TESTIMONY BEFORE THE LEGISLATIVE COUNCIL STUDY COMMITTEE ON TERMINATION OF PARENTAL RIGHTS AND ADOPTION

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Background on the Concept of Permanence

A. Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272)

1. Increased the involvement of a "third party" (i.e., the court system) to reduce the uncontrolled authority of the child welfare system

    a. Intent was to hold child welfare system accountable

    b. Intent was to reduce the number of children removed from their homes

    c. Intent was to reduce the time children spent in out-of-home care and the number of placements children experienced during a removal episode ("foster care drift" was a term often used)

2. Created the concepts of "best interest of the child" and "reasonable efforts" (to prevent the child's removal, to reunify the child with the family, and to achieve the goals of the permanency plan)

3. Created the concept of permanency planning

    a. Placed a heavy emphasis on reuniting children with their families

4. Incorporated most of the child welfare requirements described above (e.g., reasonable efforts, best interest of the child) into Titles IV-B and IV-E of the Social Security Act

B. Adoption and Safe Families Act of 1997 (P.L. 105-89)

1. Applied the principles of safety, permanence, and well-being to all children removed from the homes, through both child welfare and juvenile justice

    a. Safety of children is the paramount concern that must guide all child welfare services and must be a hallmark of the family assessment, case planning, and reunification efforts

b. Out-of-home care is a temporary setting and not a place for children to grow up

c. Permanency planning efforts must begin as soon as a child is removed from his or her home

d. Permanence should be expedited through the provision of services to families

e. Child welfare and juvenile justice systems must focus on results and accountability

f. Introduced the concept of concurrent permanency planning, which basically means that a "contingency" plan is being developed at the same time that efforts to achieve the primary goal are being made (e.g., the primary permanence goal is reunification, but efforts are also being undertaken to explore the possibility of placement with a fit and willing relative in case reunification cannot be achieved)

2. Established situations in which the court can find that reasonable efforts to reunify the child with the parents are not required

a. Parent has subjected the child to aggravated circumstances (i.e., abandonment, torture, chronic abuse, sexual abuse)

b. Parent has committed murder or voluntary manslaughter of another child of the parent (or has aided or abetted, attempted, conspired or solicited to commit such a murder or voluntary manslaughter)

c. Parent has committed a felony assault that resulted in serious bodily injury to the child or another child of the parent

d. The parental rights of the parent to another child have been involuntarily terminated

3. Established situations under which the child welfare agency must request a petition for termination of parental rights

a. The child has been placed outside of his or her home for 15 of the most recent 22 months

b. The court has found that the child was abandoned when the child was under one year of age

c. A court has found that the parent committed, aided, or abetted the commission, or has solicited, conspired, or attempted to commit first-degree intentional homicide, first-degree reckless homicide, felony murder, or second-degree intentional homicide and that the victim or intended victim of the offense is a child of the parent

d. A court has found that the parent committed battery, sexual assault, repeated sexual assault, or physical abuse of a child and that the violation resulted in great bodily harm or substantial bodily harm to the child or another child of the parent

e. There are four exceptions to the 15 of 22 months requirement

(1) The child is being cared for by a fit and willing relative

(2) There is a compelling reason for determining that filing a TPR petition would not be in the best interest of a child

(3) The agency has not made reasonable efforts to reunify the child with his or her family

(4) Grounds for a termination of parental rights do not exist

4. The Adoption and Safe Families Act, and subsequent changes made by the Chafee Foster Care Independence Act of 1999, created four primary permanence goals

a. Reunification with the family

b. Adoption

c. Legal guardianship

d. Permanent placement with a fit and willing relative

ASFA also allows other planned permanent living arrangements only after the court has accepted the agency's compelling reasons for not selecting one of the primary four goals. The other permanent living arrangements are:

e. Independent living

f. Long-term foster care

g. Sustaining care

Issues Related to Implementation of the Concept of Permanence

A. *The age of the child.* Federal and state law, particularly as they relate to the speedy achievement of permanence, make no distinction regarding the age of the child. The child welfare system must be more responsive to the concept of "child time" (i.e., 6 months for an infant is a much "longer" time than 6 months for a 15-year old child).

B. *Better identification of parental issues.* Federal and state law, again particularly as they relate to the speedy achievement of permanence, make little or no distinction between the service needs of the parent(s). A parent who physically abused a child because he or she had no training on alternative methods of corporal punishment certainly has a different need for both time and treatment methodologies than a parent who neglected a child because of a long-term drug or alcohol problem.

C. *Legal representation.* A parent has a right to an attorney only at the point of an involuntary termination of parental rights or a contested adoption. For all of the CHIPS proceedings under s. 48.13, the court may not appoint legal counsel for a parent. As such, for the time period from the initial involvement of the family in the child welfare system and up to the point of the involuntary termination of parental rights, a parent may or may not have legal counsel. This can often complicate issues at the point of the termination of parental rights.

D. *The disadvantage of poverty.* In addition to the issue described in Section C. above, parents who do not have the financial means to employ their own attorney may find themselves unrepresented throughout the case until the point of the TPR.

E. *Indian children and active efforts.* Under the Adoption and Safe Families Act, child welfare agencies must make "reasonable" efforts to prevent the removal and to achieve the goal of the permanency plan. Under the Indian Child Welfare Act, agencies must make "active" efforts to prevent the break-up of the Indian family. We are currently developing an administrative rule regarding reasonable efforts and permanency planning to clarify and provide assistance with this federal requirement.

F. *Locating and involving fathers or other absent parent.* At the time that a child is removed from the home and placed in out-of-home care and in legal proceedings related to placement, termination of parental rights, and adoption, it is critical that diligent efforts be made to locate and adjudicate fathers. This should be done to involve fathers in the lives of their children, to utilize paternal relatives as placement resources (both temporary and permanent), and for purposes of obtaining child support. Wisconsin statutes are weak in this area in terms of what must be done to locate fathers and the efforts necessary to make a diligent search.

Proposed Statutory Changes

The Department of Health and Family Services has developed a legislative package to resolve many issues that affect the termination of parental rights and adoption practices. Some of these are to follow up on previous changes made to assure Wisconsin's compliance with ASFA and some are the result of our recent federal Child and Family Services Review.

The following proposals will help to address these issues:

A. *Creation of a subsidized guardianship program.* The Department has applied for and will most likely soon receive a federal waiver regarding the current prohibition on using federal Title IV-E funds for subsidized guardianship. Within 12 months of receiving the federal waiver, Wisconsin must implement the program for which the waiver was received. We cannot implement the program without corresponding changes to Wisconsin statutes.

   The purpose of the waiver is to allow the Bureau of Milwaukee Child Welfare to close hundreds of cases which are currently open only because the guardian of the child requires a foster care payment to financially support the child. In these cases, there is no need for the involvement of the child welfare system.

   Under the terms of federal waivers, we must show that the program will be cost neutral to the federal government and we must conduct a comprehensive and involved evaluation of the results of the program. For these reasons, and the sheer number of cases involved, we have proposed this waiver program only for Milwaukee at this time. It is possible that the waiver can be expanded in the future.

B. *Confidentiality of information maintained in WiSACWIS,* our statewide automated child welfare case management system. In order for a child welfare agency to make reasonable efforts to achieve a permanence goal, that agency must have comprehensive information about a family, including information relating to mental health and alcohol and other drug abuse issues. We are proposing to clarify our statutes to make the law clear on its face and in one provision that such information can be maintained in child welfare files and on WiSACWIS. This will decrease barriers to access to full and accurate information necessary to make child welfare decisions and to protect children.

C. *Relative relationships subsequent to TPRs.* Under federal and Wisconsin law, placement with a fit and willing relative is a major permanence goal for both foster care and adoption. We are proposing to clarify that a relative remains a relative post-TPR and until the point an adoption is finalized. This will facilitate our ability to place children with relatives both prior and subsequent to terminations of parental rights.

D. *Require concurrent permanence goals in certain situations.* Concurrent permanence goals allow the agency to work simultaneously towards family reunification and also explore other permanency options such as adoptive placement. Then, if reunification does not work, alternative permanence can more quickly be achieved for the child. Under both federal and state law, the establishment of a concurrent permanence goal is allowable, but not necessary. We are proposing that a concurrent permanence goal be established no later than the first six-month permanency plan review. This will assure that we are conducting concurrent planning concurrently rather than consecutively as noted during our federal Child and Family Services Review.

E. *Legal representation for parents at CHIPS hearings.* As noted previously in this document, parents are not guaranteed legal representation until the point of an involuntary termination of parental rights. This proposal would require representation for parents at all points in the CHIPS process, unless such representation is voluntarily and knowingly waived by the parent. This will prevent mistakes in the process that may complicate and delay TPR proceedings.

F. *Conditions of return contained in the court order*. A significant problem that results in delays of reunification is when parents are not clear on what conditions must be remediated prior to the return of their child. Presently, such conditions may be found in court orders, while other more detailed conditions may be found in permanency plans, family safety plans, and other similar documents. We are proposing that all conditions for return must be contained in the court order so parents have clear notification of all requirements they must meet prior to the return of their children.

G. *Jury trial in TPR proceedings*. We believe that Wisconsin is the only state that allows a parent to request a jury trial in a TPR proceeding. Under Wisconsin law, if a jury is requested and empanelled, the jury makes the determination as to whether or not the grounds for an involuntary termination of parental rights are met. The court then makes a determination on a disposition. Requesting jury trials can significantly lengthen the TPR process and since the jury's determination is essentially a legal one, it would seem better to allow the court to make the determination to facilitate the finalization of the TPR process.

H. *Ground for involuntary termination of parental rights; parental relationship.* Under current law, one of the grounds for an involuntary TPR is failure to assume parental responsibility. This ground can be established only by showing that a parent has *never* had a substantial parental relationship with the child. We are proposing that this standard be revised to reflect that the parent has not had a substantial parental relationship with the child in recent history (perhaps six or twelve months). This change will allow the standard to be used for those parents who may have had a substantial parental relationship with the child for a brief period several years ago but have not had such a relationship in the recent past.

I. *Ground for involuntary termination of parental rights; abandonment.* Under current law, the state is responsible for proving, at the evidentiary standard of clear and convincing evidence, that a parent has abandoned a child. If that is the case, the parent can attempt to show, at the lower evidentiary standard of preponderance of the evidence, that there was good cause for not visiting or communicating with the child. This change in terms of which party has the burden of proof, and the level of such proof, is confusing to juries and other parties. We are proposing that the burden of proof be made uniform at the level of clear and convincing evidence and that the state be responsible for meeting both the burden of abandonment and the absence of good cause.