DAVID STEFFEN

STATE REPRESENTATIVE • 4TH ASSEMBLY DISTRICT

October 13, 2021

Testimony to the Assembly Committee on Children and Families on Assembly Bill 577

Chairman Snyder and Committee Members,

Thank you for the opportunity to testify in favor of Assembly Bill 577 relating to access to a deceased adoptee's original birth certificate and information about birth parents by an adult child of the adoptee.

The importance of family has always been at the forefront of our society, but for Wisconsinites who were adopted, learning about their biological history can be a challenge. If their birth parents are deceased, adopted Wisconsin adults may have to receive approval from the state court system to simply access an original copy of their birth certificate.

This bill would allow the Department of Children and Families (DCF) – though the Adoption Search Program run by DCF under current law – to release the original birth certificate and any information available on the birth parents to the requesting Wisconsin adult if the birth parent or parents are deceased. This bill makes no changes to current law if one or both of the birth parents are still alive.

This simple change saves Wisconsinites who are trying to learn more about their past the hassle, expense, and time of petitioning the court system while still protecting the privacy of birth parents throughout their lifespan. AB 577 is being circulated after a constituent of the 2nd Senate District and 4th Assembly District, who works professionally in the genealogy field, brought this issue to our attention. Additionally, DCF was consulted throughout the drafting process and is supportive of the bill.

Thank you for the opportunity to speak in favor of this bill I encourage you to join me in supporting this legislation.

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STANDING COMMITTEES:
Natural Resources & Energy, Chair
Transportation & Local Government, Vice-Chair

ROBERT L. COWLES
Wisconsin State Senator
2nd Senate District

JOINT COMMITTEES:
Audit Committee, Co-Chair

Testimony on 2021 Assembly Bill 577

Senator Robert Cowles
Assembly Committee on Children and Families
October 13th, 2021

Thank you, Chairman Snyder and Committee Members, for holding a hearing and allowing me to testify on 2021 Assembly Bill 577. This bill makes it easier for certain adoptees to access their original birth records.

In recent years, the popularity of genealogy research and growing accessibility of ancestry records has caused more and more people to seek information about the generations that came before them. However, for Wisconsinites who were adopted, learning about their past can often be much more difficult. Even if their birth parents are deceased, adopted Wisconsin adults may have to receive approval from the state court system to simply access an original copy of their birth certificate or information about their birth parent or parents.

Typically, the Department of Children and Families (DCF) – through the Adoption Record Search Program run by DCF under current law where adoption records are retained – may only release the records if an affidavit from each known birth parent is filed that grants the disclosure of this information. Short of that affidavit, an adoptee must seek access to the records from the courts which will typically only provide a copy of the birth certificate or records of the adoptee's biological parents if 'good cause' is shown by the petitioner.

2021 Assembly Bill 577 allows DCF to release the original birth certificate and any information available on the birth parents to the requesting Wisconsin adult if the known birth parent or parents are deceased. This bill makes no changes to current law if one or both of the birth parents are still alive, meaning that the adoptee would have to use the system under current law that requires a court order for the release of this information.

Access to this birth information allows adoptees to learn about where they're from and provides a connection to their genealogical past. This simple change saves those Wisconsinites the hassle, expense, and time of petitioning the court system while still protecting the privacy of birth parents through the entirety of their lifespan. AB 577 was introduced after a constituent of the 2nd Senate District, who works professionally in the genealogy field, brought this issue to our attention. DCF was consulted in the drafting process.

The companion to Assembly Bill 577, Senate Bill 524, was heard in the Senate Committee on Transportation and Local Government on September 22nd and is scheduled for an executive session today.

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September 21, 2021

Senator Robert Cowles
P.O. Box 7882
Madison, WI 53707-7882

Dear Senator Cowles and members of the Committee on Transportation and Local Government,

Thank you so much for your consideration of Senate Bill 524. As a genealogist who works with many adoptees and children of adoptees from across Wisconsin, I greatly appreciate your interest in and support of this legislation.

I have worked as a genetic genealogist since 2017, and as a traditional genealogist for nearly 30 years. I hold a degree in journalism from the University of Wisconsin-Madison, and I have given presentations on genetic genealogy at the Aging & Disability Resource Center of Brown County and the Lifelong Learning Institute of the University of Wisconsin-Green Bay. The majority of my work is dedicated to helping adult adoptees and others with questions about their ancestry identify their biological families through DNA testing.

Genetic genealogy is a wonderful tool in helping solve genealogical mysteries, but sometimes has limitations. For one client whose elderly father was the adoptee, I identified the specific family of the biological mother, but because there were several daughters, I could not pinpoint which woman was the adoptee's mother. In this particular situation, my client's elderly father was still living, but unwilling to DNA test or request his adoption records from the Wisconsin Department of Children and Families. I have worked with other children of adoptees who find themselves in a similar situation, but with a deceased parent.

While I personally believe every adoptee has the right to the know their biological origins, access to medical histories in sealed adoption records is critical. In one case, a form of muscular dystrophy passed on from a deceased female of misattributed paternity to several children and grandchildren is now believed to have originated from her previously unknown biological father's line. These stories are common among adoptees and their descendants who have little or no information about medical histories as well.

Biological and medical information is right there at the DCF, yet just out of reach for the children of deceased adoptees, without the challenge and expense of enlisting the court system. The vast majority of children of deceased adoptees have no idea that option is even available to them or how to go about it. As a side note, I'm always amazed by the number of adoptees themselves who don't know about the Adoption Records Search Program at DCF and the wonderful, helpful people there.

Last month when I learned that LRB 2474/1 had been authored and was in the process of seeking co-sponsorship, I spoke with several of the adult children of deceased adoptees I'd helped. One promised to contact Senator Cowles with his story and added, "Thanks, Beth. This could help a lot of people."

Thank you again for your consideration of Senate Bill 524. Its passage will undoubtedly make a difference in the lives of the children and families of deceased adoptees in Wisconsin who are seeking medical and biological information about their late parent's families of origin.

Sincerely,

Beth Mader

Wisconsin Department of Children and Families

Governor Tony Evers
Secretary Emilie Amundson
dcf.wisconsin.gov

TO: Chair Snyder, Vice-Chair Ramthun, and Honorable Members of the Assembly Committee on Children and Families

FROM: Amanda Merkwae, Legislative Advisor
Wendy Henderson, Administrator, Division of Safety and Permanence

DATE: October 13, 2021

SUBJECT: 2021 Assembly Bill 577

Thank you for the opportunity to provide testimony on Assembly Bill 577. The Department of Children and Families (DCF) is testifying in support of this bill.

Wisconsin has embraced, as a long-standing principle, balancing the value to an adult adoptee in knowing their biological background for medical, social, cultural, and emotional reasons, with the right to privacy for a birth parent. This principle underlies Wisconsin's current Adoption Records Search Program which is governed by Wis. Stat. §§ 48.432 and 48.433 and administered by DCF. The primary purpose of this program is to help individuals who have been adopted or whose birth parents have terminated their parental rights to obtain information about themselves and their birth relatives. The program can also be accessed by certain other individuals enumerated in the statute; however, the information that can be released to an eligible requester other than an adult adoptee is limited to non-identifying medical and genetic information.

Under the current Adoption Records Search Program, an adult adoptee at age 18 or older can request from DCF social history information, medical and genetic information about birth parents and family members, and the identity of birth parents. DCF discloses the identity of the birth parents to the adult adoptee only if the birth parents provide written consent or the birth parents are deceased. If the birth parents do not consent to disclosure of identity, DCF provides the adult adoptee medical, genetic, and social history information in a non-identifying manner (i.e., with the birth parent name(s) redacted). The only instance in which an adoptee cannot access the original birth certificate is when a living birth parent does not provide consent.

In response to the evolution of DNA technology and a rising interest in genealogy and related records, the Wisconsin Adoption Records Search Program has seen a rise in the volume of requests from the offspring of adoptees looking for information on the adoptee's birth family. AB-577 provides an avenue for an adult child of a person whose birth parents' parental rights have been terminated in this state (offspring) to request DCF to provide the offspring with the original birth certificate of the offspring's parent and any information that is available to DCF regarding the identity of the birth parents of the offspring's parent. If the offspring's parent and both birth parents of the offspring's parent are deceased, regardless of whether either birth parent has filed an affidavit, under this bill DCF would be required to disclose the requested information.

The department recognizes the value to adult adoptees and their offspring of knowing one's birth and adoption history for medical, social, cultural, and emotional reasons. The department also recognizes the confidentiality protections that were extended to birth parents under current law at the time the child was placed for adoption. Ultimately, AB-577 balances the interests of all stakeholders, provides streamlined access to information for Wisconsin citizens, and supports Wisconsin children and families to pursue fulfilling and healthy lives.

Thank you for the opportunity to testify regarding this legislation.

HO-CHUNK NATION LEGISLATURE
Governing Body of the Ho-Chunk Nation

Written Comments
AB Bills 503, 577, 289, and 412
Wisconsin State Assembly
Committee on Children and Families
October 13, 2021

Thank you, Representative Snyder and the Committee on Children and Families, for accepting these written comments from the Ho-Chunk Nation Legislature on a set of bills that will have an impact on tribes, tribal children, and tribal families.

> *"The fundamental constitutional right to family integrity extends to all family members, both parents and children." O'Donnell v. Brown, 335 F.Supp.2d 787, 820 (W.D. Mich. 2004), citing Wallis v. Spencer, 202 F.3d 1126, 1136 (9th Cir. 2000). The "right of a child to be raised and nurtured by his parents" is "fundamental. . ." Brokaw v. Mercer County, 235 F.3d 1000, 1019 (7th Cir. 2000).*

AB 503 - Subsidized Guardianship Payments

- **Support Bill**

  As to the Amendment, the Nation is less concerned with who makes the payments, and more concerned with the need for increased appropriations and infrastructure for these valuable forms of permanency to be utilized more often across the state.

The reason we submit our support for this bill is that by removing the Subsidized Guardianship language from the beginning section, it should free up some money for tribal high-cost pool needs. It is our understanding that the subsidized guardianship monies are skimmed off the top first by the counties. By removing subsidized guardianship from this section, it should return the high-cost pool to what it was meant to be- just a high-cost pool.

However, we would like to take this opportunity to stress the importance of subsidized guardianships, particularly for the Ho-Chunk Nation that has an expansive traditional kinship system. Many Tribes prefer guardianship as the primary permanency option, as opposed to adoption. This is particularly true for the Ho-Chunk Nation. The Ho-Chunk Nation does not support the permanent

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severance of parental ties, and as such explicitly bans the use of termination of parental rights in tribal court and likewise does not support such in state courts.

Guardianship ensures parents' rights are not severed and leaves the door open for parents to come back once they get back on their feet. This is important because addiction typically prevents reunification within the 15-to-22-month timeframe set forth by the Adoption and Safe Families Act (ASFA). Therefore, this is a helpful tool to support families in reunifying once a parent can overcome their addiction. Due to the historical trauma inflicted upon tribal peoples, there is unfortunately a high rate of addiction within our communities. However, extended family members or tribal members can at times step in and provide the safety, love, and support to not only the children, but to their parents as well. Thus, nurturing the traditionally communal system of raising of a child through extended familial and clan relationships.

Some counties have pushed back on subsidized guardianships because some of those funds come from the county's coffers. Therefore, some of the smaller and poorer counties have claimed in the past to not have the funding to utilize subsidized guardianships when they are needed and appropriate. Whether the funding comes directly from DCF or through appropriations to the counties from DCF, does not matter as much as the need for more funding for these important forms of permanency. This aligns with the goals of the Family First Prevention Services Act, that being to increase and promote familial placements when a child cannot remain safely within their home after preventative services are exhausted.

While one of the main goals of the 2018 federal Family First Prevention Services Act is to ensure children can remain safely in their homes and avoid unnecessary removals, it recognizes that there will at times be a need for necessary removal. In that event, the counties should be looking towards identifying kinship/relative caregivers instead of foster homes to which the children have no relation to. If children are appropriately placed with kin in the event of removal, and a case needs to progress to permanency, then subsidized guardianship is the ideal form of permanency.

AB 577- Access to Adoptee's Bio Parent's Original Birth Certificate

- **Support Bill**

There have been massive numbers of traumatic removals of tribal children throughout history that were accomplished through unnecessary social services intervention and by the federal government's boarding school assimilation tactics. The passage of the Indian Child Welfare Act in 1978 was meant to help rectify these wrongs inflicted on tribal families and communities. While there are tools built into the federal and state Indian Child Welfare Acts to assist in gaining basic information regarding tribal affiliation, the Ho-Chunk Nation will always provide support for further legislation that will make it easier to bring our relatives back to the Tribe.

AB 289– providing permanency plan and comments to out-of-home care providers in advance of a permanency plan review or hearing

- **Oppose Bill**

This bill is unnecessary. If the concern is ensuring that the foster parents have information to assist them in caring for children, they already receive this type of information through information sharing that is addressed through DCF Rules (DCF 37).

The Nation was opposed to the sharing of the Permanency Plan during the last session that this was addressed. Permanency Plans share highly confidential information (including HIPAA and 42 CFR Part 2 confidential medical/alcohol & drug information). Foster parents are not parties to the matter, and as such should never have access to these sensitive reports.

The redaction that is now being requested in this version will create an unnecessary burden on an already overly extended social services system. Social Workers need to be focused on case management and the provision of reasonable, and in the case of Indian Child Welfare Act matters- active efforts, so that families have the best chance at reunification.

There is no ability to easily redact this information in the state's centralized database system that generates these reports. This was addressed by DCF the last time this topic was addressed. This will require individual redaction- that in addition to being time consuming (time that could be better spent on managing their overburdened caseloads) can and will lead to user error as we are only human. There is too great a chance of missing information that requires redaction. The chance for user error and the extra work on an overly taxed child welfare system outweighs the need to share these reports- particularly when the information that foster parents need to do their jobs well is already provided.

AB 412– creating foster parent bill of rights

- **Oppose Bill**

The ambiguity of AB-412 presents opportunities for foster parents to be errantly raised to the level of party status and on the same footing as a biological parent. The purpose of foster care is to provide a temporary home to ensure a child's safety while biological parents are provided support and services to develop the necessary protective parenting capacity needed to ensure their children's safety. Foster parents play an important role in providing this safety, but the primary goal is and should always be – except in those very rare and statutorily expressed egregious circumstances – reunification. To lose sight of this creates imbalance that will circumvent a biological parent's constitutionally protected fundamental right to parent and a child's constitutionally protected fundamental right to be with their parent.

Tribal attorneys are in a unique situation in that many have participated in contested hearings/trials in states where foster parents are granted party status. They have experienced firsthand how this imbalance negatively affects biological parents, but it also creates an imbalance as it pertains to the rights of Indian Tribes and Indian children established by the federal and Wisconsin Indian Child Welfare Act (ICWA/WICWA). For Tribes that do not have the financial ability to fight the cases themselves or find local counsel in states where pro hac vice is too difficult or denied, it creates an insurmountable barrier to protecting their actual party status rights when facing legal attacks by foster parents.

Further, there is serious concern with language that proposes to create a preferred placement upon reentry. This is in direct conflict with ICWA placement preferences (unless the family was initially a preferred ICWA placement- but ICWA placement preferences already provide that potential protection if the family is still available and willing to take placement). ICWA/WICWA's placement preferences apply at reentry, just as they did when the first case opened/first removal occurred. A county social services agency has an ongoing duty up until the date of reunification/closure or termination of parental rights to provide active efforts, which includes seeking family members for placement and/or support. Again, an ongoing obligation to continually seek out placements that meet ICWA/WICWA's statutory placement preferences through the *entirety* of the case, and every case thereafter.

One of the most important parts of ICWA/WICWA is the establishment of standards that require that Indian children be placed in foster care, pre-adoptive, or adoptive placements that reflect the unique values of the Indian child's tribal culture. It is not enough that a non-Indian couple takes a child to a pow wow. Pow wows are, often, simply intertribal social gatherings. They are not necessarily a place in which to fully learn a particular tribe's culture- principally language and tribal roles. These types of learnings are only established through placement within one's tribal family, clan, or other tribal family.

It should never be forgotten when addressing the placement of Indian children, that Wisconsin unanimously voted to create a best interests of an Indian child standard. Wis. Stat. § 48.01(2) clearly sets forth that the best interests of an Indian child is to be placed "in a placement that reflects the unique values of the Indian child's tribal culture and that is best able to assist the Indian child in establishing, developing, and maintaining a political, cultural, and social relationship with the Indian child's tribe and tribal community."

Conclusion

We say it every time we present comments, but it is because it holds that much truth and meaning to tribal peoples. As such, our final words are as they should always be:

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.

Thank you for taking the time to listen to how these bills will impact our tribal community. We would be happy to meet with any legislator to answer questions or elaborate on any information provided herein.