corporation Counsels, we are public defenders and lawyers in private practice, and we are lawyers who represent children as adversary counsel and guardian ad litem. All of our lawyers bring additional knowledge to the Board including criminal law and family law experience.

This diversity on our Board leads to substantive and meaningful discussion of issues affecting children, particularly termination of parental rights and adoption. Our Board has been primarily focused on the recently proposed legislation concerning TPR and adoptions. I understand this Task Force is not conducting these public hearings on that legislation, but our discussion of whether there should be a jury trial in a termination of parental rights case demonstrates our diversity and depth of understanding of TPR cases. One Board member even provided data from the Public Defender's Office showing that there was no substantial change in the period it took a case to resolve when there was either a bench or jury trial. As a result of our discussion and sharing of experiences, our Board could not reach a consensus on the jury trial issue and we took no position. However, there was an overall acknowledgement and agreement that there is a difference between public and private TPR and adoption cases, and that any legislative action that primarily is done for one area could adversely affect the other area.

In these recent substantive discussions, one of our Board members noted that **there is no remedy for aggrieved parties in the statutes if a Court sets a jury trial which results in an unreasonable delay in a TPR trial.** Jury trials in TPR cases are required to be conducted within 45 days after the initial hearing on the TPR petition. See: Wis. Stats, § 48.422(2) A court may schedule a hearing beyond that time period if it tolls the time limit for one of the reasons listed in Wis. Stats, § 48.315. A primary reason used to toll the time limits is court calendar congestion. It was reported to the Board that in many smaller counties a jury trial could be schedule as far as eight months later. A petitioner in that situation has no legal ability to have the Court calendar that case sooner. This is one area that many on our Board agreed could be addressed by legislation, but the Board has not fully addressed this topic. Attorney Henry Plum will present a proposal as to this later in his role as an attorney practicing in the area, separate from his role with the Children and the Law Board.

The Children & the Law Section Board is committed to making the TPR process efficient and to have it meet the needs of all children. We welcome the opportunity to assist the legislature in reaching that result.



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COLLEEN FOLEY
Executive Director

GUARDIAN AD LITEM OFFICE

To: Members, Speaker's Task Force on Adoption
From: Deanna Weiss, Chief Staff Attorney
Legal Aid Society of Milwaukee, Inc.
Date: August 19, 2019
Re: Recommendations for Improvements in the Termination of Parental Rights Process

Good afternoon Chairwoman Dittrich and members of the Speaker's Task Force on Adoption. I am a Chief Staff Attorney with the Legal Aid Society of Milwaukee. The Legal Aid Society was formed in 1916 and is one of the oldest continuously operating public interest law firms in the country. It provides free legal assistance to low income Milwaukee County residents with civil legal problems including landlord/tenant law, mental health law, consumer law, bankruptcy, and foreclosure defense.

The Children's Court Division of the Legal Aid Society contracts with Milwaukee County to provide guardian ad litem services for children involved in CHIPS, terminations of parental rights, guardianship, adoption, and appellate cases. Legal Aid employs twelve attorneys to cover ten courts daily in Milwaukee County. In 2018, we represented the interests of 4,149 children. These children can be the subject of a public action by the State of Wisconsin or they can be the subject of a private action initiated by an interested person, relative, parent, or private adoption agency. Our office uses a team of social workers and lawyers to meet with children in their homes, interview and foster relationships with the children, and to advocate for their needs.

I have asked to address this Task Force because we have seen first-hand the effect of delays in the system on the children. The delays in the court process can cause anxiety in children when they do not know what is going to happen to them. The TPR process is not just about newborn babies but of children of all ages. During periods of delays in cases, we have seen increased behavioral and mental health issues in children due to children being torn between people they love, and harm done to children's educational, physical, and emotional development.

I am asking the Task Force to consider the following changes to the TPR statutory scheme:

- 1) After a termination of parental rights has occurred, allow a child or a child's guardian ad litem to request a change in placement or object to a change in placement proposed by an agency under Wis. Stats. § 48.437.**

Wisconsin Statutes §48.437 governs placement of children after parental rights have been terminated and an agency has been given guardianship pending adoption. This section provides in part: "...the agency appointed as the guardian of a child who is subject to a guardianship order under s. 48.427(3m) (a)1. to 4., (am), or (b), the district attorney or corporation counsel may request a change in the placement of the child."

Unlike the other Change in Placement provisions in Chapter 48, this section does not allow a child or a child's guardian ad litem to object to the change in placement or to ask that the child be placed in a more suitable placement. Wisconsin Statute § 48.217, which provides for changes in placement prior to a CHIPS Dispositional Order being entered and §48.357 which governs change of placements after a CHIPS Dispositional Order has been entered, both provide for the child's interests to be represented when they change placement:

"... any person receiving notice... may obtain a hearing on the matter by filing an objection with the Court within 10 days after the notice is sent to that person and filed with the court."

These sections also allow for a child's attorney to request that a child be moved to a placement:

"...the child, the child's counsel or guardian ad litem, the parent, guardian, legal custodian, or Indian custodian of the child, the expectant mother, or the unborn child's guardian ad litem may request a change in the placement of the child..."

See: §§ 48.217(2m),48.357(2m)

I am asking that the Task Force recommend that the above language be included in Wis. Stats. § 48.437.

It is critical in cases that are post-TPR that a child be in a safe and suitable environment that will meet that child's special needs. It is also important that the child be placed in a home that will provide permanence for that child. This home could be a foster home, a relative home, or a home of a person that a child has strong connection with such as teacher.

A lawyer for a child may be aware of facts or information that would indicate that a placement is not safe or suitable for that child due to the relationship the attorney has with the child and it is important that the attorney bring this to the attention of the Court in a timely manner. This is particularly important for older children. A good example of this is a child for whom the agency is having difficulty placing, is placed in a group home indefinitely. A group home is not always the best placement for children. Adoption is also not likely once a child is placed in a group home or other temporary placement. A lawyer for a child can bring the matter to the attention of the Court promptly which may cause that child to be placed in a more suitable home that could lead to adoption.

Further, a child is considered a party to a TPR action and as the statute is currently written, it denies a party the right to object to an action taken by an agency. It is important to fix this deficiency in the written language of the statute to prevent constitutional challenges in the future.

By allowing an attorney for a child to be involved with the placement decisions of a child, you would be enforcing one of the purposes of Chapter 48 which is to promote the adoption of children into safe and stable families rather than allowing children to remain in the impermanency of foster care. *See:* Wis. Stat. §48.01(1)(a).

2) Reduce delays resulting from appeals of TPR decisions.

Once a TPR petition is granted, a parent has the right to appeal the decision. An adoption generally does not occur until all appellate rights have been exhausted. The expedited appeal process is addressed in Wis. Stats. §809.107. This statute sets some guidelines but allows timelines to be extended for good cause. Deadlines have become routinely extended. Appeals in some cases have lasted eight to ten months. Many times, delays have had an adverse effect on a child and their behaviors, or the delays may cause an adoptive resource to become frustrated and give up placement. If the decision of the Court of Appeals is then appealed to the Supreme Court, there are similarly no guidelines as to when a decision must be made once the Supreme Court accepts a case. Nine or ten months is a long time for a child to wait to be part of what they view as their forever family.

It is respectfully requested that the timelines in both the Court of Appeals and the Supreme Court be reviewed so that cases do not linger unnecessarily in those courts once the TPR has been completed. Only one extension should be given, and that extension should be for a short period of time. Any requests for additional time should have to show how it would not be harmful to a child.

3) Court Permanency Consultant

The Milwaukee County District Attorney's Office suggested that a Permanency Consultant employed by the Court be used to improve court efficiency. This person would be an experienced, objective social worker who would assist in resolving cases by trouble-shooting issues that cause delays in cases. This person would meet with parents, attorneys, and others to resolve issues such as visitation and relative placements which could delay resolution of the TPR petition. I encourage the Task Force to further consider this suggestion.

Thank you for the opportunity to testify. We appreciate the attention the Task Force is giving to vulnerable children and children that are waiting for adoption.

To: Members, Speaker's Task Force on Adoption
From: Henry J. Plum, Attorney
Date: August 19, 2019
Re: Recommendations for Improvement in the Termination of Parental Rights/Adoption Process

As the legislative co-chair of the Children and Law Section of the State Bar of Wisconsin, I, also along with Deanna Weiss my colleague and co-chair, would like to thank Chairwoman Dittrich and members of the Task Force on Adoption for this opportunity to speak to you. Having just completed serving as a committee member of the Study committee on minor guardianships, I appreciate your time and effort as committee members that you have spent in listening and gaining the various perspectives to identifying the problems surrounding the termination of parental rights and adoption process in Wisconsin.

My practice and experience in the child welfare area spans several decades as an assistant district attorney in Milwaukee at the children's court and then in private practice serving as a special prosecutor / or special counsel representing various counties around the state in termination of parental rights cases. In addition, my practice also includes consulting and training for the Wisconsin Child Welfare Professional Development through the University of Wisconsin which involves training County social workers on a state-wide basis on the legal issues involving termination of parental rights. The perspective that I would share with you today is that from both practitioner as well as an educator as I hear the state-wide anecdotal challenges County Departments of Human Services agencies encounter with termination of parental rights.

In identifying the problem areas, it is helpful to view the process of termination of parental rights and adoption as a continuum from referral of a case to removal of the child with hopefully reunification, but if that is not possible then reaching a permanent plan which includes termination of parental rights and adoption. One of the concerns which has been raised in several public hearings regarding this continuum is the length of time that it takes to get from removal of the child to an eventual termination of parental rights and then adoption. We need to identify and then eliminate some of the choke points along the permanency process continuum.

Proposed Changes:

1. Procedural: - time limits

The difficulty with timelines is that TPR's get delayed because of clogged court calendars where the court is unable to provide a trial date within a reasonable time period. The statutes require the hearing to be set within 45 days, but that time requirement can be waived for good cause. There is no speedy trial provision in the children's code similar to that in the criminal code under Wis. Stats. § 971.10. The first suggestion would be to include such a speedy trial requirement such that if the trial is not set within 90 days, then as in the criminal procedure, the case is reassigned to a different judge. It is also recommended that this speedy trial right be extended to all parties not just the parent. With this change and requirement, parent's counsel would have sufficient time to prepare without the case languishing for months before going to trial.

2. Grounds.

Under current federal law, permanency must be achieved after 15 out of 22 months. In addition, a permanency plan must be filed within 60 days of the child's removal from the parental home. Thereafter, the permanency plan is reviewed every six months either by the court or in some jurisdictions an administrative panel.

There is a disconnect between these time requirements under the federal law and certain grounds for Termination of parental rights under Wisconsin law which have time requirements. In other words, the 15/22 months under federal law do not line up with the grounds for termination of parental rights under Wisconsin law. There are three grounds under Wisconsin law that contain a timeline requirement. In addition, these grounds also require a CHIPS finding and written termination of parental rights warning from the court that is attached to the Court's order. I will address changes to two of these grounds which include: Continuing Need for Protection and Services under Wis. Stats. §48.415(2) and Denial of Periods of Physical Placement or Visitation under Wis. Stats. § 48.415(4). Each of these grounds have minimum time period that must lapse before the ground ripens. The Continuing CHIPS grounds has a six-month requirement and the Denial of Visitation has a twelve-month requirement. However, in addition to the time requirement, each ground contains the requirement that the child is removed from the home, but the time is triggered not by the removal but when the court makes a CHIPS finding and enters a dispositional order along with a TPR warning. Thus, if it takes 12 months to get to a CHIPS finding, then all of the time spent out of home prior to the CHIPS finding does not count towards the grounds time requirement.

A. Continuing Need of Protection and Services Wis. Stats. § 48.415(2)

It is recommended that this ground for termination be amended to include all court orders where the child is removed or continues to remain out of the parental home. This would include the CHIPS dispositional order under Wis. Stats. §48.355 but also a Temporary Physical Custody order under Wis. Stats. §48.21, a consent decree order under Wis. Stats. §48.32, and a permanency plan order under Wis. Stats. §48.38. The change to this TPR ground should also require that the TPR warnings be attached to these orders along with a listing of the goals which the parent must meet in order to have the child returned. It is also recommended that the triggering mechanism for the clock to begin running under this TPR ground would be the removal of the child from the home by a court order rather than a CHIPS adjudication. With this change, the time requirements for reunification would begin much earlier under this TPR ground. This would also allow the Wisconsin TPR ground under Wis. Stats. §48.415(2) to line up with the Federal requirements for reunification or moving more quickly to permanency for the child.

With this change, it is also recommended that that first permanency plan hearing within 6 months of the removal date be a court hearing before a judge rather than an administrative panel. In this way, the condition for return listed in the permanency plan would be given to the parents along with the TPR warning and a court order would be issued. The administrative panel does not issue court orders when it reviews a case whereas the Court signs a permanency plan order. These changes as recommended would significantly cut down the long waiting periods before the grounds for TPR under Continuing Need of Protection and Services ripens.

B. Denial of Period of Physical Placement or Visitation Wis. Stats. §48.415(4).

A similar recommendation would be made to amend the Denial of Periods of Physical Placement or Visitation ground under Wis. Stats. §48.415(4) to allow for any Children's Court Order in which the judge has suspended parental visitation to apply, regardless whether the order is made under a Temporary Physical Custody order Wis. Stats. §48.21, Consent Decree Wis. Stats. §48.32, Revision order Wis. Stats. §48.363, Dispositional order Wis. Stats. §48.355, Permanency Plan order Wis. Stats. §48.38 or Visitation order entered under Wis. Stats. §48.355(3).

Courts clearly have authority to make orders affecting visitation which also includes suspension of visitation. However, under current law only orders that are entered after a CHIPS findings and dispositional order can be considered to be applicable under this ground. For example, if a parent delays the CHIPS trial and the Court suspends visitation, this ground does not apply. This proposed change modifies current TPR grounds to consider any court order which contains a no contact or no visitation order. This order would still have to have the TPR warnings attached as well as the conditions for reinstatement of visitation but would eliminate waiting until a CHIPS finding is entered

before triggering the 12-month clock for TPR grounds under Wis. Stats. § 48.415(4). This would speed up those cases in which children are just waiting and the parent's visitation rights have been suspended.

3. Appeals.

There is a need to address the problem with the absent parent who requests an appeal of a TPR and then does not cooperate with either getting their lawyer or cooperating with their lawyer. There should be an affirmative duty to either follow through or abandon the appeal. The law should require cooperation and participation of the parent in the appeal. If there is a failure, then appeal should be deemed abandoned. The current rules place a burden on the appellate counsel to advise the court that the parent has abandoned the appeal. Some lawyers representing parents are hesitant to raise such a motion. The law should allow for the Guardian Ad litem or the County to move the appellate court for finding that the parent has abandoned the appeal.

4. Effective date And Implementation of Legislation.

Typically, all new legislation includes the effective date the law goes into effect. However, frequently there is little or no direction as to how the law should be applied to existing or pending TPR or CHIPS cases. This might include when should the warnings of the new law be given to the parents and how will the grounds be applied to pending TPR cases. It is recommended that the Committee consider and include in any legislation how any proposed legislative changes will impact pending cases and how the trial court should address these issues. This instruction in the legislation would eliminate needless confusion, delays and unnecessary appeals.

5. Open adoption.

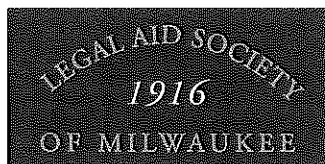
It is recommended that open adoption provisions be included in the statutes. Current law does not allow for open adoption, although neighboring states such as Minnesota do have such legislation. Any agreement for an open adoption entered into in Wisconsin is currently unenforceable under the law. This legislative change would open up permanency options much earlier for children.

I would note that there are several issues to consider when drafting such provisions:

- A. The types of cases in which this is allowed.
- B. The types of post adoption contact that is allowed.
- C. The frequency of contact or communication, as well as what information might be provided to the biological parent regarding the child.

- D. How the open adoption agreement can be modified, rescinded, or expanded and which parties bear the legal costs of such action.
- E. How and which court would enforce an open adoption agreement.
- F. Clarifying that failure to honor the agreement will not void the adoption.
- G. Caution must be given to the unintended consequences of this legislation such that these open adoption agreements are used appropriately and not as way of forcing foster/adoptive parents into agreeing to an open adoption.

Hopefully, the Task Force on Adoption will find these recommendations helpful. The Children and Law Section of the Wisconsin State Bar remains willing to answer any questions or provide any assistance to the Task Force that it requested. Thank you for your time and attention.



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COLLEEN FOLEY
Executive Director

GUARDIAN AD LITEM OFFICE

To: Members, Speaker's Task Force on Adoption
From: Deanna Weiss, Chief Staff Attorney
Legal Aid Society of Milwaukee, Inc.
Date: August 19, 2019
Re: Recommendations for Improvements in the Termination of Parental Rights Process

Good afternoon Chairwoman Dittrich and members of the Speaker's Task Force on Adoption. I am a Chief Staff Attorney with the Legal Aid Society of Milwaukee. The Legal Aid Society was formed in 1916 and is one of the oldest continuously operating public interest law firms in the country. It provides free legal assistance to low income Milwaukee County residents with civil legal problems including landlord/tenant law, mental health law, consumer law, bankruptcy, and foreclosure defense.

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I have asked to address this Task Force because we have seen first-hand the effect of delays in the system on the children. The delays in the court process can cause anxiety in children when they do not know what is going to happen to them. The TPR process is not just about newborn babies but of children of all ages. During periods of delays in cases, we have seen increased behavioral and mental health issues in children due to children being torn between people they love, and harm done to children's educational, physical, and emotional development.

I am asking the Task Force to consider the following changes to the TPR statutory scheme:

- 1) After a termination of parental rights has occurred, allow a child or a child's guardian ad litem to request a change in placement or object to a change in placement proposed by an agency under Wis. Stats. § 48.437.**

Wisconsin Statutes §48.437 governs placement of children after parental rights have been terminated and an agency has been given guardianship pending adoption. This section provides in part: "...the agency appointed as the guardian of a child who is subject to a guardianship order under s. 48.427(3m) (a)1. to 4., (am), or (b), the district attorney or corporation counsel may request a change in the placement of the child."

Unlike the other Change in Placement provisions in Chapter 48, this section does not allow a child or a child's guardian ad litem to object to the change in placement or to ask that the child be placed in a more suitable placement. Wisconsin Statute § 48.217, which provides for changes in placement prior to a CHIPS Dispositional Order being entered and §48.357 which governs change of placements after a CHIPS Dispositional Order has been entered, both provide for the child's interests to be represented when they change placement:

"... any person receiving notice... may obtain a hearing on the matter by filing an objection with the Court within 10 days after the notice is sent to that person and filed with the court."

These sections also allow for a child's attorney to request that a child be moved to a placement:

"...the child, the child's counsel or guardian ad litem, the parent, guardian, legal custodian, or Indian custodian of the child, the expectant mother, or the unborn child's guardian ad litem may request a change in the placement of the child..."

See: §§ 48.217(2m),48.357(2m)

I am asking that the Task Force recommend that the above language be included in Wis. Stats. § 48.437.

It is critical in cases that are post-TPR that a child be in a safe and suitable environment that will meet that child's special needs. It is also important that the child be placed in a home that will provide permanence for that child. This home could be a foster home, a relative home, or a home of a person that a child has strong connection with such as teacher.

A lawyer for a child may be aware of facts or information that would indicate that a placement is not safe or suitable for that child due to the relationship the attorney has with the child and it is important that the attorney bring this to the attention of the Court in a timely manner. This is particularly important for older children. A good example of this is a child for whom the agency is having difficulty placing, is placed in a group home indefinitely. A group home is not always the best placement for children. Adoption is also not likely once a child is placed in a group home or other temporary placement. A lawyer for a child can bring the matter to the attention of the Court promptly which may cause that child to be placed in a more suitable home that could lead to adoption.

Further, a child is considered a party to a TPR action and as the statute is currently written, it denies a party the right to object to an action taken by an agency. It is important to fix this deficiency in the written language of the statute to prevent constitutional challenges in the future.

By allowing an attorney for a child to be involved with the placement decisions of a child, you would be enforcing one of the purposes of Chapter 48 which is to promote the adoption of children into safe and stable families rather than allowing children to remain in the impermanency of foster care. *See:* Wis. Stat. §48.01(1)(a).

2) Reduce delays resulting from appeals of TPR decisions.

Once a TPR petition is granted, a parent has the right to appeal the decision. An adoption generally does not occur until all appellate rights have been exhausted. The expedited appeal process is addressed in Wis. Stats. §809.107. This statute sets some guidelines but allows timelines to be extended for good cause. Deadlines have become routinely extended. Appeals in some cases have lasted eight to ten months. Many times, delays have had an adverse effect on a child and their behaviors, or the delays may cause an adoptive resource to become frustrated and give up placement. If the decision of the Court of Appeals is then appealed to the Supreme Court, there are similarly no guidelines as to when a decision must be made once the Supreme Court accepts a case. Nine or ten months is a long time for a child to wait to be part of what they view as their forever family.

It is respectfully requested that the timelines in both the Court of Appeals and the Supreme Court be reviewed so that cases do not linger unnecessarily in those courts once the TPR has been completed. Only one extension should be given, and that extension should be for a short period of time. Any requests for additional time should have to show how it would not be harmful to a child.

3) Court Permanency Consultant

The Milwaukee County District Attorney's Office suggested that a Permanency Consultant employed by the Court be used to improve court efficiency. This person would be an experienced, objective social worker who would assist in resolving cases by trouble-shooting issues that cause delays in cases. This person would meet with parents, attorneys, and others to resolve issues such as visitation and relative placements which could delay resolution of the TPR petition. I encourage the Task Force to further consider this suggestion.

Thank you for the opportunity to testify. We appreciate the attention the Task Force is giving to vulnerable children and children that are waiting for adoption.