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Testimony before the Senate Committee on Mental Health, Substance Abuse Prevention, Children and Families

Senator André Jacque

September 21, 2023

Thank you, Chairman James and Members for holding this public hearing on Senate Bill 80, the Adoption Process Reform Act.

Adoption in the United States is a complex patchwork of law and practice that imposes considerable strain on those navigating it. Unfortunately, Wisconsin has gained a reputation for being one of the most difficult states in which to adopt. According to the most recent state-by-state statistical review of adoption (for fiscal years 2012 through 2021) published by the Children's Bureau of the U.S. Department of Health & Human Services, Wisconsin ranks behind 42 states and the District of Columbia in the rate of adoptions finalized in our state in 2021, and behind every other state in the Midwest and more than 25% below the national average over the past decade.

The difficult and uncertain court process faced by prospective birthparents and adoptive parents in Wisconsin is often cited as a factor, leading families seeking to adopt to look out of state. Several multi-state adoption agencies have indicated that they do not finalize adoptions in Wisconsin due to the length and complexity of the court process (for example, one prominent interstate adoption agency assists in placements in 46 states, but notably, Wisconsin is not among them).

The Adoption Process Reform Act makes significant reforms to Wisconsin's adoption system at the request of birth parents, adoptive parents, adoption attorneys and adoption agencies, and reflects extensive consultation with the Department of Children and Families and Wisconsin's Native American Tribes:

1. Adding the option for birthparents of a child under one year of age to invoke the termination of their parental rights (TPR) through a witnessed and notarized affidavit without the requirement to endure a lengthy and intimidating court process. Such an alternative is commonly used in the majority of states throughout the U.S. and is considered a best practice.

This change will create a system that is easier to navigate for birthparents by removing the fear and uncertainty surrounding mandatory court proceedings which can make them feel like they are being penalized for their decision, particularly if such proceedings would potentially require them to relive traumatic events. This option would also remove a large portion of uncertainty for adoptive parents about the permanency of the placement of a child with them, which would encourage more adoptions to take place in Wisconsin.

By allowing parents to voluntarily disclaim their parental rights after 120 hours from the birth of the child, Senate Bill 80 will bring more consistency to Wisconsin's adoption process instead of variability from county to county and judge to judge, while reducing unnecessary court time and costs for the completion of the adoption. A minor may use an affidavit of disclaimer only after the TPR petition has been filed, they have been offered legal counseling, and they have been appointed a guardian ad litem, and only if the guardian ad litem approves the disclaimer.

2. Expanding parental options by allowing payments to be made to a licensed out-of-state private child placing agency for services provided in connection with an adoption.

Both components of the bill require compliance with the federal Indian Child Welfare Act.

Senate Bill 80 does not impact the other requirements of the domestic adoption process in Wisconsin, including selecting an agency and completing a home study, which encompasses background checks, home inspections and interviews about family, background, finances and reasons for wanting to adopt. Wisconsin law requires that women considering adoption be provided counseling and certain living expenses up to $5,000.

Senate Bill 80 is a re-introduction of 2021 SB 29/AB 138 in the identical form that it passed the full State Senate and the Assembly Committee on Children and Families last session.

Thank you for your consideration of Senate Bill 80.

Wisconsin Department of Children and Families

Governor Tony Evers
Secretary Emilie Amundson
dcf.wisconsin.gov

TO: Chair James, Vice-Chair Cabral-Guevara, and Honorable Members of the Senate Committee on Mental Health, Substance Abuse Prevention, Children and Families

FROM: Ragen Shapiro, Legislative Advisor

DATE: September 21, 2023

SUBJECT: 2023 Senate Bill 80

Thank you for the opportunity to testify for information only about this legislation related to DCF programs and the children and families we serve. DCF is committed to the goal that all Wisconsin children and youth are safe and loved members of thriving families and communities. To support this goal, the Wisconsin child welfare system is guided by the following key principles:

- **Prevention:** Child welfare increasingly focuses on prevention efforts and keeping children in their homes when possible.
- **Reunification:** The primary goal is to reunify a child with their birth family whenever it is safe to do so.
- **Permanence**: The child welfare system aims to transition children in out-of-home care (OHC) safely and quickly back with their family, whenever possible, or to another permanent home.
- **Relatives:** Familiar, caring adult relatives play an important part in children's lives as caregivers or ongoing supports and should be used as out-of-home placements whenever possible.

It is through the lens of these principles that the DCF reviewed Senate Bill 80. SB-80 allows a parent to submit an affidavit of a disclaimer to their parental rights to a child without appearing in court to terminate their parental rights. DCF supports efforts wherever possible to reduce complexities and uncertainties in the court process for all parties, including biological and potential adoptive families.

DCF appreciates changes made during the previous session to attempt to better align with the Indian Child Welfare Act (ICWA), the Wisconsin Indian Child Welfare Act (WICWA), and the

language in the ICWA Regulations issued by the U.S. Department of Interior in 2016 that requires state courts to ask each case participant in a proceeding whether they know or have reason to know the child is an Indian child. As a reference, ICWA and WICWA explicitly requires a voluntary consent to a termination of parental rights to be executed in writing, recorded before a judge, and accompanied by a written certification by the judge that the terms and consequences of the consent were fully explained and understood by the parent. ICWA and WICWA also provide that a voluntary consent to a termination of parental rights to an Indian child is not valid within the first 10 days of their birth. In addition, ICWA and WICWA allow for the withdrawal of consent for up to two years after an adoption if the consent was obtained through fraud or duress. While the current draft of this bill attempts to align with the 2016 Regulations, tribal stakeholders have continued to voice concerns with the bill regarding the practice and application to Indian children.

The Department appreciates that the bill attends to the important provision and costs of counseling prior to the execution of the affidavit, as well as the provision and costs of legal counseling for a minor executing the affidavit. In public adoptions, the county is traditionally working with the family prior to a termination of parental rights, but the Department is subsequently the agency that places the child for adoption once the termination of parental rights is completed. The bill, therefore, would ultimately leave the Department responsible for paying for birth parent counseling and minor legal counseling in these specific situations. In addition, except for Milwaukee County where DCF provides direct child welfare services, the Department and its contracted adoption agencies do not have any contact with birth parents and do not provide services for parents before, during, or after a termination of parental rights (unless facilitating ongoing contact with the child after the termination of parental rights). While the Department agrees with the need to provide counseling, this provision will cause a large shift in current practice and has the potential to be costly as the Department does not currently have the ability to absorb this counseling into existing contract obligations.

Thank you again for the opportunity to testify on this legislation. We are happy to answer any questions.

Written Comments of Nicole M. Homer
Ho-Chunk Nation, Legislative Attorney

Committee on Mental Health, Substance Abuse Prevention, Children and Families
September 21, 2023
SB 80

One of the paramount purposes of the Indian Child Welfare Act (hereinafter ICWA) is to ensure "the placement of [ ] children in foster or adoptive homes or institutions which will reflect the unique values of the Indian culture."[1] The ICWA's mandate that an adoptive placement is preferred to be with members of the child's extended family, other members of the same tribe, or other Indian families is "[t]he most important substantive requirement imposed on the state."[2] Further, the ICWA permits Tribes that desire to have a different, more culturally appropriate order of preferences to adopt such preferences to take the place of the standard placement scheme found in the ICWA.[3]

Some might question, why would this still be important of a newborn child that would not "know" they are even Indian? It is very important. Not only to the Tribes fighting to maintain existence in the 21st Century and beyond, but to the children affected by removal from their communities. In fact, children adopted out of their tribal communities are highly affected by this removal- invoking trauma long after the adoption is finalized.

In a study of Indian adoptees, startling information was discovered. Information that shows just how deep the trauma can be for these children as they reach adolescence and adulthood. Dr. Carol Locust, of the Native American Research and Training Center at the University of Arizona College of Medicine, performed in-depth research on the disorder known as "Split Feather Syndrome." What is that exactly?

> [Dr. Locust] identified unique factors of Indian children placed in non-Indian homes that created damaging effects in these children's lives. Locust found that: Native children placed in non-Native homes were at great risk for experiencing psychological trauma leading to long-term emotional and psychological problems as adults; that the same clusters of long-term psychological problems experienced by naive adult adoptees were recognizable as a syndrome; and 'split feather' syndrome appears to be related to a reciprocal-possessive form of belongingness unique to survivors of cultures subjected to annihilation.[4]

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[1] H.R. Rep. No. 95-608, 95th Cong. 2nd Sess. 8 (1978); *see also* 25 U.S.C. § 1902.
[2] *Miss. Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 36 (1989).
[3] 25 U.S.C. § 1915(c).
[4] *ICWA from the Inside Out: 'Split Feather Syndrome,'* MINN. DEPT. OF HUMAN SERVS. (July 2005), *available at* http://www.dhs.state.mn.us/main/groups/children/documents/ pub/dhs16_180049.pdf. *See also Georgia Deoudes,* Evan B. Donaldson Adoption Institute, *Unintended Consequences: 'Safe Haven' Laws are Causing Problems, Not Solving Them available at* http://adoptioninstitute.org/publications/unintended-consequences-safe-haven-laws-are-causing-problems-not-solving-them (finding this concept extends to all children, and not Indian alone):

These children grow up, looking in the mirror, knowing that there is something "different" about them- something special. However, without their tribal community there to support them as they go through life, they are simply going through the motions. They lack the tribal connection and cultural leaders to guide them as they transition through these formative years. They lack the guidance as to how they are supposed to act as a male or female of their particular tribe. They lack the support in how to combat the feelings of loss and disconnectedness. A piece of them is missing. And a piece of the tribe is missing too.

Later, in 2017, a group of researchers proceeded with a quantitative study of the mental health differences found within American Indian adoptee populations versus Non-Indian adoptee populations. While no difference was found between non-Indian (Caucasian) adoptees and American Indian adoptees on self-assessed depression or diagnosed depression, meaning adoptees in general experience depression, there were significant differences with regards to other areas of mental health.[5] American Indian adoptees were found to be more vulnerable to mental health problems within the whole adoption system generally.[6] Specifically, American Indian adoptees were more likely to report alcohol addiction, alcohol recovery, drug addiction, drug recovery, self-assessed eating disorder, eating disorder diagnosis, self-injury, suicidal ideation, and suicide attempts.[7] The study highlights that historical trauma is inherited through one's ancestors, as such American Indian "adoptees experience trauma through their lived experiences of being separated from their families and culture, a phenomenon referred to as "blood memory.""[8]

The Wisconsin Legislature took the necessary steps to prevent this from occurring when it chose to codify the federal ICWA into state statute. Throughout the codification process it would have been hard to ignore the Wisconsin specific data that came from the federal adoption of the ICWA. During the late 1970's Congress found that 25 to 35% of all Indian children in the country had been removed from their families at a rate five times greater than non-Indian children. Here in Wisconsin, the risk of Indian children being separated from their parents was 1,600% greater. This very state legislature unanimously declared that Wisconsin's policy is to "protect the best interests of Indian children and promote the stability and security of Indian tribes and families."[9]

> Safe haven laws also ignore the psychosocial importance to adopted people, as children and later in life, of information about their origins, ethnicity and social backgrounds. The overwhelming majority of adoption practitioners and mental-health professionals today – including ones who do not necessarily embrace the rapidly growing practice of "open adoption" – agree about the benefits of having personal, as well as medical, information; moreover, they maintain that the lack of such information can undermine adoptive families, especially the children in them.

[5] Ashley L. Landers, PhD et al., *American Indian and white Adoptees: Are there Mental Health Differences?* AMERICAN INDIAN AND ALASKA NATIVE MENTAL HEALTH RESEARCH (2017) at 69.

[6] *Id.*

7 *Id.*

8 *Id.* at 70.

[9] Wis. Stat. § 48.01(2)(b).

Senate Bill 80 – Oppose, but appreciate Tribal/ICWA language
Relating to: a disclaimer of parental rights and payments allowed in connection with an adoption.

The Nation appreciates the continued efforts to include language in an attempt to bring this bill into compliance with the ICWA. However, the issue remains that without having parents in a courtroom, a Judge is prevented from performing their duty under the federal regulations to inquire whether a child is an Indian child or whether there is reason to believe the child is an Indian child.

> 25 C.F.R. § 23.124 What actions must a State court undertake in voluntary proceedings?
> (a) The State court must require the participants in a voluntary proceeding to state on the record whether the child is an Indian child, or whether there is reason to believe the child is an Indian child, as provided in § 23.107.
>
> 25 C.F.R. § 23.107 How should a State court determine if there is reason to know the child is an Indian child?
> (a) State courts must ask each participant in an emergency or voluntary or involuntary child-custody proceeding whether the participant knows or has reason to know that the child is an Indian child. The inquiry is made at the commencement of the proceeding and all responses should be on the record. State courts must instruct the parties to inform the court if they subsequently receive information that provides reason to know the child is an Indian child.

It is not enough that there is information within the Affidavit. The inquiry is to be made by the Judge in every proceeding. Appearances can be deceiving. There is no one size fits all "look" for someone who is a tribal member. As such, the requirement that every single person be asked if they know or have reason to know if the child is an Indian child is one of the important added protections of the Indian Child Welfare Act and the clear federal regulations. This protection was put into place because Tribal children can and will slip through the cracks without the added protection of having a Judge asking the necessary questions of every single parent in every single case as required by federal law. As such, we are simply not in a position to be able to support this Bill despite our appreciation of the efforts made to try and bring it into compliance with the state and federal ICWAs.

There is nothing more important to a Tribe than its children. They are our future, and they will ultimately be the links to our past. It is likewise in their best interests to know and have the opportunity to learn about their Indian heritage and be connected with their tribal communities. We- Wisconsin and tribes- must work together to ensure legislation takes into account the ICWA and WICWA so that we do not lose any more of our tribal children and before our tribal children lose us. Great things happen when we work together- just look at WICWA. Thank you for your time.