October 10, 2017

To: Members of the Speaker's Committee on Foster Care

From: Judge Chris Foley

I sincerely appreciate the opportunity to have input with the Committee. I hope that my extensive experience in the child welfare arena and these specific recommendations will assist the Committee in devising ways to better serve our abused and neglected children; their families and substitute caregivers. As you will see, my recommendations primarily address very practical solutions to issues that cause significant and unnecessary delay and expense in achieving timely permanence for children.

I am aware one of the primary focuses of the Committee is older children aging out of the foster care system. I don't claim any particular expertise with regard to that population and only offer the self-evident observations how concerning documented outcomes are for that population and that the solution lies in achieving timely permanence for those children when they enter the system (many having entered years earlier).

TPRs (OR TRANSFER OF GUARDIANSHIP) EMANATING FROM THE CHILD WELFARE SYSTEM SHOULD BE INITIATED BY MOTION IN THE UNDERLYING CHIPS PROCEEDING.

It is the height of inefficiency, lack of timeliness and a tremendous waste of resources to require the institution of a new lawsuit when alternative permanency is necessary for children. The court likely has jurisdiction over all the necessary parties and they are often readily available for service of the motion. Other states initiate termination by motion in the underlying child welfare (Chips) proceedings. Initiating a new proceeding with attendant costs of service and delays is, as stated, the height of inefficiency, entails significant unnecessary expense, and significantly impacts timely permanence for children.

DILIGENT SEARCHES FOR UNADJUDICATED FATHERS NEEDS TO BE EXPLICITLY REQUIRED AT THE TIME CHIPS PROCEEDINGS ARE INSTITUTED.

Pursuant to federal mandate, we diligently search for fit and willing relatives as placement resources for children in the system. 48.21 (3) and (5) (e). While the duty to search for father of

children born out of wedlock is implied in other statutes, 48.27 (3) (b) and 48.42 (2) (b), it should be made explicit in 48.21 (3) and (5) (e). Identification of the father opens the possibility of placement with paternal relatives who may already be a significant figure in the life of the child at the initiation of the process. Historically, diligent efforts to establish paternity have not been made until much later in the process when the child has developed substantial relationships with, often, non-relative caregivers.

However, this is not all---or even primarily---on the system. Once diligent efforts have been made to identify fathers without success, the father has forfeited any protected interest in the relationship with the child. 48.42 (2m). Men cannot engage in conduct which may create a child; blithely ignore that possibility; then claim months and years into the child's life they have some cognizable interest. Lehr v. Robertson, 463 U.S. 248 (1983); Quilloin v. Walcott, 434 U.S. 246 (1978

REASONABLE EFFORTS NOT REQUIRED

We should add to the instances in which a child welfare agency is not required to make reasonable efforts to prevent removal from the home or safely return a child to the parental home cases in which the parent murdered the other parent of the child. Present law, pursuant to federal mandate, already provides reasonable efforts to prevent removal or safely reunify are not required when the parent has murdered a sibling of the child. 48.21 (5) (b) 1 and 3; 48.355 (2d). It further provides that murdering the other parent of the child is grounds to summarily find the offending parent is unfit. 48.415 (8). It seems absolutely incongruous the law does not explicitly relieve the system from making reasonable efforts to prevent removal or effect safe return in those instances. (Legislative staff would have to research the issue to assure this change was not somehow inconsistent with federal mandates).

Almost as an aside, my experience is the system is insufficiently diligent in identifying reasonable efforts not required cases; following the mandate to schedule prompt permanency hearings; and pursue timely permanence through motions for summary judgment, if available, or trial in the grounds phase of TPRs.

FINAL JUDGMENT OF CONVICTION GROUNDS

Grounds for TPR requiring a "final judgment of conviction" should be amended to allow "other evidence" the crime was committed as an alternative to the final judgment of conviction or deleting the word final. The legislature has concluded (appropriately so) certain criminal conduct of a parent should promptly and summarily establish unfitness. This includes homicide of the other parent, 48.415 (8), and commission of a serious felony against one of the parent's children, 48.415 (9m). Those grounds can and should lead to summary judgment findings of unfitness. However, appellate courts have interpreted "final judgment of conviction" to require expiration of all criminal appeals. The inordinate delay occasioned by criminal appeals renders these two grounds, intended to summarily establish unfitness, virtually useless. Both should be amended to provide the "other evidence" alternative or to delete the "final" qualifier.

I recognize offending parents will be put on the horns of a dilemma in this circumstance. They likely will be advised by their lawyer to invoke their 5th amendment right. However, doing so permits (but does not require) the court to "draw an adverse inference." However, balancing of interests leads me to conclude these grounds should be revitalized in this manner. (It is my understanding that Sen. Bewley's staff has drafted proposed legislation addressing this issue as to the homicide grounds; I strongly feel the same should be done with the serious felony grounds).

PRIOR INVOLUNTARY TERMINATION OF PARENTAL RIGHTS

48.415 (10) provides summary grounds for an unfitness finding if a parent has previously lost their rights to a child in an involuntary termination proceeding within 3 years of a Chips finding on a sibling. However, the grounds applies only if a subsequent child is adjudged in need of protection and services after the order terminating parental rights. If the sibling is the subject of an existing Chips order at the time of termination, the ground is inapplicable due solely to the timing of the Chips adjudication. The ground should apply to siblings who are the subject of existing Chips orders.

I am not advocating that the 3 year window be deleted. If a parent has involuntarily lost their rights to a child and subsequently demonstrated a protracted period of stability and lawful conduct, summary unfitness grounds should continue to be unavailable.

APPELLATE PROCEEDINGS

Appellate proceedings have become a very significant delay in achieving timely permanence. A previous proposal to require respondent parents and their lawyer to sign notices of intent to seek post dispositional relief has not been enacted. It is imperative it be enacted. Lawyers for parents who fail to appear at disposition often feel compelled to initiate appeals either believing they are ethically compelled to do so or for fear they will be accused of ineffective assistance of counsel if they fail to do so (or both).[1] Many, if not most, of these appeals are resolved several months later with motions to declare the appeal abandoned. The delay and expense involved is, to put it mildly, wholly unjustified.

Secondly, the Court of Appeals can remand a case to the trial court if the basis of appeal "may require postjudgment fact-finding." I would estimate that in excess of half of appeals of TPRs from my court (in which the appeal is not abandoned) are remanded to me. Remands often occasion 3-4 month delays. In at least half of those remands in the last two years I have refused to do a hearing as there was no need for fact-finding. 809.107 (6) (am) needs to be amended to

[1] 809.107 (2) requires trial counsel to continue through the initiation of the appeals process unless discharged by the client or the court. They are required to file the notice of intent if the parent "desires to pursue" appeal.

require appellate counsel to file an affidavit stating with specificity why post judgment fact finding is necessary to stop repeated and wholly unnecessary remands.

CONTINUING NEED OF PROTECTION AND SERVICES

Past proposals have advocated the elimination of modification of the fourth element of the Continuing Need of Protection and Services ground which requires a fact finder to project whether a parent is substantially unlikely to meet the conditions of safe return within 9 months from trial. This element is highly inconsistent with ASFA-related mandates requiring timely permanence, including mandated filing of TPRs if a child is in out of home care for 15 of the most recent 22 months. The ground is not available until the Chips order is in effect for 6 months. If all time limits are strictly complied with in the Chips proceedings (and often they are not as, for instance, mental health or AODA evaluations establish good cause for delay), the proceedings can take up to 90 days. Quite commonly, more than 3 months has elapsed before the order establishing the conditions of safe return and the services to be provided to assist the parent in meeting the conditions of safe return is in place.

I am aware that multiple child welfare experts are highly critical of this element because it is inconsistent with timely permanence expectations. If the legislature is going to consider eliminating this element, it needs to be recognized that this ground without that projective element is highly inconsistent with the treatment needs and expectations of substance abusing parents. If the 4th element were to be deleted, I sincerely believe that our "mandatory filing" statute should also be amended to further explicate the "best interests" exception to mandatory filing by adding the following language (or substantially similar language); "based on consistent and demonstrated progress towards meeting the conditions of safe return by the parent." 48.417 (2) (b).

ABANDONMENT GROUNDS

The essence of the most commonly used provisions of this statute establish that a parent who falls to visit or communicate with their child for 3 months (if the child is in the child welfare system) or 6 months (if the child is not in the child welfare system) without "good cause" may have their rights terminated. The statute switches the burden of proof to the parent to establish good cause if the petitioner establishes the period of non-contact. Not only does the burden shift—it lowers. The petitioner is required to meet the middle burden (clear, satisfactory and convincing) while the parent must meet the lowest burden (preponderance of the credible evidence. This circumstance becomes virtually incomprehensible to juries as is; worse when an Native American child is involved as the petitioner than has to prove ICWA elements beyond a reasonable doubt and the jury must apply 3 differing burdens of proof.

There simply is no necessity for this shifting and lowering burden. All petitioners (governmental and private) have the ability to make an initial showing of a lack of good cause. They also have the ability through discovery to further discern whether there is good cause. The statute should

be simplified to put the burden on the petitioner and avoid shifting and lowering burdens of proof.

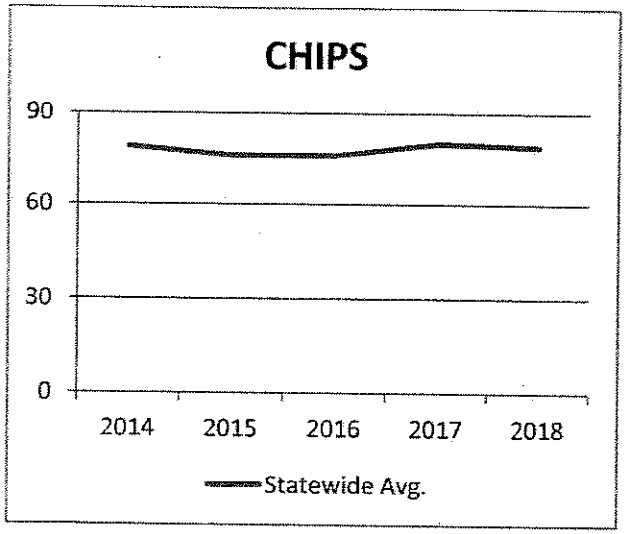
GENERAL OBSERVATIONS

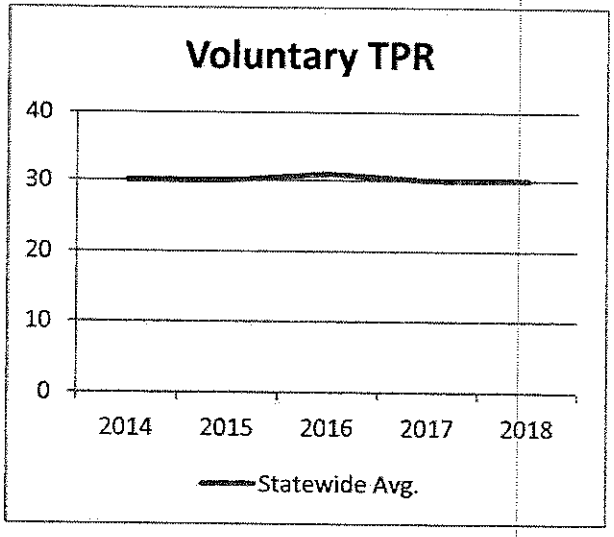
All segments of the child welfare system---including parents and extended relatives--- continue to struggle with our commitment to timely permanence for our children. Child welfare law and policy---primarily as defined in ASFA---is not complicated. In essence it tells parents: These are your children. They want to be with you; they should be with you. But they are not safe. We want to help you resolve those safety issues and promptly get them home to you. But if you can't or won't **promptly** solve those safety issues, they deserve and we will find another permanent, safe, loving home for them. It is imperative that judges, lawyers and social workers make that clear to parents at the first hearing and warning them the 15 month clock begins to run that day.

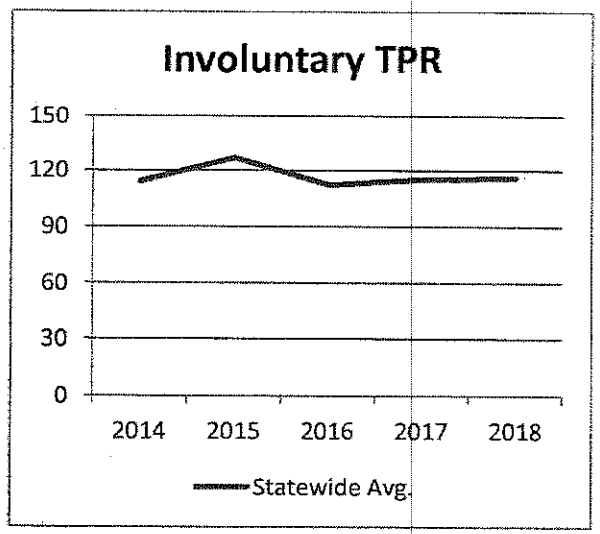
It also provides kids in crisis should be with fit and willing relatives. If your children were in crisis, you would want them with family We need to diligently search for those relatives who must be both fit and willing (not just willing). But families have an obligation as well to make themselves available. Often, particularly in the instance of children born out of wedlock without paternity determinations, even the most diligent searches for family members do not reveal "relatives" who would be fit and willing. Hence children end up in foster care. With each passing day a child spends in foster care, the relative significance of any biological connections ebbs in comparison to the significance of the relationship with the daily caregivers. Families can't wait 6 months, 9 months or 12 months and then appear and expect a biological tie will necessarily dictate or even significantly influence what placement is in the best interests of the child.

Child welfare cases present primarily human problems; not legal problems. Seldom is the question whether there is a problem; the issue is how can we solve the problem? If we can't timely solve the problem, what placement and form of alternative permanence serves the best interests of the child. When we engage with families and they engage with us, children win. When parents and families don't engage and resolve the safety issues, only alternative permanence serves the children's best interest.

Median Age at Disposition (in Days)

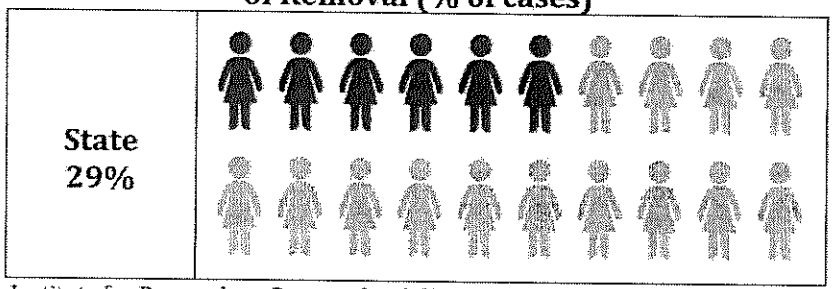




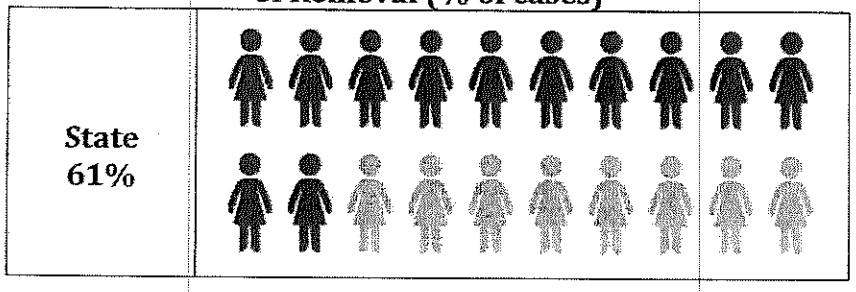


Source: CCAP Statistical Reports (TPR data includes both privately and publicly filed cases.)

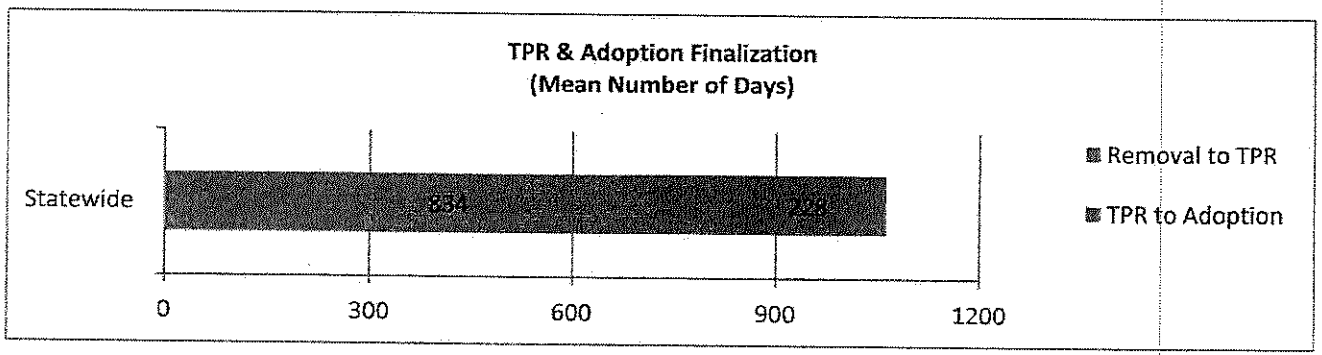
TPR Petition Filed within 15 Months of Removal (% of cases)



TPR Petition Filed within 24 Months of Removal (% of cases)



Source: Institute for Research on Poverty for children achieving permanency in 2016-2018



Source: DCF Dashboards for 7/1/18 - 6/30/19

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Speaker's Task Force on Adoption
Wednesday, August 28, 2019
Testimony from Wisconsin State Public Defender

Chair Dittrich & Task Force Members,

Thank you for the invitation to speak to the Task Force this morning. My name is Adam Plotkin, Legislative Liaison for the State Public Defender (SPD). Joining me is Milton Childs, the Local Attorney Manager from the SPD's Milwaukee Juvenile/Mental Health Office. The SPD is happy to be a resource to the Task Force as it considers legislative proposals.

SPD is authorized to provide representation for children who are the subject of a Juvenile in Need of Protection and Services (JIPS), Children in Need of Protection and Services (CHIPS), or who are accused of having committed a delinquent act.

For parents in the family system, we provide representation statewide in Termination of Parental Rights (TPR) proceedings and for parents only in Indian Child Welfare Act (ICWA) cases.

Thanks to the Legislature under Representative Ballweg's leadership, the SPD is just over a year into a pilot program of representing parents in any CHIPS case in 5 counties - Brown, Outagamie, Winnebago, Racine and Kenosha. So far we have made about 1000 appointments for parents in the pilot program under 2017 Act 253.

The goal of providing representation for parents at the CHIPS stage is to increase the chances of success, reduce the number of termination proceedings, and increase the speed and permanency of placement. A similar project in Washington State showed that children reached permanency 11% faster for reunification, 83% faster for guardianship, and 104% faster for adoption. Overall, the average number of days to reach permanency dropped from 344.8 to 251.9. Washington also noted a 44% decrease in the number of termination of parental rights petitions filed. The goal of the CHIPS pilot program in Wisconsin is to study the impact and hope to duplicate the results that Washington and other states have seen.

The statutory intent of Chapter 48 in general is found in s. 48.01, which makes clear that the ultimate goal of the Children's Code is to determine the best interests of the child. The first stated goal is to assist parents in changing any circumstances in the home that might harm the child. The next sentence states that courts should recognize they have the authority not to reunite the child with their family. In sum, while making appropriate allowance for either temporary or permanent removal of the child, the assumption is that the best interests of the child should first be to preserve the unity of the family.

Adoption is something that by its own nature comes out of loss. Recent research on adoption and its effects on kids show that everyone is better off--the children, adoptive and biological parents--if you remember that adoption doesn't happen in a bubble. The relationship between birth parent and child are forever changed, and the relationship between adoptive parents and their children are different, too.

My name is Milton Childs. I have had the pleasure of working with and representing parents in TPR cases for over 12 years. I currently work in Milwaukee County. But I started with the SPD in the Sheboygan County Office. I then worked in Racine County for a couple of years. I've represented parents in all three counties and I can say that there were more similarities than differences in the parents. One, they love their children. They may show their love differently than the way many of us perceive what love is and perceive what a traditional relationship should look like between a parent and a child. Second, many of the parents did not have great parents and did not come from great families. Many of my clients were in the system when there were children; they were CHIPS children. Many did not have great parents or adults as role models, so they tried to do their best. Many are trying to overcome many obstacles: substance abuse issues, mental health issues, victims of domestic violence and other trauma, and cognitive limitations, just to name a few. Most of my clients were minorities, they were poor, having no resources and no support system.

Based on my experience, speeding up the TPR process will not solve the problem. First, there seems to be a perception that voluntary TPRs do not happen. Actually, they happen quite frequently. In many of those cases, the child is either with a family member or the birth parent knows and has a relationship with the foster parent. This is a big reason for you to consider open adoptions. Many successful adoptions occur when the birth parent is able to remain involved in the child's life; especially for those children that are removed at an older age and have lived with their parent for a portion of their life. Additionally, many adoptive children, especially as they reach adolescence, seek out their birth parents as they struggle with their identity. Open adoptions would increase the number of voluntary terminations. Therefore, speeding up the adoption process is not the solution. When a child is removed from their home, trauma occurs. Whether it's a good home or bad home; whether the parent is a good parent or bad parent, any removal of a child from their home causes trauma. When a child is placed in two or three foster homes, this causes trauma. Many children, especially older children do not want to be adopted, they just want "mama to get help so that we can come home and be a family" (the words of one of my client's daughters). Some parents finally get it and are finally getting things together. Then a TPR petition is filed. As we consider what is best for the child, we should consider giving the parents an opportunity and additional time, with appropriate services and resources. Then there are children who are no longer wanted by their adoptive parents. Unfortunately, there are a growing number of children, many of whom look like me, that are placed outside of their community as a young child. But as they reach adolescence and begin to act out like many typical teenagers, they re-enter the system as either a CHIPS child or a delinquent child. Speeding up the process does not equal faster permanency.

Based on our experience, here are suggestions that the SPD believes would have an impact on both the efficiency and permanency of the TPR process.

1. Effective date for 2017 Act 256

   Act 256 made changes to the timeline related to filing a TPR petition based on a continuing need of protection and services. At the time, SPD noted that the proposed changes would rush the process by shortening the time frame to terminate parental rights with the end result of increased terminations and more children placed into the foster care system.

   One unintended consequence of Act 256 was a lack of clarity on effective date. Some counties are starting the time frame after the effective date of Act 256 (which we argue is the more appropriate way of implementing the law) while some counties are looking back in time.

The lack of an effective date has resulted in a number of appeals filed while the termination proceeding is still pending. It has been suggested in prior hearings of this Task Force that clarity on the effective date would help to address short term permanency issues related to Act 256.

2. Increased access to services and representation at the CHIPS stage

The biggest barrier to success at the CHIPS stage include access to substance abuse and mental health treatment as well as consistent access to legal representation statewide. As discussed earlier, access to counsel significantly increases permanency and successful resolution on a faster timeline.

3. Delays in providing discovery

Related to the lack of counsel at the CHIPS stage, by the time an SPD attorney is involved at the TPR stage there are often thousands of pages of discovery to review which creates a significant delay in moving forward with the case. Streamlining the provision of discovery and ensuring that depositions, interrogatories, and requests for admission are granted in a timely manner would have a significant impact on moving the case forward.

4. Permanency Counselors

There has been prior discussion about the use of permanency counselors. I have had a chance to work with permanency counselors and I have seen this model work successfully in some cases. A good permanency counselor can assist with the creation of a relationship between the birth parent and foster parent early on, and in some cases successfully co-parent the child. I had one case where the child had behavior issues and when the child's behavior was really out-of-control, the foster parent would call the child's mother. She would talk to the child and was able to calm the child down. The child was not able to stay with the mother due to obstacles that the parent was going through, but the parent was still able to stay connected to the child. Unfortunately, the current system creates an adversarial relationship between the birth parent and foster parent from the time of removal and normally the relationship never improves. This again supports the concept of open adoptions.

5. Open Adoptions

We believe that open adoptions would increase the number of voluntary terminations. One way we could address the reality of these relationships is to have a statutory mechanism for children to have some relationship with their parents post-termination. Without support, adoptive children often seek out their birth parents as they struggle with their identity during adolescence. To pretend that contact doesn't happen is to ignore reality. Knowing that there might be a possible way to have contact with their children post-termination may also increase the number of voluntary terminations because parents right now have a choice of all or nothing when facing potential termination.

We also wanted to take a moment to offer comments on some other ideas that have been suggested for the Task Force's consideration.

1. Elimination of Jury Trials for Termination of Parental Rights Proceedings

The idea of eliminating jury trials in TPR proceedings has come up at several hearings. The SPD does not agree that this will result in a significant increase in time to disposition and will likely result in more involuntary TPR's and appeals.

I have included two charts with our testimony. The first shows the number of cases handled by the SPD broken down by disposition type in the last 5 years. As you'll see in the most recent year for example, out of 565 appointments, 40 were concluded by jury trial. Just for clarity, our data reflects when a case is actually decided by which type.

The second chart shows the average number of days per disposition type also broken down showing Milwaukee alone, the other 71 counties, and statewide. The most telling statistic is to compare the average number of days to disposition statewide based on disposition type. It took 309 days to reach disposition when trying a case to the court, 279 days when trying it to a jury.

We believe that what is at stake in a TPR case justifies the highest and one of the most treasured rights in the justice system - right to a trial by jury. Often called the "civil death penalty," a TPR proceeding uses the power of the state to end a parent's right to custody of their child. The data indicate that removing jury trials is a drastic step to take given the limited scope of the impact they have on the system now. TPR proceedings should carry the same ability for a respondent to request a jury trial as a defendant in a criminal misdemeanor case.

2. Access to Medical History

Previous meetings of the Task Force have included discussions on finding a way to allow adults who were adopted access to genetic information for the purposes of medical history without revealing the names of birth parents if they do not wish to be disclosed. While the SPD would not encounter this issue in the course of our practice, we can appreciate the interest in having access to this information. In a way, it is related to the idea of allowing open adoptions. In fact, an open adoption process would allow for easier access to this type of information in some circumstances.

3. Drug Addicted Grounds

In following previous testimony, there have also been discussions about creating a grounds for drug addiction. SPD would urge caution when considering that concept. First, as we get more research and evidence, we know more quantitatively what we have known anecdotally for some time - that the justice system has become the least efficient and most expensive way to deal with issues that should be treated, for instance, as a public health issue. Substance abuse issues that lead to JIPS, CHIPS, and TPR proceedings don't just affect the addict or individual with mental health issues, but the children as well. In our experience, the timeline requirements in the CHIPS and TPR process imposed by statute and the federal Adoption and Safe Families Act (ASFA) are often incompatible. In order to show progress sufficient not to face a TPR petition based on continuing CHIPS ground, a parent with mental health or substance abuse issues often has to complete a treatment program with a waiting list that doesn't allow them to even begin before

other timelines come into play. And ultimately substance abuse often fits into one of the 15 already established grounds to initiate a CHIPS petition.

Thank you again for the opportunity to present to the committee. We welcome the opportunity to provide input as you move forward with your work.

Submitted by:
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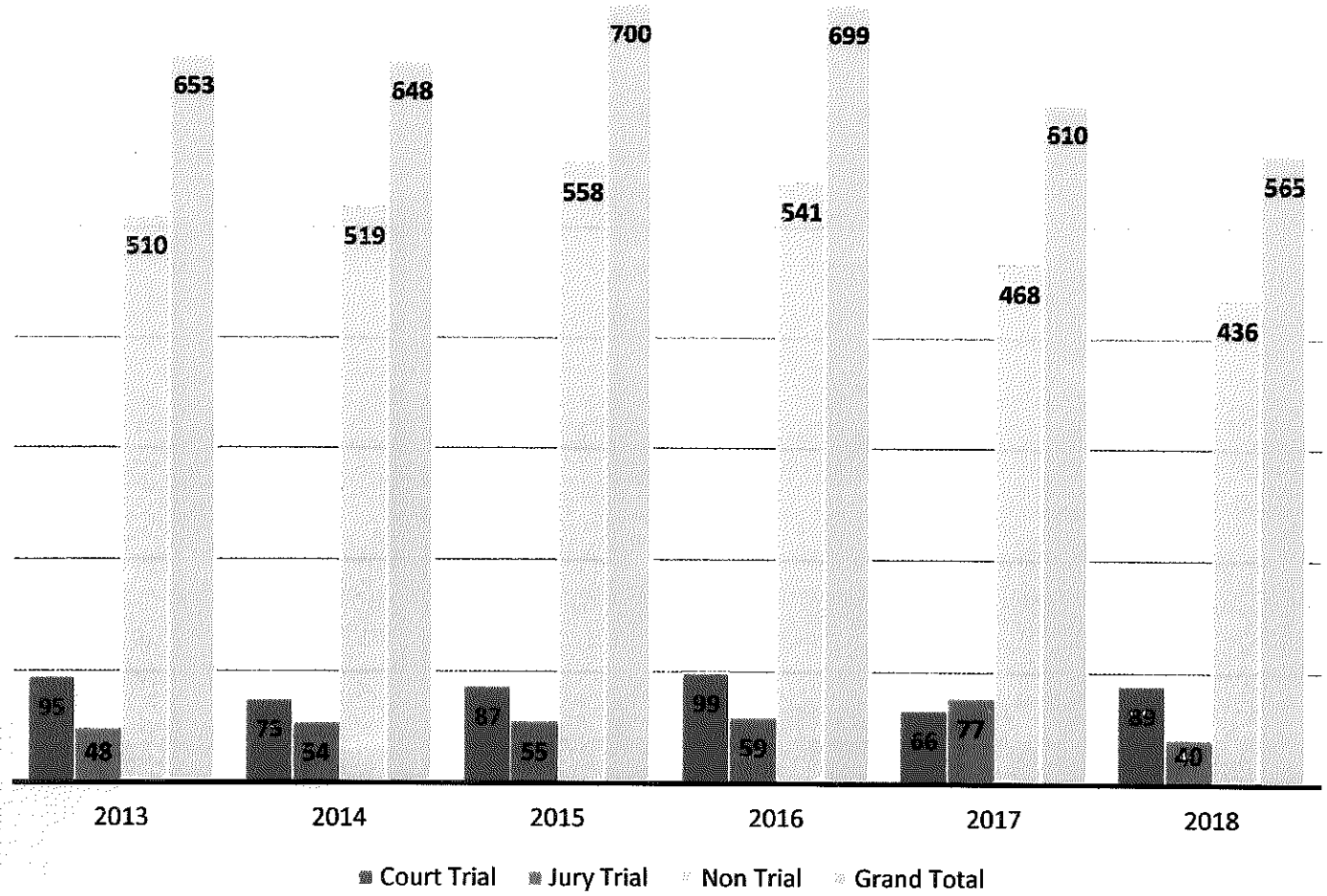
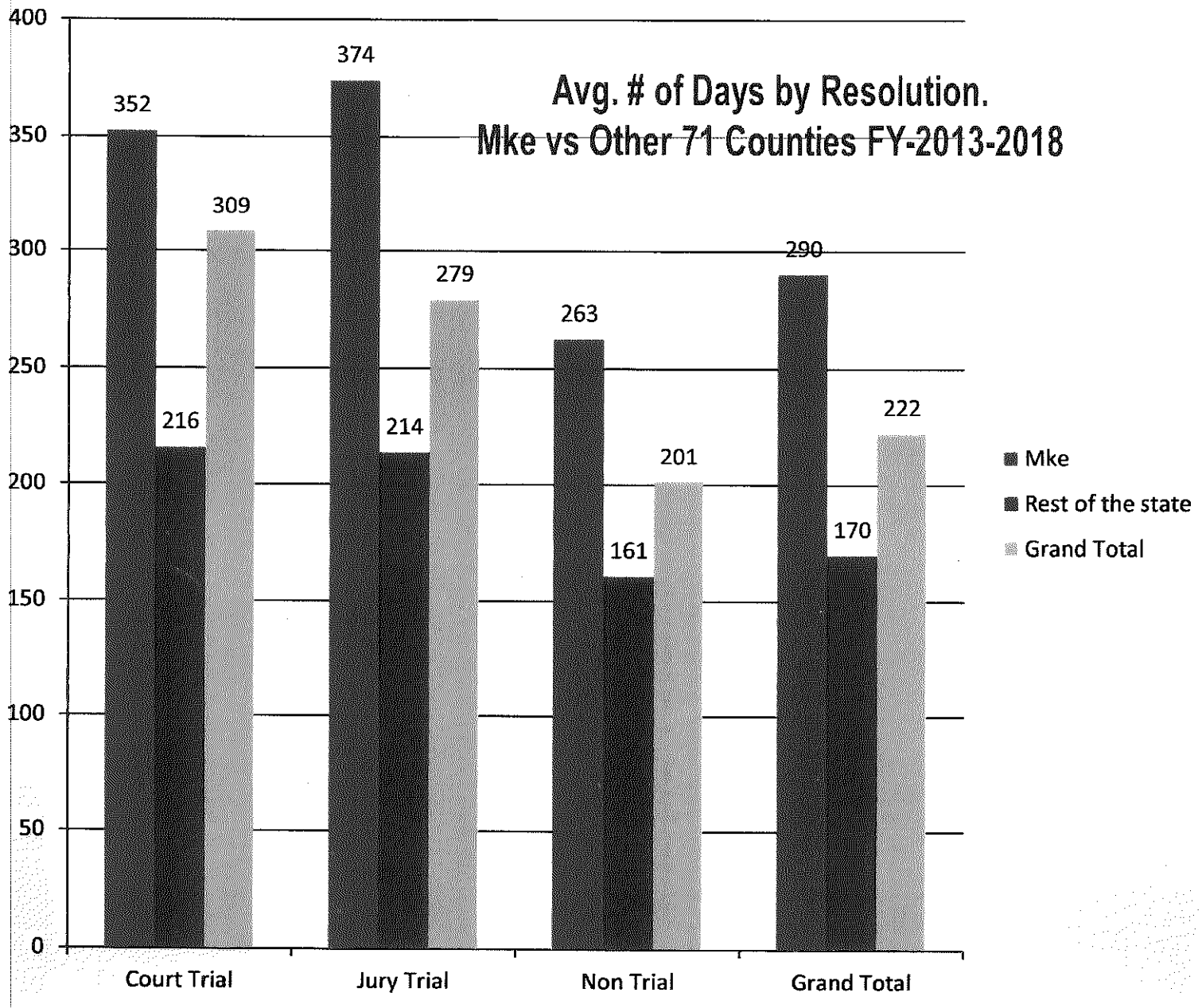
plotkina@opd.wi.gov

Total # of Cases by Resolution
(FY-Case Opened Year)




Avg. # of Days by Resolution.
Mke vs Other 71 Counties FY-2013-2018
400
350
300
250
200
150
100
50
0
352
216
309
374
214
279
263
161
201
290
170
222
Court Trial
Jury Trial
Non Trial
Grand Total
Mke
Rest of the state
Grand Total

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DATE: August 28, 2019
TO: Representative Dittrich and members of the Committee
FROM: Megan L. DeVore, Corporation Counsel, La Crosse County
RE: Speaker's Task Force on Adoption

Good afternoon. I am currently the Corporation Counsel for La Crosse County and I have worked in the La Crosse County Corporation Counsel office for 21 years. Our office represents the La Crosse County Human Services Department in CHIPS cases, CHIPS guardianships and TPRs. I appreciate the opportunity to offer information to the Speaker's Task Force as it relates to the improvement of adoption and adoption-related issues across the State. I offer these observations with the following caveat: Every County is different. Having served on study committees, appeared before task forces and public hearings and generally networking with other professionals in the child welfare arena, it is clear that despite a uniform Children's Code, administrative rules and policy guidelines, every County operates a little differently. This may be attributed to many factors -- size of county; number of Judges, culture or practice. What may "fix" an issue or barrier in one County may have little, or possibly negative, effect in another. In considering legislative changes, effort should be made to consider state-wide impact. Given that caveat - and seeing no easy solution to that problem - I offer the following observations and suggestions.

Support for adoptive parents post adoption
Families need additional support post-adoption whether financially or through access to ongoing social services. The availability of adoption subsidies (financial support post-adoption) has continued to decrease. In many cases, especially those involving younger children or children not in sibling groups, adoption subsidy is not available. In addition, certain financial assistance - specifically, child care - may no longer be available post-adoption. These financial considerations may make other permanency options like guardianship more attractive even if that is not the best choice for the child and family.

Consider:

- *Changes to adoption subsidy requirements*
- *Changes to economic assistance to allow for benefits to continue if a child is adopted through the child welfare system*
- *Allocation for additional State adoption workers or for post-adoption services, including support groups, access to mental health professionals, etc.*

Support the stakeholders in the child welfare system
Support to the CPS case workers that provide services to the children and families in the child welfare system will result in better outcomes both in achieving reunification and other forms of permanency. Turnover in case workers or other service providers negatively impacts the trajectory of the case and results in delays in permanency.

Consider:

- *Ongoing support of CPS caseload studies and continued legislative oversight of caseload distribution and allocations.*
- *Legislative changes that lead to additional mandates for the caseworkers working with families in the child welfare system should be carefully considered before implementation.*

Competent and consistent representation of parents in CHIPS cases results in better outcomes.

Consider:

- *Support of changes to compensation for court appointed attorneys in CPS cases with necessary assistance to the Counties.*

- *Following review of pilot projects appointing Public Defenders in CHIPS cases, consider state-wide implementation.*

Delays in court processing

Timelines. In my opinion, this issue is complicated and not likely to be fixed by modifying statutory time lines. Currently the statute requires that TPR trials occur within 45 days of the plea hearing. In La Crosse County this rarely, if ever, occurs due to multiple factors. TPR cases are extremely complicated and document laden. Discovery - providing, reviewing and distilling thousands of pages of information - is time consuming. This is particularly true when the parent is appointed a new attorney for the TPR case and that attorney has no prior knowledge of the events of the last years. Forty-five days may not be a reasonable time to allow for adequate preparation.

Consider:

- *Would changing the time line to a longer time (eg. 90 days) but requiring stricter adherence result in less delay overall?*
- *Consistency in parental representation from a CHIPS to TPR case would result in less time being required for preparation as the attorney would have first-hand knowledge of the basis for the TPR. This certainly cannot be mandated but may be assisted by changes to court-appointed attorney rates and/or appointment of SPD in CHIPS cases.*

"Adoptability" I am aware that others have suggested changes to the requirement that as a practical matter an adoptive resource must be identified in order for a TPR petition to be filed. In addition to the statutory requirement addressing "likelihood of adoptability", it is important to be aware that in counties outside of Milwaukee, guardianship of the child transfers to the State for the period of time post-TPR but pre-adoption. If the State is unwilling to accept guardianship, the County is unable to file the TPR petition. There are times when the combination of these two factors creates circumstances where TPR petitions cannot be filed even when there are grounds to do so.

Consider:

- *A change to the requirement addressing the "likelihood of adoption" factor in sec. 48.426(3).*
- *Possibility of allowing guardianship to transfer to the County or others (current foster parents) under sec. 48.427.*

Open adoptions

Consideration should be given to moving towards statutorily recognizing open adoption agreements in Wisconsin. Almost all child welfare case are "open" adoptions already in the sense that bio-parents almost always know the identity of the adoptive or proposed adoptive parents. In my experience, many TPR cases resolve following discussions - either informally or through mediation - about what things will be like post-adoption. Bio-parents that have (currently unenforceable) assurances that they will continue to receive information about or continue to have a connection or contact with their child are more likely to consider voluntarily terminating their parental rights. If statutory provisions clearly addressed the circumstances in which agreements would be enforceable and continued to provide paramount consideration to the child's best interest, allowing open adoption agreements would be a benefit to children, bio-families and adoptive families. Multiple states have successful open adoption agreement statutes and review and consideration of these models would be instructive.

Consider:

- *Statutory recognition of open adoption agreements*

I appreciate the opportunity to appear before the Committee. I am open to questions that the Committee may have now or in the future.