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Testimony on Assembly Bill 47 *Guardianships of children*

Good morning Chairwoman Rodriguez and committee members. It was my pleasure to serve as chair of the Study Committee on Minor Guardianships alongside Co-chairwoman Senator Latonya Johnson. Thank you for the opportunity today to describe the legislation that our study committee unanimously recommended.

Late in 2017, I was approached by a constituent of mine regarding issues she was having with our state's minor guardianship laws. She is here today to tell her story and share her experiences. In short, our current laws held the potential for her niece, whom she had taken guardianship of, to be put back into an abusive and neglectful situation. After digging into this topic, it became clear that her concerns were echoed by countless guardians and families across the state, each with a different story but all with the same conclusion: our state's minor guardianship laws do not serve Wisconsin children, families, or guardians well.

These stories highlighted not only that there are large problems within our state's minor guardianship laws, but that the solution would be incredibly complex. I knew that speaking with experts and stakeholders directly involved in minor guardianships would provide me, and the legislature as a whole, with the information we need to move towards solving this problem. Bringing this issue to the Joint Legislative Council to form a Study Committee was the best way to provide the insights needed for legislation that can make a real, lasting difference for those affected by minor guardianship laws.



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The committee was tasked with examining guardianships under Chapter 54, which governs guardianships of both adults and minors, and recommending legislation that creates procedures specific to minor guardianships. Note that minor guardianships under Chapter 54 do not require involvement by the child welfare system and, therefore, are informally referred to as “private” guardianships. It is my understanding that Chapter 54 has been criticized for being unworkable in the context of minor guardianships, because many of its provisions apply only to adults and because the statutes do not reflect applicable case law.

To address these concerns and execute the committee’s charge, the committee was comprised of 3 state representatives, 1 senator, and 7 public members, including attorneys, judges, and advocates for child-related issues. The committee met four times from July to November of 2018.

As a starting point for its work, the committee drew upon legislation introduced in the 2009 and 2011 legislative sessions that was the product of a working group within the State Bar of Wisconsin’s Children and the Law Section. Some members of that working group also served as study committee members.

However, the committee deviated in part from the State Bar’s draft based on the scope of the committee’s charge and the committee’s independent study of the issues, which included testimony from various speakers, such as private guardianships, attorneys, a guardian ad litem, a litigant in a minor guardianship, and the Department of Children and Families.



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Based on the testimony provided, the members' professional experiences, and thorough discussions over several meetings, the committee recommended what is now Assembly Bill 47, which makes various changes relating to private minor guardianships. The bill draft's key provisions include:

- A new statute governing private minor guardianships in a new subchapter under Chapter 48 of the statutes, which transfers jurisdiction of such actions from the probate court under 54 to the children's court.
- Creation of 4 types of private minor guardianships: full; limited; temporary; and emergency.
- Court procedures and legal standards specific to the new types of private minor guardianships.
- New guardian ad litem duties and responsibilities specific to private minor guardianships.

In reaching unanimous consensus on the bill draft, the committee tackled several complicated issues, including the constitutional rights of parents, the best interests of children, and the role of the guardian ad litem. I am proud of not only this final product created by the committee, but of the level of engagement and respect demonstrated by committee members throughout the process.

Chairwoman Rodriguez, again, I appreciate the opportunity to come before you to have this important conversation today. At this time, I'd be happy to answer any questions you or the members of the committee may have.



STATE SENATOR
LaTonya Johnson

WISCONSIN STATE SENATE

6TH DISTRICT

Good morning Chairwoman Rodriguez and committee members,

Last summer, I had the honor of serving as the vice chair of the Legislative Study Committee on Minor Guardianships. The study committee, chaired by Rep. Steineke, brought together a wide variety of legal subject matter experts and child welfare advocates to reform Wisconsin's laws regarding private minor guardianships. The primary issue addressed is that Chapter 54, the current location of our private guardianship statutes, treats adult and minor guardianships in the same way. This situation has resulted in inconsistency among the courts and confusion for families attempting to navigate the private guardianship process.

Assembly Bill 47 is the result of years of work by the State Bar's Children & the Law Section as well as the deliberations of study committee members over this past summer. The bill, which was accepted unanimously by the Joint Legislative Council, properly puts minor guardianships into Chapter 48—The Children's Code—and, among numerous procedural clarifications, ensures that a child's best interests will be taken into account when determining whether to terminate a properly granted minor guardianship.

The State plays an important role in protecting the rights of children, and nowhere is that role more important than in the decision to place a child outside of their home, but we all know of situations where seeking a guardianship was the best decision for the child and for their family. Sometimes a guardianship only needs to be temporary or limited in scope, but even where full guardianship is appropriate, it is important to maintain our focus on the best interests of the child. Creating a clear and fair process for granting private minor guardianships will help Wisconsin families who are facing these difficult decisions.

AB 47 is a thoughtful and thorough attempt to create a minor guardianship process that safeguards both parental rights and the child's well-being, and I am extremely proud of the bipartisan, collaborative and constructive process that produced this proposal. I would like to thank Chairman Steineke, my fellow study committee members, and the Legislative Council staff attorneys for their work on this important legislation, and hope that these long-awaited reforms will be enacted into law without delay.



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Governor Tony Evers
Secretary Emilie Amundson

Secretary's Office

TO: Chairman Rodriguez and Members of the Assembly Committee on Family Law

FROM: Fredi Bove, Policy Initiatives Advisor, Department of Children and Families
Therese Durkin, Chief Legal Counsel, Department of Children and Families

DATE: May 21, 2019

SUBJECT: 2019 Assembly Bill 47

My name is Fredi Bove and I am a Policy Initiatives Advisor for the Department of Children and Families (DCF). I am accompanied by Therese Durkin, DCF Chief Legal Counsel who will provide the Department's testimony for information only.

Thank you for the opportunity to provide testimony on Assembly Bill 47. We support improving the law related to private minor guardianships to better meet the special needs of minors and clarify private guardianship procedures. However, we are concerned that the bill extends beyond the scope of private guardianship actions and has repercussions on the public child welfare system.

The Department appreciates the Joint Legislative Council's Study Committee on Minor Guardianships' attention to and review of this issue, and its consideration of comments that the Department provided to the Study Committee. The Department also appreciates the State Bar Children and Law Section for consideration of comments the Department provided to the Section as it developed the draft legislation provided to the Study Committee. The Study Committee was responsive to and addressed some of the concerns raised by the Department related to the bill's impact on the child welfare system. However, some of the Department's concerns regarding the impact of AB 47 on the child welfare system remain. We are concerned that the bill creates unforeseen and unintended, confusing, and potentially adverse consequences for the public child welfare system. The Department has reached out to both Representative Rodriguez and

Representative Steineke to provide feedback and to offer to collaborate on this bill. The Department would be pleased to continue working with this Committee and others to refine the bill to eliminate unintended and potentially negative consequences.

Further consideration should be given to clearly separating private minor guardianships processes from public guardianships under the child welfare system. As currently drafted, AB 47 includes the procedures and standards for appointing private guardianships as a new statute in Chapter 48 of Wisconsin Statutes. As the Wisconsin Supreme court said in *State ex Rel. Harris v. Larson*, 64 Wis. 2d 335 (1974), Chapter 48 is a chapter of carefully defined child welfare procedures and dispositions and carefully detailed agency and judicial authorities, and if an authority is not expressly granted in Chapter 48 it does not exist. Combining private minor guardianship procedures into the carefully defined Chapter 48 public child welfare proceedings creates confusion and uncertainty about the interplay of private guardianship and existing public child welfare procedures and authorities.

The bill impacts public resources and funding. The bill imposes burdens on public child welfare agencies and other entities to provide information for private guardianship proceedings beyond the scope of information that is provided for public child welfare proceedings, which is limited to information that is relevant to the child welfare proceeding. Responding to broader record requests is time intensive because the requests require careful review and redactions of information to protect the confidential information of family members and others which may not be relevant to the minor guardianship proceeding and may be confidential under other law.

The bill, as drafted also potentially impacts federal foster care funding by authorizing changes in a child's placement in certain private guardianship proceedings for children in the care of public child welfare and delinquency systems, which may violate federal funding requirements for those children.

The Department supports the bill's improvements to private minor guardianships proceedings, but we believe that Chapter 48 should be reserved for addressing public child welfare matters, and to avoid unintended impacts on the public child welfare system, the Department strongly recommends that the statutory provisions related to minor private guardianships be placed in Chapter 54 or a separate statutory chapter.

There are other statutory schemes related to child custody that are located outside of Chapter 48 that pertain to child custody matters, for example, Chapter 767 pertains to private action affecting the family, including private child custody and visitation actions, and may be a more appropriate place for private guardianship actions.

In conclusion, the Department encourages the Committee to refine AB 47 to meet both the interests of those involved in private minor guardianships and the public child welfare system. The attached comments highlight a few of our specific concerns about intertwining private guardianship provisions with procedures for dealing with children needing public child welfare and juvenile justice services. The Department would be pleased to work with the Committee and others on such refinements.

Thank you for your consideration of the Department's testimony.

Wisconsin Department of Children and Families Comments on 2019 Assembly Bill 47

1. Section 21, P. 14, lines 1 and 6, section 48.9795(2)(b)2. Does the reference to a pending action under ss. 48.13, 48.133 and 48.14 include change of placement proceedings under ss. 48.217 48.357? In other words, if a child is a subject to one of the listed actions, does this mean that the private guardianship petition will be stayed until those proceedings are completed?
2. Section 21, P. 14, lines 12-13, section 48.9795(2)(b)4. Does this provision allow a court to appoint a private guardian as co-guardian with a public agency guardian?
3. Section 21, P. 15, lines 1-14, section 48.9795(2)(d). This provision appears to change or create confusion regarding a public agency's guardianship authority. The provision says that a full private guardian has rights in addition to a child welfare s. 48.023 guardian, including the right to determine visitation subject to a court's jurisdiction and to move out of state. Section 48.023 does not limit a guardian's authority to determine visitation or move out of state (subject to certain required procedures for changing with whom a child lives).
4. Section 21, P. 17, lines 1-14 section 48.9795(3)(c). This provision expands records that a court must order be provided upon request to a GAL in a private guardianship proceeding beyond the records provided in other child welfare proceedings. This provision requires that the court order access to a non-exhaustive list of records for every private guardianship proceedings including but not limited to: law enforcement records; court records in proceedings under chs. 48 and 938, Stats.; social welfare agency records; abuse and neglect reports and records; pupil records; mental health records; and health care records. This may increase costs for public agencies and other entities that maintain these types of records as these records may reference confidential information not relevant to the private guardianship proceeding that is confidential under various laws, and will require review and redactions by the agencies and entities.
5. Section 21, P. 18, lines 6-10, section 48.9795(4)(a)2.

This provision allows a court to authorize any person to file a private guardianship proceeding in a pending ch. 48 child welfare proceeding if the petition is consistent with the child's permanency plan and does not seek to change the requirements of a preexisting court order.

- Currently, Chapter 48 limits who may file actions in public child welfare proceedings as a gatekeeping function, which limits the scope and duration of adversarial litigation and its impact on a child and the child's time to a stable and permanent living situation.
- It is not clear what is meant by the requirement that a private guardianship petition must be consistent with the child's permanency plan. When a new permanency plan is submitted for an annual judicial review, does this refer to the currently approved permanency plan or the new permanency plan during a permanency plan hearing? Does it mean that the guardianship petition must be consistent with the general permanency goal, such as adoption, or a goal for a child to be adopted by a certain person?

- Since these limitations only apply to actions “pending” under certain Ch. 48 or 938 proceedings, does this allow a private guardianship petition to proceed without these limitations once a Ch. 48 pending action is completed? In other words, may a guardianship petition then have these effects on an order that results from the pending Ch. 48 action, e.g., even it is contrary to the permanency plan or the requirements of that order?

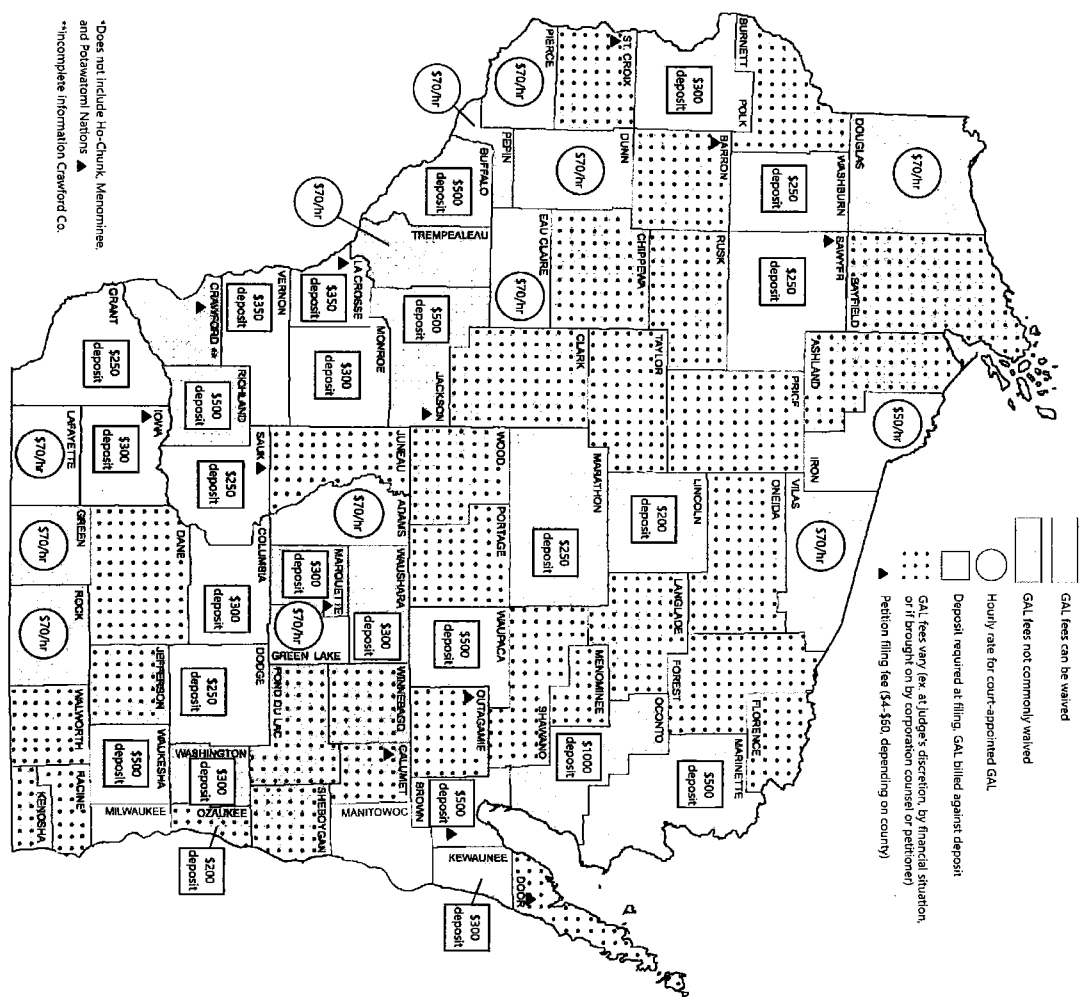
6. Section 21, P. 24, lines 1-14, section 48.9795(4)(f).

- This provision says that a private guardianship order for a full limited or temporary guardianship may not change the placement of a child under the supervision of a court pursuant to s. 48.13, 48.133, or 48.14 or ch. 938. This indicates that an emergency private guardianship order can change the placement of a child under those orders. When a child is under supervision of a court pursuant to s. 48.13, 48.133, or 48.14 or Ch. 938, federal funding requirements require certain court findings and procedures to change the child’s placement that are not provided for in the private guardianship proceedings.

7. Section 21, P. 28, lines 1-4, section 48.9795(6)(d). Consider further clarifying this provision pertaining to the duration of an emergency guardianship under 48.9795(6)(a). As written (6)(d) says that an emergency guardianship is limited to 60 days or when “the situation of the child that was the cause of the emergency” terminates as determined by the court.

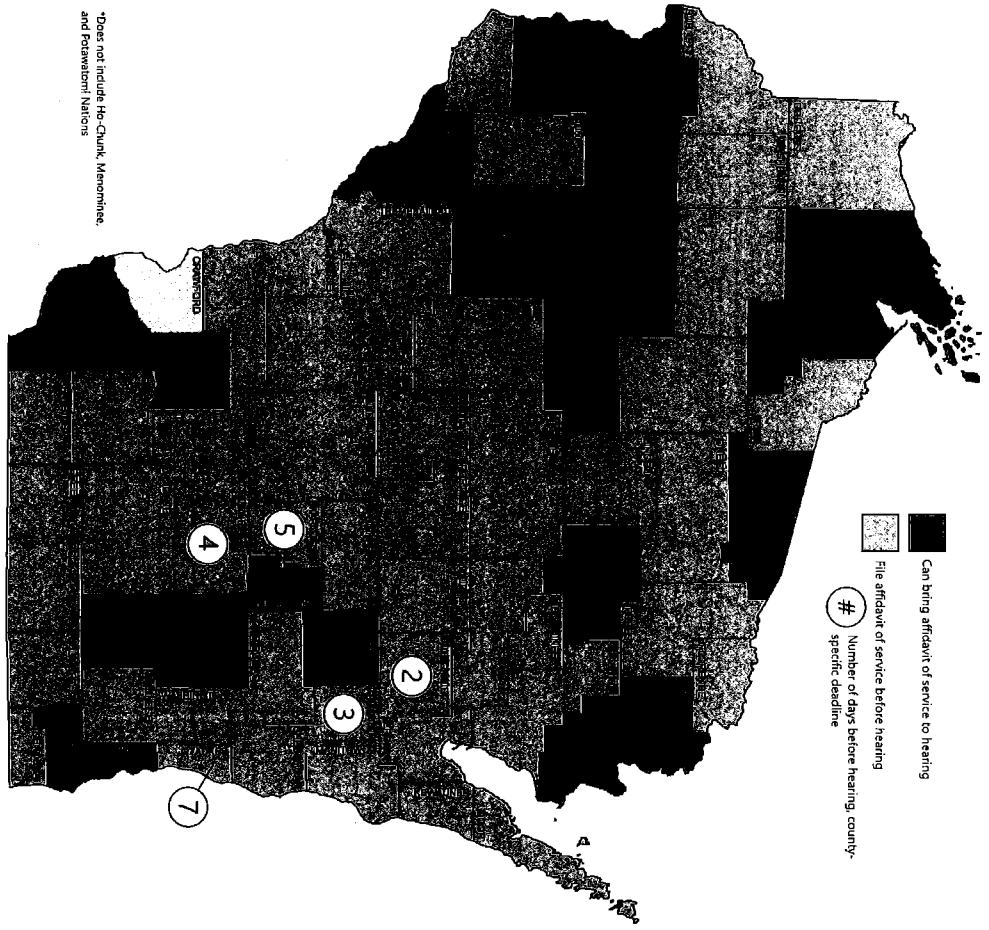
8. Section 21, P. 29, lines 8-15, section 48.9795(8)(b)2. Provisions for appointment of a successor guardian when there is no guardian (following death, removal or resignation of a guardian) do not appear to require that the same limitations that apply to initial guardianship proceedings related to ch. 48 and 938 proceedings and dispositions, but instead only allows a court to impose the same requirements if requested.

Fees by County



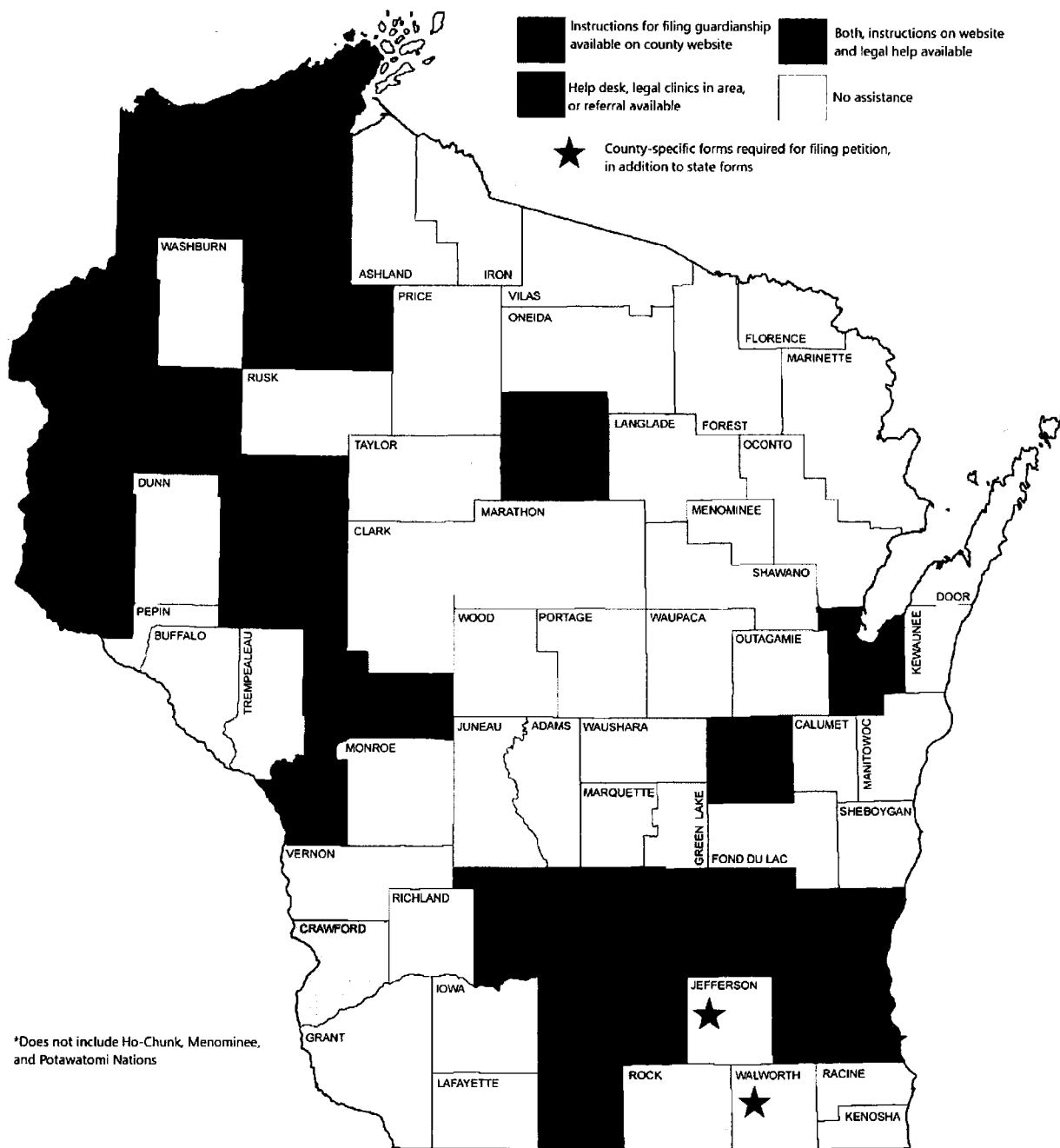
*Does not include Ho-Chunk, Menominee and Potawatomi Nations
 **Incomplete information Crawford Co.

Service Requirements by County



*Does not include Ho-Chunk, Menominee, and Potawatomi Nations

Legal Assistance and Required Forms by County



Specific Type of Assistance

Bayfield: Attorney Resource List (some have sliding fee scales)

Chippewa: Chippewa Bar Association has a legal clinic every 3rd Wednesday of the month

Columbia: Wisconsin Law Library

Dodge: Clerk of Courts has a pro bono attorney

Eau Claire: L.E. Phillips Legal Clinic

Green: Legal Action of Wisconsin

La Crosse: Free Legal Services meets every 3rd Wednesday of the month at First Baptist Church

Milwaukee: Kids Matter

Ozaukee: Has an attorney that comes in on Wednesdays 11:30-12:30 that helps with family law matters

Pierce: Legal Clinic run in courthouse every 4th Tuesday

St. Croix: St. Croix Valley Bar Association meets at the courthouse every 3rd Wednesday of the month, 6-7 :30 p.m.

Sawyer: Judicare

Waukesha: Can fill out a form to meet with an attorney at their legal clinic for an hour

Winnabago: Refer them to Legal Assistance Clinic. Meets at Menasha Public Library (440 First St): the first Tuesday of each month, 4:00-6:00 p.m., Neenah Public Library (240 E. Wisconsin St): Public Library (106 Washington Ave): the third Tuesday of each month, 4:00-6:00 p.m. the second Tuesday of each month, 4:00-6:00 p.m., and Oshkosh

CHILDREN & THE LAW SECTION

To: Members, Assembly Family Law Committee
From: Children & the Law Section, State Bar of Wisconsin
Date: May 21, 2019
Re: AB 47 – minor guardianship

The Children & the Law Section of the State Bar of Wisconsin supports AB 47, which revises and updates current law regarding the guardianships of children.

This bill seeks to repeal those portions of Chapter 54 which provide for the appointment of a guardian of the person of a minor and, in its place, create Wis. Stat. § 48.9795. The Children & the Law Section of the State Bar of Wisconsin believes this legislation – and the insertion of this law into Chapter 48 - is necessary to improve the legal process for meeting the needs of children if the appointment of guardian for a child becomes necessary. Guardianship of the estate of a minor will remain in Chapter 54.

When Chapter 880 was repealed and Chapter 54 created, the primary focus was on improving how guardianships for the elderly and disabled were sought, granted and administered. While guardianships for children were included in that rewrite, the needs of children under guardianship are separate and distinct and, therefore, not fully addressed in Chapter 54. The development of mandatory circuit court forms for Chapter 54 guardianships brought the distinctions between adult guardianships and minor guardianships into sharp focus. Judges, guardian's ad litem, private practitioners, corporation counsel, district attorneys along with legislators and other stakeholders participated in the Study Committee on Minor Guardianship to fashion a legislative solution to these deficiencies in the current law. The collective efforts of the study committee resulted in recommendations that were accepted unanimously by the Joint Legislative Council resulting in the introduction of AB 47. This proposed legislation inserts those changes that are not addressed in Chapter 54 and inserts this law into Chapter 48 in order to significantly improve the legal process for meeting the needs of children whose parents are unable to provide those needs as legal guardian.

Some of the specific issues which are addressed by the creation of Wis. Stat. § 48.9795 include the development of four distinct categories of guardianship (full, limited, temporary and emergency), clarification of who is an interested party as it relates to a minor, clarification of parental rights when a guardianship is granted, clarification of the responsibilities and rights of the guardian, clarification of the legal standard and burden of proof for petitioning for and terminating a guardianship as well as clarification of the procedural steps for each of these proceedings and clarification of the duties of a guardian ad litem. The bill also incorporates the case law standard for an involuntary removal of guardianship rights from a parent.

The guardianship reform bill for minors provides a comprehensive change to the existing guardianship laws that impact children by eliminating confusion, inconsistency and barriers that currently exist for implementing guardianship proceedings for a minor in Wisconsin as follows:



STATE BAR OF WISCONSIN

1. Current guardianship statutes under Chapter 54 combine both adult and minor guardianship law. Unfortunately, the procedures that exist under Chapter 54 for adults needing guardianship orders are not differentiated for juveniles. As a result, the current law under Chapter 54 is unable to respond to the unique issues that only impact minors requiring guardianship such as emergency, temporary, limited or full decision-making authority.
2. The body of case law regarding minor guardianship which has evolved from the former existence of guardianship law under Chapter 880 and currently Chapter 54 is not incorporated into the existing statutes. As a result because of the lack of clarity in existing statutes, decisions by Courts in minor guardianship cases are frequently inconsistent on a state wide basis.
3. The proposed reform bill removes these impediments in the following manner:
 - a. The guardianship law for minors is separated from the existing guardianship law affecting adults in Chapter 54 and is placed in Chapter 48 – The Children’s Code. This provides an ease of reference for those accessing all of the guardianship laws of minors. This combines all minor guardianship cases under Chapter 48 whereas currently some types are vested in Chapter 48 whereas others are contained in Chapter 54. This will eliminate confusion and increase ease of access and application. Moreover, Chapter 48 has well defined procedures and well settled law which will benefit the courts and practitioners with placement of minor guardianship laws in Chapter 48.
 - b. The four specific types of guardianships affecting decision making on the issues affecting minors is specifically addressed under this proposed legislation whereas the current law under Chapter 54 for adults does not address this. This legislation creates four types or categories of guardianships ranging from emergency, temporary, limited and full guardianship. These categories specifically address the unique decision-making problems that caretakers, parents and the Courts must face with a minor. With the creation of these categories, private family matters are offered a flexible legal solution without involving governmental agencies.
 - c. The procedural legal requirements that accompany these types of guardianships are designed to respond to the specific time frames that the particular type of guardianship requires. Emergency guardianship procedures are crafted so that the court is able to respond quickly when necessary without having to follow the cumbersome requirements for adults under Chapter 54, whereas other non-emergent categories of guardianships have different procedural requirements that provide for timely decision making as well as clearly delineating the length of time that such orders will remain in effect.
 - d. The body of case law which has evolved interpreting minor guardianship law under the prior Chapter 880 and the current Chapter 54 is now incorporated into this reform bill. The lack of clarity currently leads to speculation and often inconsistent

application of the minor guardianship law state wide. Incorporating the case law standards into the legislation, along with clear criteria for each step in the process will eliminate the speculation and confusion that currently exists with minor guardianships under Chapter 54.

The Children & the Law Section believes this legislation vastly improves the guardianship law as applied to minors and encourages your support of this important legislation for children.

For more information, please do not hesitate to contact our Government Relations Coordinator, Lynne Davis, ldavis@wisbar.org or 608.852.3603.

The State Bar of Wisconsin establishes and maintains sections for carrying on the work of the association, each within its proper field of study defined in its bylaws. Each section consists of members who voluntarily enroll in the section because of a special interest in the particular field of law to which the section is dedicated. Section positions are taken on behalf of the section only.

The views expressed on this issue have not been approved by the Board of Governors of the State Bar of Wisconsin and are not the views of the State Bar as a whole. These views are those of the Section alone.

May 21, 2019

I am going to begin today by saying this testimony almost didn't happen. As I got the kids settled so I could type last Friday evening, my computer froze and I couldn't get it to reboot. I gave up until Saturday morning. Still no computer. Then I was approached by one of the boys with an itching head that turned out to be head lice. It took several hours to treat his hair, pick out lice, and try to get a comb through a shrieking boy's head all the while certain I had lice too. The washing machine I have barely works and I had to spend a lot of time by it manually shifting it into the next part of the cycle doing the many loads of laundry caused by trying to quickly get rid of the lice and also just our weekly laundry. By then it was time to mow the yard which takes forever because my old lawn mower clogs up and quits every 5 minutes. The afternoon was over and it was time to make dinner which has to be thought out so that the right foods are served or one or both boys won't eat. Afterward it was time to clean up the house but the vacuum wouldn't work so I had to cobble it together again. I still had nothing typed. A sleepless Saturday night followed because both boys have sleep issues and can never settle long enough to sleep more than a few hours at a time. They are always afraid someone is going to get them or something is going to happen. This is always worse on weekends when there is more traffic on our street. Even in the hottest part of summer, they will never sleep with a window open due to their fear of someone coming in. Sunday morning I went to work to try to use a computer but they were also not working. Since I was at school, I worked on a few of the countless tasks that are never done. Then it was off to pick up supplies for the Girls on the Run group that I coach after school. After a couple of hours helping my mother out, I ended up at the grocery store because we haven't had milk or bread for days. Then home again to make dinner. I noticed that one of the boys had pulled out the rest of his eyelashes on his left eye. His anxiety causes him to always pick or pull his hair, skin, scabs, etc. When he was younger he would pull out teeth that weren't even loose. The other boy was still in sensory overload from having his hair combed repeatedly due to the lice the previous day. Finally time to get the boys off to bed and type for a couple hours until they wake up around 2:00 a.m.

I made this testimony happen because the trauma and anxiety that has plagued both boys in my care, is in my opinion a direct result of not only the abuse and neglect they have suffered but also because of their long-term guardianship status. What has become typical for my family should never become the norm for any other children and their caregivers. I am testifying today in full support of AB47 being sponsored by Representative Jim Steineke. Our family has endured 10 ½ years, yes you heard me correctly, 10 and one half years of guardianship limbo as the direct result of the current guardianship legislation in Wisconsin. The current law does not meet the needs of children who have to endure much uncertainty in an often unstable living situation that gives parent considerably more rights than their children. In my opinion, minor guardianships as they are recognized under current law were meant to be short-term placements when parents were unable to care for their children. For example this could be due to an extended illness or accident, military deployment, or short-term incarceration. It should not extend for an entire childhood as continues to be the case for the boys in my care.

As you consider this legislation I ask you to consider these questions I have had for years. How are the best interests of a child met when a parent can continually change their mind and file to terminate a guardianship and then withdraw the petition? Why children are returned to dangerous living situations that they would not be sent back to if their case was in family court? Why do the children often not get

legal representation when their parents frequently do? What legal rights and supports do children have when they age out of a minor guardianship? What permanent damage is done to their ability to trust and make long term relationships? As a nonrelative guardian, our family is basically not recognized as a family and the children have few if any rights under the current system. Once a year I fill out a form and mail it back to the Probate Court. That's it. No contact other than a single sheet of paper that takes a couple minutes to complete is required. That is all a year in their lives matters at this point. Just be sure the form is filed. The length of time that I speak today will be longer than the amount of time it has taken me the past 10 years to complete the county's yearly guardianship paperwork.

Today I am going to speak about some of the bigger systems issues and how they have impacted and forever altered the lives of two boys Mark age 10 and Luis age 12. Of course, it has completely caused me to alter my life as well. I am at the age where all my friends' children are grown but I rarely go anywhere except work. It's extremely difficult to find someone to come to my home or find a place for the boys to go for even a few hours. They are frequently not welcome to join social outings due to their behavior. I have been a teacher for 32 years and have seen it all. I have taught 4-year-olds to eighth graders with numerous challenges and disabilities. I have had countless students who were homeless, others with incarcerated or murdered parents, unfortunately more who suffered physical, emotional, and/or sexual abuse. I have had kiddos who were in their first, second, fifth, or more foster care placement. I have had several students who were alcoholics, a couple who found their caregiver dead or who tried to kill themselves as young as 7 years old. However, one of my most disturbing moments as a teacher involved three boys who lived with their grandmother who had been their guardian for most of their lives. Their mother whom they had seen a few times in many years showed up at school with termination of guardianship papers and the police to take the boys. The seventh grader tried to get away and was carried out of the building by two police officers kicking, clawing, and screaming, begging not to have to go. How could that ever be in the best interest of a child? The truly sickening part for me is that this could also become my boys' reality.

Our family's continuing saga caused by guardianship limbo began on November 18, 2008. Luis came to live with me that day followed by his brother Mark the next. However, our story actually started on a chilly November day just before Thanksgiving in 1993 when their mother came home from school with me. I was married at that time and my husband and I had gotten licensed to do respite foster care for Dane County. We had only done a couple of days of respite when I was called to our school office that afternoon. There was a kindergartener who needed a home that night as they feared for her safety if she returned home. The county social worker told our school social worker that they didn't have a place for her that evening. Her teacher knew I was licensed as a foster home. The girl came home with me and stayed eight years.

The more I got to know her, the more it became apparent that she had experienced extreme physical, emotional, and sexual abuse. Her behaviors were relatively normal and then would become unpredictable and aggressive. She did significant damage to our home and vehicles, touched other children inappropriately, tried to jump out of moving vehicles, stood over our bed with a knife, killed and injured our pets, and physically assaulted me and another child in our home. She did not know how to relate to adults who didn't scream at her, hurt her, or punish her for minor things. We stuck in there with her during numerous crises, emergency room visits, failed visits with her birth mother, hospitalizations for mental

health, and juvenile charges. We were banned from most of our family and friends homes and were kicked out of stores due to her outbursts and stealing. There were periods of time when weekly police calls were the norm. Right before she started eighth grade, my husband moved out and that was the beginning of the end. Her violence against me increased. One morning she threw me over the coffee table and broke several of my ribs. She left my home and for the next four years was in a series of mental health facilities, foster homes, group homes, and detention facilities. Each time she took off from a place she would contact me or show up on my doorstep.

In September of 2006 she showed up and was pregnant with Luis. She had just turned 18 two weeks before and the father was almost twice her age. I helped her find housing and get medical care and was there to support her. I was the only one there for her on the day of his birth. Luis came into this world during an emergency C-Section that went much like something you see on a TV show. Little did I know that Luis' birth was just a sign of all the drama yet to come. Luis' birth mom struggled caring for him despite all the resources and support she received from individuals, local, and county agencies. Her relationship with Luis' father was often strained and violent, both of them yelled, hit, and threatened each other.

His birth mother left Luis with me the day she got out of the hospital and giving birth so she could go meet friends. Countless times in his first few month of life, Luis was taken to parties where excessive drinking and drug use took place. I was sometimes called to pick him up. Several times he smelled so strongly of marijuana, I wondered how I would ever be able to explain the smell in my car and a baby who was high. Other times he was dropped off at my school or with my high school aged son, so that his mother could go out that afternoon and evening, sometimes extending to overnight. She was oblivious that I could not have an infant at my work. I would have to quickly make sub plans and get another teacher to cover my classes for the rest of the day. When Luis was able to open doors, he would often wander away from her apartment and she didn't know he was gone until a neighbor brought him back. He ate whatever he could find lying around in their apartment. He often had severe diaper rash and chronic diarrhea. He had an eye infection that was so severe he should have been hospitalized but she refused. He continued gaining weight because he primarily ate fast food. Multiple referrals were made to Dane County Human Services (DCHS).

When Luis was 16 months old, Mark was born in June 2008. I had agreed to watch Luis during the time their mother was in the hospital. The issue is that she never took him back for most of that summer. He stayed with me for weeks at a time. When school started in the fall, Luis was with me most weekends and one to two days during the week. I was trying to give her time to bond with Mark. What I didn't know until later was that she was constantly leaving Mark with friends and acquaintances and going out. Mark was not held, rocked, or even talked to. He spent almost the first six months of his life strapped into a car seat. He was force fed his bottle and when he took too long to eat, the nipple was cut off so the formula just gushed down his throat and face. This has led to swallowing and eating issues for him.

Their mother left their father and went out of state with another man in November 2007. Luis was left with his father who called me to come get him. I went the next day, November 18, and saw dirty bottles with curdled milk that Luis was attempting to drink out of. Dirty diapers were overflowing from the

garbage can and trash was on the floor. Luis was unkempt, exhausted, and had green diarrhea. He had a prescription that had been filled 6 days earlier and it was not even opened. I took Luis home with me.

The next day, November 19, 2007, I called social services and reported the conditions in their apartment and that Mark may be missing as neither his father or I knew where he was. Their mother wouldn't answer any phone calls. I met with a social worker in the afternoon. Later that day I received a call that Mark had been found. I was to go pick him up in a parking lot at a nearby apartment complex. The scene could have been from a movie. I pulled into a dark parking lot. A car pulled up and a man who I didn't know got out and handed me Mark and some clothes that were wet and too small for him. Mark had one bottle with pieces missing and enough formula to make one bottle. The man who met me wanted me to pay him \$100 for taking care of Mark because that was the deal he had made with Mark's mother. And that is how our Mark and Luis came to live with me.

The next few months were a whirlwind. I was now suddenly parenting three boys by myself. My son was a sophomore in high school at the time. I had a 75-90 minute round trip drive twice a day to take the boys to their daycare. After less than two weeks the boys were kicked out because I attempted to get them into a daycare closer to my home. Their mother needed to sign forms to continue and she was gone. Also she had daycare funding and it was not valid if they were not in her care. This was to be the first of countless daycare issues.

About ten days later, their mother returned to the area with her new boyfriend. The boys' father broke into their apartment and attacked them. He threatened that he was going to kill them. He beat their mother so badly that she was unrecognizable. He was arrested and spent 10 months in jail and had an INS hold placed. I was told he would be deported when his time was served. She left the state again.

After the boys lost daycare, I frantically searched for childcare. I couldn't afford any of the centers and didn't qualify for funding. I found an elderly woman to take Luis but she couldn't take Mark. It wasn't a good fit but one made out of desperation. I couldn't find anywhere for Mark. He ended up spending the next month staying with whichever one of my friends was available. Sometimes he stayed a day, other times he stayed up to a week. This was not at all ideal for a child who had just done the very same thing with his mother but I was left with no other choice. Dance County Human Services repeatedly told me there was nothing they could do to help us.

On January 14, 2009 I officially became Mark and Luis' guardian. I had to do this to secure medical care and childcare for them. I could not take them to the doctor or enroll them in any sort of daycare legally without becoming their guardian. It was not what I had planned to do but Luis needed medical care and I needed to work. Also, the constant change in childcare providers was taking a toll on Mark. Knowing what I know now, I have to say that I never would have willingly become their guardian because it set them up for a childhood of uncertainty.

Neither of the boys was in a good situation and I spent weeks calling almost every name in the child care listings to find another place. By chance I came across a woman who saved me. She was also a non-relative guardian of a boy because his father was incarcerated. She knew the predicament I was in. She was willing to take both boys for about \$900 a month. It was a deal at the time, but still pretty expensive for a now

single parent of three boys. Luis' behaviors continued to escalate and he was eventually asked to leave the in-home place he had been at. A series of several daycare centers followed. He would do okay for a while and then be asked to leave. During this time he also received services from the Birth to Three Program and then transitioned to Early Childhood Special Education Classes, and a supported 4 year-old-kindergarten. He continues to receive special education services since he was in kindergarten. He has had good years and difficult years, often dependent upon who is teacher, case manager, or therapist was at the time. After school care continued to be a problem. He was suspended for fighting, swearing, aggression, and other unsafe behaviors. He and his brother stayed at our neighbor's after school during 3rd and part of 4th grade. After threatening them repeatedly and being violent they demanded I pick him up immediately which happened to be in the middle of parent-teacher conferences. He was cabled to a community center for the rest of the year with many pleadings from me that he not be permanently kicked out. In 5th grade he was administratively transferred to a different school. Madison School Community Recreation (MSCR) provided the after school care at the site. When MSCR, which is supposed to be an inclusive program asked him to leave their program several months into the year in 2017, I had reached the end rung of the daycare ladder. I finally had to have him transported from his school to my school at the end of the day because I couldn't find care. If I had been able to afford the skilled childcare supports that Luis needed, he would have been able to receive care in my home or be supported in a center and not have to be bounced from place to place based on what I could afford at the time. The irony of it was that his brother had to leave most places too. The logistics of going to two different places in the morning and for pick-up after school was impossible.

From January 2009-June 2009, their mother visited a few times for 10-15 minutes at a time. She demanded a TV that I had taken from her apartment along with some of the boys' things. For the next few months she alternated between wanting the boys back, telling me I was stuck with them forever, and saying she was terminating her rights. She then wanted just one of them back and that boy often changed and in May 2009 she filed to terminate the guardianship. There was a hearing in June 2009. At that point their daycare provider saw the boys more in one day than their mother had seen them in six months. She withdrew her petition.

Both of the boys showed many signs of neglect, abuse, and trauma. Mark had literally not been touched and cuddled. For over a year I could only hold him for very short periods of time before he screamed like he was in dire pain. He would sleep most of the time and only interacted with Luis. Mark is still not comfortable sleeping alone or without a light on. Luis would never go fall asleep unless he was touching someone. If I moved him or left the room after he fell asleep he would wake and scream until I went to him. For years he sleepwalked and had night terrors. I can only image what he witnessed between his parents.

Mealtimes were a chaotic scene. Mark needed total quiet to eat what little I could get him to. His brother gobbled his meals quickly and hid food all around the house. Luis tried to run out of the house any chance he got. The daycare provider and I had to install locks up high on the doors and keep them locked all the time. Mark wouldn't move off any blanket you put him on. He couldn't stand to be on grass or in sand or water. It took years of gentle persistence, patience, and caring to get them to trust me. Luis lacks boundaries and will hug or touch anyone while Mark will only tolerate brief hugs or touching.

In May and June of 2009 I took Dane County Human Services training to recertify my foster care license. The county required me to go through the entire training to place Mark and Luis with me as foster children. I had to scramble each week to get childcare coverage so I could attend the classes I could basically have taught. The social worker completed a Child in Need of Protective Services (Chips) petition but never filed it with the county. On August 8, 2009 I received referral paperwork officially placing the boys with me as special needs foster children due to their significant needs. The paperwork was backdated to be effective 7-15-09. Several days later I received notice that no Chips petition had been filed so Mark and Luis were not foster children and we were not entitled to any county services. I had spent months following Dane County's rules and regulations by getting my foster care license and then the county never followed through for the boys. In a further jab to our family, DCHS promptly revoked my foster care license. If the boys had been placed in foster care in 2009, their parents would have had no more than two years to make the changes needed to get them back. If they weren't making that progress, the county would have worked to terminate their parent's rights and the boys could have been adopted by ages 3 and 4. Instead, the county dismissed them and let their parents keep all their rights and at almost 11 and 12 years old they are still without permanency.

In October 2009 there was a hearing because their mother wanted to terminate the guardianship again. By this time both of the boys were enrolled in Birth to Three Services due to their delays in speech, language, motor skills, and developmental delays. All of their providers testified that it was not in their best interest to return to their birth mother's care. She had demonstrated numerous times that she was unwilling to put her needs above theirs or to follow through on the services that they needed. I actually wanted to have the guardianship end at this point and did little to win over the Court Commissioner. When I learned that their mother's claim had been dismissed and they would remain with me, I broke down in tears due to frustration not relief. Things were going to continue as they had and both boys were showing more and more signs of their previous abuse and neglect.

In July 2010 their mother had another child. Although I never visited her, I spoke with her several times on the phone. I was so alarmed by our conversations that I called Dane County Human Services and reported her when her newborn was days old. When he was only two weeks old he suffered multiple skull fractures. No one seemed to know what happened. She was so drunk at the time she didn't know what to do. Fortunately a friend got the child medical care. That child was placed in protective custody. At that time, I tried to get the county to once again file a Chips petition on Mark and Luis' behalf. They wouldn't even consider it because they were living with me.

In August 2010 their mother was charged with felony neglect. She was arrested in October 2010 and formally charged on 11-2-10 with Neglecting a Child (Consequence is Great Bodily Harm). She served time in the Dane County Jail for the charge. In July 2011 she was not to have any unsupervised contact with juveniles. This was changed in May 2012 to supervised contact with children under 18 if supervised by that child's parent. At one point she received Huber privileges but this was revoked after she was charged with escape at the end of September 2011. Her third child recovered from his injuries and was adopted by the family he was placed in foster care with and now has a stable life.

Upon her release from jail, their birth mother could have had contact with Mark and Luis but she chose not to because she would have had to arrange supervision. Since the boys were not in the county system,

she would have had to pay for supervision. She waited until her parole was over before she initiated contact as it no longer needed to be supervised. I feel that if she had wanted to see her children, she could have made arrangements when she was still on parole.

In the summer of 2017 I needed surgery and couldn't find anyone to watch the boys. I called various agencies and finally the county trying to find a short term respite solution. I was told there was no options and I should call their mother to take them. The county did not care that she had served time for felony child neglect and was still technically under supervision until September. It was "close enough" for them. At this point Mark had not seen her in 9 years and Luis had seen her about 5 hours in 9 years, yet Dane County Human Services staff said she was an appropriate respite option for a week. Needless to say I didn't have them go with her. I found care for them for one night and had to come home and care for them and myself against my doctor's advice. Twice before this incident in 2017, I have had a serious medical issue requiring hospitalization. I had to check myself out against medical advice each time due to lack of child care.

Luis' biological mother first had contact with him in almost 9 years in February 2017. Since that time he has had numerous emergency room visits, 5 hospitalizations, and over 30 police calls because of mental health issues. His birth mother decided that she wanted Luis to live with her despite not having had contact with him for the past 9 years. She filed again to terminate the guardianship and we had a hearing on August 21, 2017. Luis didn't have a guardian ad litem to represent him because the hearing was in probate and not family court. The court commissioner could have decided to end the guardianship that day. Luis and I had no idea if he would be staying with me or going with her. His school year was able to begin and he had no idea where he would be going. At this point his behavior was out of control. His brother and I were being hit by him. He threw objects at us often aiming for our head and he made holes in doors and walls. He also started to do self-harm. She had only seen him for a couple lunch dates in 9 years but seemed to think he could go and live with her. At the hearing she withdrew her petition because she was about to have her fourth child. Luis was relieved but also felt abandoned again.

Since Dane County Social Services refused to file a Chips petition on Luis' behalf his birth parents retained all their parental rights. His mother started visits with him again around Halloween in October 2017 when she was no longer under court ordered supervision. She lived in a one bedroom home with two adults and an infant. When Luis visited, he slept on a mattress on the floor in the living room. In my home he had his own room. She intended for Luis to transition to her home over his winter break in December 2017 despite not having any having any overnight visits with him until November 2017, not knowing him, his needs, and disabilities, and not wanting his younger biological brother Mark to live with her.

At Luis' winter break in December 2017 he was enrolled in the school district near her home in Dodge County. All of his therapy and support services in Dane County were stopped, and he was to transition to his birth mother's home during the winter break. Luis was packed with his things by the door and three times over the break he was scheduled to go with his mother yet she never took him. During this time Luis ran away several times in very unsafe conditions (extremely cold and wearing only pajamas) and had multiple police involvements. His mother never took him despite the fact he had been withdrawn from his school and after school programming, and all therapy services, stating that "This is stressing me out."

Luis missed the first week of school in January 2018 due to his mother's inability to take him as she had planned. During this time Luis' mental health deteriorated significantly. He made several suicide attempts, started a fire to burn down my house, and had two extended hospitalizations for mental health issues. Luis was discharged from one hospital on a Monday against my strong objections that he wasn't stable and was back in a different hospital by Friday. I expressed concern that I was not comfortable having Luis discharged from the hospital due to statements he had made and I wasn't confident that I could keep him safe. I requested that we have a meeting with the staff but was told the doctor had already put in discharge orders. I said that I might not pick him up at discharge. The social worker at the hospital called Dane County Human Services and reported the situation as a possible neglect or abandonment of a child. Although I truly believed that I was acting in Luis' best interests, and his regular psychiatrist supported my decision, the threat of police involvement and my possible arrest on endangerment charges caused me to pick him up against my better judgment. I was actually told that I would likely be arrested. I had to inform my principal in case the police showed up at my work. It was a very tense period.

I had a CPS investigation and had to meet with human service staff and the police department in an attempt to clear up the case. I was encouraged to terminate the guardianship and have Luis placed in foster care instead of giving any resources to our family. I was told "all you ever want is childcare and respite. If you can't manage them you need to terminate your guardianship." Luis would have had more services available to him in foster care but I couldn't be his foster care placement. In fact, the county would determine how much if any contact I had with him and would likely have neglect charges brought against me thus ending my teaching career. His birth parents have never been threatened with charges being brought against them for the abuse and neglect they received. In fact, I was told by a Dane County worker that his mother is a perfect respite resource. In the end Luis stayed with me and because of his mother's lack of follow through he was left with no therapy or support services. I had to wait days to be able to enroll him again in his previous school. From late February until the end of the school year, Luis attended school only three hours a day and was in a half-day mental health day treatment program. His mother collected benefits for him and he has never lived with her. She has made extremely inappropriate comments to him, shared unbelievably inappropriate information with him, and doesn't acknowledge the emotional damage she has inflicted upon he and his brother. The system has failed the boys once again.

Their mother had a fifth child in January 2019. She has taken the boys on several overnights. At this point, Mark refuses to go. It is too chaotic for him. Luis is often made to feel guilty if he won't go. When he does go there is much tension, yelling, name calling, and some physical confrontations between Luis and his mother. He is expected to provide childcare for her younger children. Because she still has her rights, she is free to pick either of the boys up when she wants. I could call police and they could decide if they boys have to go. However, I have been told that since she still has her parental rights there would be little they would do to intervene.

Luis continues to make unsafe choices and his anxiety and depression have worsened. He was once again referred by his doctor for a day treatment program. The referral has been in process for a month waiting to hear if insurance will cover it. If things can get figured out soon he can start the program in late July. Things never go quickly when insurance and particularly mental health coverage is involved. I have significant concerns for Luis' mental health as long as his mother has no restrictions on her involvement and he has no permanent home. The State of Wisconsin was willing to spend in excess of \$100,000 on his

mental health hospitalizations and treatment but won't work to give him stability so that he can get better. With current guardianship laws, his parents have retained the right to show up whenever they want and I am powerless to stop them.

As a nonrelative guardian in Dane County you are entitled to only one benefit. The children in your care qualify for Badger Care. No one tells you that though. I was able to put the boys on my insurance back in 2009. More than a year after they were with me, someone told me I should be eligible for benefits for them. I cannot get any kinship care because neither of their parents is a relative. I did some investigating and discovered quite by accident, that they were eligible for Badger Care. This has been helpfully frustrating. For several years their Badger Care HMO was different than my private insurance. Certain providers wouldn't see them because of the billing issues when the two plans weren't the same. My insurance has changed four times in the past few years. This means that their therapists and doctors have had to change too. Luis has had at least 8 different therapists and 5 psychiatrists. I think that Mark has had 6 therapists and 3 psychiatrists. I have actually lost track. It is no wonder that both of them are struggling with relationships and trust. The insurance changes also delayed Mark obtaining an assessment for autism. It took so long to get this done, that he is now too old to get intensive services. Also, a seemingly simple task like filling prescriptions takes hours a month. My insurance only pays for generics. The Badger Care has certain medications that it only pays for brand names. Many pharmacies don't know how to bill the insurance companies in this situation that happens every month, requiring multiple phone calls and trips to the pharmacy.

Childcare has had such a significant impact on our family. As anyone with children knows, having children is expensive. I never dreamed that when I signed the guardianship papers that I would still be paying for childcare over 10 years later. At one point almost half of my income went for childcare and other services for the boys. The cost has impacted my ability to be able to afford needed maintenance on my home and pay for extracurricular activities for the boys. My retirement will be years later than I anticipated and I do part-time jobs here and there for additional funds. I also never thought I would be criticized by numerous county social workers and employees when I continually asked for daycare funding and respite.

I have been given 4 or 5 nights of respite over the years when the boys have stayed at the Respite Center. My mother had watched them a couple nights a year until her stroke. In both instances, they were typically dropped off at dinner time and picked up the next morning. I usually just went home and slept until it was time to go get them. Luis had a licensed Dane county foster family provide respite for him two nights when he was enrolled in the Children Come First Program (CCF). The second time he went, his behaviors were such that he was not allowed back. He was assigned to another foster parent for respite. He had Luis in his home 5 or 6 nights when the county stopped the respite. Luis wasn't county involved so they said he wasn't eligible for respite anymore. This was probably the only time not having respite was in Luis' favor. Two days after Christmas that year I received a call from Rock County Child Protective Services. The man who was licensed for foster care by Dane County had fled his home state while being investigated for child pornography and sexual abuse. Dane County somehow didn't know about the charges and licensed him. They wanted information that Luis may have shared about the times he stayed with the man because he was now under investigation for possible sexual abuse charges in Dane County. I just cannot believe the irony that Dane County let him be a foster parent but wouldn't place Mark and Luis with me

as their foster parent. In fact, county workers thought they would be better off last year moving to a foster home placement, but not their mother's home. Our systems to protect children are broken.

I have attempted countless times and from multiple agencies to obtain legal representation for Mark and Luis to represent their best interests. Since they are not county involved they don't qualify for services and because I receive no assistance to care for them, I am unable to pay the high retainers that have been requested. I have notebooks filled with the names of lawyers I have contacted over the years to seek advice and find someone to be their legal champion. I often end up knowing more than most attorneys I have talked to. The few who I believe could be of assistance are considerably out of my price range. Once I even filed to terminate the guardianship in the hope that I could get some assistance but it didn't help at all. I have also met with several legislators in the past and got a little sympathy for our plight but no willingness to put words into action.

I picked up the paper a fateful day, April 29, 2018, and saw an article with the headline "Committee Will Help Vulnerable Children" by Representative Jim Steineke. I couldn't believe it. I called and requested a meeting to share my family's story. I feel very strongly that change needs to happen soon. I have spent much of my personal and professional life working on behalf of kids and situations that are just not right. Realistically it is probably too late for my boys to benefit from any changes in legislation. They will continue to ride the roller coaster that is their guardianship journey. But if we can act and make changes, then no more children will need to go through the unnecessary, stressful, and unhealthy events that result from minor guardianships at the present time. It is far better for our kids to not just make it enough to survive, they must be given every opportunity to thrive.

Respectfully Submitted,
Joan Brennan