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From: Stephen W. Hayes [SWH@tsglaw.com]
Sent: Monday, September 13, 2004 1:56 PM
To: Uselman, Tracey; Sue.Jeskewitz@legis.state.wi.us
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Subject: Proposals for legislative change-adoption and tpr laws

Tracey-I am including items for consideration of the committee in addition to the items I mentioned at the meeting in August.

1-Sec. 48.913 Stats.-Payments by adoptive parents to birth parent. This issue is primarily relevant in the case of newborns being voluntarily placed through an agency or independently.

(c) maternity clothing-consider a cap at $300. There is currently no cap. Potential for abuse.

(i) living expenses for health and welfare of mother or fetus-consider raising expense to $5000 and requiring receipts/affidavits. Many states have much higher or unlimited expense reimbursement rules. WI mothers travel to other states to give birth to take advantage of more substantial reimbursement rules. Our current limit of $1000 is insufficient to provide for mothers who have been kicked out of apartments or houses or are in shelters and are seeking housing. Many of them are unemployed and have no means of support. Many often have other children with them. Frequently mothers need financial assistance to cover food expenses. As a matter of practice we require mothers to furnish receipts documenting expenses for which they seek reimbursement. We check the receipts and often present them in court to verify the expenses paid for are legitimate–no alcohol, cigarettes etc. We use sworn affidavits to verify the expenses paid and present the affidavits in court. The use of receipts and affidavits makes compliance more likely.

(m) gift to the birth mother-consider raising the cap to $100. In voluntary adoption cases it is common for the adopting parents to want to give flowers to the mother in the hospital, pay for a meal if in an open adoption the mother and the couple meet at a restaurant to become acquainted and plan for the adoption, or perhaps give a small gift of appreciation. The gift statute was added in 1997 to make it clear that gifts had limits ($50) and to indicate that larger gifts were inappropriate. Experience has shown that $50 is not much when buying flowers alone yet limiting the payment to say $100 makes it clear that large gifts are inappropriate.

2-Sec. 48.825 Stats. governs advertising related to adoption. In 1997 rules were passed prohibiting advertising by persons over which WI had no "quality" control such as out of state attorneys, agencies and facilitators who advertised for the purpose of locating birth mothers to place their children out of state. Voluntary compliance was achieved in part, but several advertisers have ignored the law in part because there is no penalty for violation by the company soliciting the ad (Yellow Pages). WI has many of its birth mothers leaving to place in other states to avoid expense reimbursement limits here and to avoid placement of their children in foster care. They are placing through persons or entities that in some cases are regulated by no state laws. WI has a legitimate state interest in protecting both the birth mothers and children conceived here by regulating those that function as placers or facilitators of placement to insure ethical behavior. Part of the problem could be solved by active intervention by DHFS or the attorney general, for example, writing the violators and advising them of the violation. However, without specific penalties for those that solicit the ads such notifications are without teeth.

3-Sec. 48.64 Stats. requires that notice be given to a foster parent who has had a child in placement for more than 6 months if there is an intent to remove the child from the home (see 1m). That triggers the

right of the foster parent to ask for a hearing on the subject of removal. It is not clear whether the foster parent actually is a "party" with all the litigation rights of a party. Consider making a statement in the statute to allow the foster parent to be given party status. It appears that the statute gives the foster parent many of the rights of a party anyway.

Consider clarifying that part of Sec. 48.64 (4) which gives the foster parent the right to examine all records which the opponent intends to be used at the hearing. If the opposing party can control the information to be used at the hearing to the exclusion of the foster parent, then one side has an overwhelming and unfair advantage in the litigation which is to focus on the foster child's best interests. It should be made clear that the foster parent in 48.64 litigation has an equal opportunity to review records and raise issues in court based on the records reviewed.

4-Sec. 48.62 Stats. regulates placement of children in licensed foster homes. A foster home license is necessary before a person can take such a placement. That includes adoptive placement. Thus in a typical case involving a WI adoptive parent and a WI birth parent a legal risk placement can occur so that the newborn baby can go from the hospital to the home of the adoptive parent. Most states have some form of legal risk placement. However, if the case involves for example an Antioch IL adoptive parent and a WI mother, no legal risk placement is possible. Consider allowing a placement with an out of state couple between hospital release and termination of parental rights and placement approval if the intended adoptive parent has an approved home study in the receiving state. Because this issue arises in private adoption with non relatives it may be appropriate to add language in Sec. 48.837 which regulates placement of children with non relatives for adoption. Another solution would be to permit temporary guardianships under either Chapter 48 or 880 for the limited purpose of pre adoptive placement. The latter approach would probably obviate the need for ICPC compliance at the pre adoptive placement stage.

5-Open adoption. I mentioned at the August meeting the trend among other states to add contact between birth parents and children who have had parental rights terminated as part of our statutes. DHFS had worked on such an effort in 2002 and it had the blessing of certain of the Milwaukee County juvenile court judges. It became LRB 0110/1 covering Voluntary Post Adoption Agreements. Susan Dreyfus had represented DHFS at the meetings leading up to the draft Consider including LRB 01101/1 or modification thereof in our legislative package.

6-Sec. 48.368 Stats. covers Continuation of Dispositional Orders. In termination of parental rights cases involving newborns particularly, there is often an issue as to whether a parent should be able to contest for placement and/or visits while the tpr case is pending. The child is either in placement with a foster family or intended adoptive parents at the time. At times the child has a court appointed guardian which may be the intended adoptive parents. If it is a child that is the subject of a dispositional order it is clear under 48.368 that the dispositional order or extension order continues in effect until the tpr case is done. Consider adding to 48.368 or other statute a provision that would respect the existence of a guardianship order or existing voluntary placement agreement with an agency until the tpr case is done. That would allow resolution of tpr cases faster, would avoid having a single tpr case dominate a children's court calendar, and would provide stability and predictability of placement for the child over the short run.

7-Sec. 48.235 Stats. covers the duties and responsibilities of the guardian ad litem for the child. One of the duties is to make recommendations to the court concerning the child's best interests. Current law does not permit counsel to ask questions of the guardian ad litem to find out what the basis for the

recommendations are, the amount of effort put forth by the guardian ad litem, or whether the guardian ad litem carried out his or her responsibility to the child in question. Consider allowing counsel to examine the guardian ad litem after the recommendations of the guardian ad litem have been presented in tpr cases. I suspect this may be somewhat controversial, but if we have expert testimony presented by psychologists and psychiatrists whose opinions on best interests we are to consider, why should not others whose opinions may affect the outcome of the case and who are required to make recommendations be subject to some form of interrogation to test the recommendations which they make and which may have a life changing effect on the child in question?

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