



# Wisconsin State Assembly

P.O. BOX 8952 MADISON, WI 53708

TO: SPEAKER ROBIN VOS

FROM: Representative Barbara Dittrich, Chair of the Assembly Speaker's Task Force on Adoption

RE: Interim Report of the Assembly Speaker's Task Force on Adoption

DATE: October 3, 2019

This report details the activities and the recommendations of the Assembly Speaker's Task Force on Adoption that you established on May 14, 2019.

## **INTRODUCTION**

The task force was created to study and make recommendations on policy initiatives to address the barriers facing biological and adoptive parents in the adoption process. Specifically, you presented the task force with the following goals:

- Examine the termination of parental rights (TPR).
- Identify ways to shorten the timeline for adoptions.
- Evaluate the costs of adoption and ways to reduce the amount.
- Increase awareness and resources pertaining to adoption.

The report contains a brief description of hearings held by the task force throughout the state and explains the recommendations that arose from 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 seven public hearings throughout the state for the purpose of receiving testimony and recommendations for legislation regarding adoption in Wisconsin. The hearings were held on the following dates and in the following locations.

### **June 19, 2019, Madison**

The task force held a public hearing at the State Capitol at which it received invited testimony about adoption in Wisconsin, and the child welfare system more broadly, from representatives of the following organizations:

- Wisconsin Department of Children and Families (DCF).
- Bethany Christian Services of Wisconsin.
- Coalition for Children, Youth, and Families.
- Children's Hospital of Wisconsin.
- Lutheran Social Services of Wisconsin and Upper Michigan.

### **July 2, 2019, Green Bay**

The task force held a public hearing at the University of Wisconsin (UW)-Green Bay, at which it received testimony from the public and invited testimony from representatives of the following:

- UW-Green Bay Behavioral Health Partnership and social work professional programs.
- Wisconsin tribes.
- County departments of human services and social services.

### **July 25, 2019, Balsam Lake**

The task force held a public hearing at the Unity School District Performing Arts Center, at which it received testimony from the public and invited testimony from representatives of the following:

- Polk County Sheriff's Department.
- Polk County Department of Children and Families.
- Wisconsin tribes.
- Catholic Charities.
- CESA 11.

### **August 14, 2019, Milwaukee**

The task force held a public hearing at Vincent High School, at which it received testimony from the public and invited testimony from representatives of the following:

- Wendy's Wonderful Kids.
- Milwaukee County District Attorney's Office.
- DCF Division of Milwaukee Child Protective Services.
- Kids Matter, Inc.

### **August 19, 2019, Waukesha**

The task force held a public hearing at Waukesha County Technical College, at which it received testimony from the public and invited testimony from representatives of the following:

- Waukesha County Circuit Court.
- Grady, Hayes, & Neary, LLC.
- Children’s Court Improvement Program.
- Office of the Director of State Courts.

### **August 28, 2019, Richland Center**

The task force held a public hearing at UW-Platteville Richland, at which it received testimony from the public and invited testimony from representatives of the following:

- Milwaukee County Circuit Court.
- Wisconsin State Public Defender.
- LaCrosse County Corporation Counsel.

### **September 4, 2019, Madison**

The task force held its final public hearing at the State Capitol at which it received invited testimony from DCF that included specific recommendations for legislative action and responded to various suggestions that the task force heard at the six prior public hearings.

## **TASK FORCE RECOMMENDATIONS**

### **Grounds for Finding a Child in Need of Protection or Services**

#### **Background**

Under current law, there are several grounds under which a child may be found to be in need of protection or services (CHIPS). These include that the child has been abandoned, abused, or neglected.

#### **Recommendation: Create a CHIPS Ground for Drug-Affected Child**

The task force chair recommends that the Legislature consider creating a CHIPS ground for a child who is identified as affected by drugs due to prenatal exposure to a controlled substance or alcohol used by the mother for a nonmedical purpose.

## **Permanency Plan Reviews**

### **Background**

Under current law, for each child placed outside of his or her home, the agency responsible for the care of the child must generally prepare a permanency plan. A permanency plan is a plan designed to ensure that a child is reunified with his or her family whenever appropriate or that the child quickly attains a placement or home providing long-term stability. The court, or a permanency plan panel designated by an agency appointed by the court, must review the permanency plan not later than six months after the date on which the child was removed from his or her home and every six months after a previous review. In addition, current law provides that the court hold a hearing to review the plan not later than 12 months after the child was removed from his or her home and every 12 months thereafter.

### **Recommendation: Require a Court to Conduct First Review of a Permanency Plan**

The task force chair recommends that the Legislature require that the first review of a child's permanency plan be conducted by court hearing, rather than by a permanency plan panel, no later than six months after the date on which the child was removed from his or her home.

## **Permanency Counselors**

### **Background**

Each CHIPS case has a case manager who coordinates the care for the child and the services to the child's family.

### **Recommendation: Support Court Employment of Permanency Counselors**

The task force chair recommends that the Legislature consider providing resources to counties in support of court-employed permanency counselors in each county who would not be assigned to particular cases, but who could serve as neutral liaisons and sources of information for parents and prospective adoptive families during court proceedings.

## **Grounds for Involuntary TPR**

### **Background**

There are several grounds under current law for involuntary TPR, including abandonment, child abuse, failure to assume parental responsibility, and that a child is in continuing need of protection or services (often referred to as "continuing CHIPS"). The continuing CHIPS ground maybe established by showing that the child has been adjudged CHIPS and placed, or continued placed, outside of his or her home pursuant to CHIPS court orders. In addition, the following must be established:

- That the agency responsible for the care of the child and the family has made a reasonable effort to provide services ordered by the court.
- That the child has been placed outside of his or her home for a cumulative total period of six months or longer; that the parent has failed to meet the conditions established for the safe return of the child to the home; and, if the child has been placed outside of the home for less than 15 of the most recent 22 months, there is a substantial likelihood that the parent will not meet the conditions as of the date on which the child will have been placed outside the home for 15 of the most recent 22 months.

In addition, the continuing CHIPS ground may be established by showing that the child has, on three or more occasions, been adjudicated CHIPS due to abuse or neglect or substantial risk of abuse or neglect and, in connection with those adjudications, has been placed outside of his or her home. In addition, it must be established that the conditions that led to the placement of the child outside of his or her home were caused by the parent.

**Recommendation: Modify the Continuing CHIPS Ground and Create Additional Grounds for Involuntary TPR**

The task force chair recommends that the Legislature modify the continuing CHIPS ground by providing that it may be established by showing that the child has been placed outside of his or her home for 15 of the most recent 22 months.

The task force chair also recommends that the Legislature create additional grounds for involuntary TPR: (1) for a drug-affected child; and (2) based on parental incarceration if the parent is likely to continue to be incarcerated for a substantial period of the child's minority.

**Initiating a TPR Proceeding as Part of a CHIPS or JIPS Proceeding**

**Background**

Under current law, a TPR proceeding is initiated by filing a petition for TPR. The proceeding is independent procedurally from any CHIPS or juvenile in need of protection or services (JIPS) proceeding involving the parent and child.

**Recommendation: Allow Initiation of a TPR Proceeding by Motion in a CHIPS or JIPS Proceeding**

The task force chair recommends that the Legislature create a process by which a TPR proceeding may be initiated by motion in an existing CHIPS or JIPS proceeding as an alternative to the current law requirement that a TPR be initiated by a petition for a new, independent civil proceeding.

## **Parental Right to Counsel in a CHIPS Proceeding**

### **Background**

Under current law, in a proceeding involving an involuntary TPR or a contested adoption, any parent who appears before the court must be represented by counsel, unless the parent is an adult and waives counsel. In addition, an Indian child's parent or Indian custodian has the right to be represented by court-appointed counsel whenever an Indian child is the subject of a proceeding involving the removal of the Indian child from the home of his or parent or Indian custodian, placement of the Indian child in an out-of-home care placement, or TPR to the Indian child. There are also circumstances under which the court may appoint counsel. There are parallel provisions to these in the Juvenile Justice Code, ch. 938, Stats.

Current law does not generally require that a parent be represented by counsel in a CHIPS or JIPS proceeding, except that, under a five-county pilot program, the Office of the State Public Defender must provide counsel to nonpetitioning parents in CHIPS proceedings. The pilot program operates in Brown, Outagamie, Racine, Kenosha, and Winnebago Counties and will expire on June 30, 2021.

### **Recommendation: Create a Parental Right to Counsel in a CHIPS or JIPS Proceeding**

The task force chair recommends that the Legislature require a parent to be represented by counsel in a CHIPS or JIPS proceeding, unless he or she waives counsel.

## **Right to Jury Trial in a TPR Proceeding**

### **Background**

Before a child may be adopted, any existing legal relationship of parent and child must be severed in a TPR proceeding. A TPR may be involuntary or voluntary. An involuntary TPR proceeding is bifurcated. The first part is a fact-finding hearing, which may be to a judge or jury, to determine whether one or more of the grounds for involuntary TPR has been proved. For the second part, if it has been determined that one or more of the grounds for involuntary TPR has been proved, a dispositional hearing is held at which the judge determines whether TPR would be in the best interests of the child.

At the fact-finding hearing, the judge or a jury, if requested, determines whether any of the statutory grounds for involuntary TPR exist. The petitioner must prove by clear and convincing evidence the grounds for involuntary TPR.

### **Recommendation: Eliminate the Right to a Jury Trial in TPR Proceedings**

The task force chair recommends that the Legislature eliminate the right to a jury trial in TPR proceedings and provide that all TPR fact-finding hearings are to a judge.

## **Duty to Participate in a TPR Appeal**

### **Background**

Under current law, a birth parent generally has a right to appeal a TPR order. To initiate the process, the birth parent (“the appellant”) must file a notice of intent to pursue postdisposition relief with the clerk of the circuit court within 30 days after the TPR order is entered. This is commonly done on behalf of the appellant by legal counsel. Within five days after the notice is filed, the clerk of the circuit court must send to the appellant or the appellant’s counsel a copy of the TPR order and other documentation. The appellant or the appellant’s counsel then has an opportunity to request additional information and, following receipt, to file a notice of appeal. Such notice must be signed by the appellant and the appellant’s counsel, if any. The appellant’s counsel may not sign the notice in lieu of the appellant.

### **Recommendation: Require a TPR Appellant to Participate in an Appeal**

The task force chair recommends that the Legislature require a person who appeals a TPR order to participate in the appeal.

## **Foster Parent Rights Relating to a Change in a Child’s Placement**

### **Background**

When a child or juvenile is subject to a CHIPS or JIPS order, the following may request that a court change the child’s or juvenile’s placement: (1) any person or agency responsible for implementing the order; (2) the district attorney or corporation counsel; (3) the child or juvenile; (4) the child or juvenile’s legal counsel or guardian ad litem; or (5) the child or juvenile’s parent, guardian, or legal custodian. If a change of placement request would remove a child or juvenile from a foster home or other placement with a physical custodian, current law provides that the foster parent or physical custodian must be given the right to be heard at any hearing on the request and the right to make a written or oral statement during the hearing or to submit a written statement prior to the hearing. However, current law provides that a foster parent or physical custodian does not become a party to the proceeding solely on the basis of receiving such notice and the right to be heard. The same is true of any request made by a district attorney or corporation counsel to change a child’s placement after a parent’s rights have been terminated.

### **Recommendation: Make Foster Parents Parties in Change in Placement Proceedings**

The task force chair recommends that the Legislature expand the rights of foster parents and physical custodians in any hearing on a requested change in a child’s placement, so that they are parties to proceedings involving a child who has been placed with them for six months or more.

## **Relatives of the Child**

### **Background**

In a case involving a child deemed in need of protection or services, current law favors preserving the family unit and removing a child from the home and transferring custody of the child from the parent only when there is no less drastic alternative. In an intent statement, the Legislature has provided that if there is no less drastic alternative than removal from the home, then a judge must consider transferring custody to a relative of the child whenever possible.

### **Recommendation: Modify the Law Regarding Placement with Relatives**

The task force chair recommends that the Legislature modify current law to clarify that custody should be transferred to a relative only if it is in the best interest of the child. In addition, the task force chair recommends that the Legislature limit the amount of time a relative has to come forward to request custody of the child in a TPR proceeding.

## **Postadoption Contact Agreements**

### **Background**

Under current law, a TPR order and an adoption permanently sever the child's legal relationship with the birth parent and all relatives of the birth parent, and create the legal relationship of parent and child between the adoptive parent and the adopted child. Wisconsin law does not recognize an agreement entered into between a birth parent and a proposed adoptive parent for postadoption contact, commonly referred to as an "open adoption."

However, the Wisconsin Supreme Court has stated that in a TPR proceeding, when considering the impact on the child of severing the legal relationship, a court may, in its discretion, afford due weight to an adoptive parent's stated intent to permit continued visitation between the child and the parent or other relatives, while bearing in mind that such a promise is legally unenforceable after TPR and adoption.

### **Recommendation: Permit Postadoption Contact Agreements**

The task force chair recommends that the Legislature create a statutory procedure that allows a court to approve an agreement for postadoption contact privileges. Under such an agreement, a proposed adoptive parent could allow postadoption contact, the nature and frequency of which may vary, with a former parent or a relative with whom the child has a substantial relationship. Conditions would apply to ensure that the agreement was in the best interests of the child and that the former parent or relative would not interfere with the adoptive parent's relationship with the child.



## **Eligibility for Adoption Assistance**

### **Background**

Adoptions from the child welfare system are often “special needs adoptions” that are eligible for federal adoption assistance payments. Federal law does not specifically define “special needs” and leaves it to each state to specify how special needs is defined. However, under federal law, special needs factors are those factors that, if applicable to a child, make it reasonable to conclude that the child cannot be placed with adoptive parents without providing adoption assistance payments. Generally, these factors relate to ethnic background, age, or membership in a minority or sibling group, or the presence of factors such as medical conditions or physical, mental, or emotional disabilities.

In Wisconsin, statutes require DCF to define, by rule, what it means for a child to have “special needs” for the purpose of adoption assistance eligibility. Under DCF rule, a child may be deemed to have special needs if any of the following are true at the time of adoptive placement:

- The child is 10 years of age or older if age is the only factor in determining eligibility.
- The child is a member of a sibling group of three or more children that must be placed together.
- The child exhibits a sufficient number of identified moderate or intensive special needs, including in the areas of adjustment to trauma, life functioning and social skills, functioning in a child care or school setting, behavioral and emotional needs, risk behaviors, and language.
- The child belongs to a minority race and children of that minority race cannot be readily placed due to a lack of appropriate placement resources.
- The child is an Indian child.
- The child does not have a documented special need, as described above, but is at high risk of developing a moderate or intensive level of special needs based on certain experiences in the child’s life.

### **Recommendation: Expand Eligibility for Adoption Assistance**

The task force chair recommends that the Legislature modify DCF rules to expand eligibility for adoption assistance by decreasing the age at which a child is considered to have special needs and decreasing the size of the sibling group that qualifies as special needs.



MEMBERS OF THE SPEAKER'S TASK FORCE ON ADOPTION

Representative Dittrich (Chair)

Representative Subeck (Vice-Chair)

Representative August

Representative Mursau

Representative Murphy

Representative Kulp

Representative Snyder

Representative Tusler

Representative Stafsholt

Representative Plumer

Representative Ramthun

Representative Crowley

Representative Considine

Representative L. Myers

Representative Vining

Representative Doyle