



WISCONSIN LEGISLATIVE COUNCIL

ADOPTION AND TERMINATION OF PARENTAL RIGHTS LAW

Legislative Council Conference Room
Madison, Wisconsin

September 15, 2004

10:00 a.m. - 2:45 p.m.

[The following is a summary of the September 15, 2004 meeting of the Special Committee on Adoption and Termination of Parental Rights Law. The file copy of this summary has appended to it a copy of each document prepared for or submitted to the committee during the meeting. A digital recording of the meeting is available on our Web site at <http://www.legis.state.wi.us/lc/2004studies.htm>.]

Call to Order and Roll Call

Chair Jeskewitz called the meeting to order. The roll was called and it was determined that a quorum was present.

COMMITTEE MEMBERS PRESENT: Rep. Suzanne Jeskewitz, Chair; Sens. Jeff Plale and Tom Reynolds; Rep. Steve Kestell; and Public Members Susan Dreyfus, Joseph Ehmann, Stephen Hayes, Patrick Kenney, and Mary Jane Proft.

COMMITTEE MEMBERS ABSENT Rep. Chris Sinicki; and Public Member Christopher Foley.

COUNCIL STAFF PRESENT: Anne Sappenfield, Senior Staff Attorney; Laura Rose, Deputy Director; and Tracey Uselman, Support Staff.

APPEARANCES: Mark Campbell, Director, Bureau of Programs and Policies; and Jodi Timmerman, Rock County Corporation Counsel.

Approval of the Minutes of the August 24, 2004 Meeting of the Special Committee

Senator Plale moved, seconded by Stephen Hayes, to approve the minutes of the committee's August 24, 2004 meeting. The motion carried on a voice vote.

Description of Materials Distributed

Anne Sappenfield, Senior Staff Attorney, Legislative Council staff, described Memo No. 1, *Declarations of Paternal Interest*, September 2, 2004. Chair Jeskewitz explained that the legislation described in the Memo was the product of a working group of persons representing various interests relating to adoption and parental rights.

Mr. Hayes said that this type of legislation has been enacted in several states and that the national trend is to create declarations of paternal interest or birth father registries for notification to fathers of their parental rights. He said that this is the main legislation that adoption agencies would like to see enacted in order to address issues raised by “accidental impregnators” and incarcerated felons. He said that the current termination of parental rights (TPR) and TPR notice to alleged fathers processes are lengthy and that some mothers decide not to place their child for adoption after experiencing many delays.

Representative Kestell said that he was uncomfortable with the legislation when it was introduced in the Legislature because he felt that it gave the impression that fathers are not important. He said that fathers should be given the same level of importance in this type of legislation as they are when the state is seeking child support.

Ms. Dreyfus stated that she believed the system should do a better job of identifying fathers. She said that the Department of Workforce Development (DWD) has technology that is effective in finding fathers for purposes of collecting child support and that access to this technology could be very helpful to the child welfare system. She said that any legislation should make clear that the state values fathers while protecting children; require child support and child welfare agencies to cooperate in identifying fathers and their families; provide that filing a declaration of paternal interest is only one way of being given the opportunity to participate in TPR proceedings; and provide funding so that there is adequate publicity for putative fathers to be aware of their options.

Mr. Kenney said that the goal of the legislation is to terminate the parental rights of fathers who do not have a relationship with their children but noted that, in general, children should have a relationship with their fathers and the father’s relatives. He said that the legislation does not achieve those goals.

Chair Jeskewitz requested that Representative Kestell, Ms. Dreyfus, and Mr. Hayes meet with the committee’s staff to make recommendations to the full committee on this topic.

Laura Rose, Deputy Director, Legislative Council staff, described Memo No. 2, *2003-04 Legislation on Adoption Tax Credits*, September 2, 2004.

Senator Reynolds stated that he introduced the legislation described in the Memo to make it more reasonable for families to adopt children and that he believes the tax credit would achieve stable placements for more children.

Ms. Proft and Ms. Dreyfus said that incentives are not needed to adopt children privately or from overseas and that there is a better use for funding. Senator Reynolds said that the tax credit would not use state funds but would rather allow families to keep more of their own money.

Mr. Hayes said that he would support the tax credit and that it would benefit his clients, many of whom are not wealthy. He said that he is not sure why the federal tax credit also applies to overseas adoptions because the credit should be used as an incentive to adopt children in this country.

Ms. Rose briefly described Memo No. 3, *Legislation Introduced by the 1996 Joint Legislative Council Special Committee on Adoption Laws*, September 7, 2004. She said that the Legislature made only minor changes to the legislation recommended by the Special Committee.

Ms. Sappenfield and Ms. Rose described Memo No. 4, *Options for Legislation Relating to Termination of Parental Rights*, September 7, 2004.

Regarding the involuntary TPR ground of failure to assume parental responsibility, Mr. Kenney said that the ground is very confusing and that requiring the state to show that the parent *never* had a substantial parental relationship with the child is frequently the focus of the defense. He said that he does not believe the Legislature intended minimal contact with a child to constitute a substantial parental relationship.

There was consensus that staff prepare a bill draft modifying the provision to require a showing that the parent did not have a substantial parental relationship with the child at the time that the TPR petition was filed.

Regarding the involuntary TPR ground of abandonment, Mr. Hayes and Mr. Kenney stated that they did not understand the concern raised in the Memo. There was consensus to discuss this topic at a later meeting.

Regarding the right to a jury trial in TPR proceedings, Ms. Timmerman stated that she views the jury trial as a family's last chance to defend themselves. She said that in her county, she and the judge have often been working on the family's case for years and that she believes it is good to have a jury independently consider the merits of the case. Mr. Ehmann said that the jury trial is the only check on the system in that citizens, not the government, are making the decision. He also noted that it is possible that the Wisconsin Supreme Court would find that there is a constitutional right to a jury trial in TPR proceedings.

Mr. Hayes said that he supports eliminating the right to a jury trial because some adoptions fall through when potential adoptive parents are faced with the high costs of a jury trial. He said that often the birth fathers who are in the best position to stall the process are convicted felons. He noted that in child welfare cases, public attorneys represent the various interests at no cost to the parties, but that, in private adoptions, the adoptive parents must pay the costs of litigation.

Mr. Ehmann said that the State Public Defender will provide information to the committee on how many TPR jury trials are conducted each year and the duration of the trials and the trial preparation.

Regarding the definition of "relative" under the Children's Code following a TPR, staff was asked to prepare a memorandum on the inheritance rights of persons following a TPR and the provisions of current law that may be affected by clarifying the definition.

Regarding the issues raised in the *Kelley H.* decision, Mr. Ehmann stated that the committee should consider these issues after resolving how to proceed regarding the right to a jury trial.

Regarding parties who may file a TPR petition, Mr. Hayes said that he would support including at least certain foster parents as parties who may file a petition. He said that it would allow certain cases to get to court that are not proceeding due to issues such as the district attorney's relationship with the judge. He said perhaps it should be limited to foster parents with whom a child has resided for at least 12 months. Ms. Dreyfus said that it could be limited to cases in which the timelines for filing a petition under the federal Adoption and Safe Families Act have not been complied with. Ms. Timmerman said that she would be more comfortable with that type of limitation.

Regarding the notice of appeal, Mr. Ehmann said that current law relating to notice of TPR appeals could be modified to make it consistent with the process for other civil appeals. Staff was asked to prepare a bill draft on this item.

Regarding creating a one-year time limit for TPR appeal or relief from judgment, Mr. Hayes said the purpose of the proposal is finality and stability of a child's placement. Mr. Ehmann said that current law is ambiguous and that any time limit should begin to run on the date that the judgment or order is final.

Discussion of Committee Assignment

Ms. Dreyfus stated that there is a lack of services available for adoptive families of special needs children following the adoption and that special needs children who are eligible for Medical Assistance (MA) after being adopted should continue to be eligible until reaching age 21. She and Mr. Kenney noted that there are studies that show that children who were in the foster care system do very poorly between the ages of 18 and 21 years. Staff was asked to prepare a memorandum discussing current law relating to MA coverage and post-adoption services and to collect information on studies relating to young adults who have been in the child welfare system.

Mr. Hayes suggested that perhaps the committee should consider creating a penalty specific to mothers who lie about who the father of a child may be in the course of a TPR proceeding. Representative Kestell agreed.

Mr. Hayes described proposals he submitted to the committee in an email dated September 13, 2004. Ms. Dreyfus requested that staff contact the Department of Justice and the Department of Agriculture, Trade, and Consumer Protection to learn what those agencies have done to enforce the prohibition on advertising adoption services.

Other Business

There was no other business brought before the committee.

Plans for Future Meetings

The next meeting of the Special Committee will be held on *Wednesday, October 13, 2004, at 10:00 a.m., in the Legislative Council Conference Room.*

Adjournment

The meeting was adjourned at 2:45 p.m.

AS:tlu