



WISCONSIN LEGISLATIVE COUNCIL

ADOPTION AND TERMINATION OF PARENTAL RIGHTS LAW

Legislative Council Conference Room
Madison, Wisconsin

October 13, 2004
10:00 a.m. - 2:15 p.m.

[The following is a summary of the October 13, 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 at 10:10 a.m. a quorum was determined present at 10:30 a.m.

COMMITTEE MEMBERS PRESENT: Rep. Suzanne Jeskewitz, Chair; Sen. Tom Reynolds; Rep. Steve Kestell; and Public Members Joseph Ehmann, Christopher Foley, Patrick Kenney, and Jodi Timmerman.

COMMITTEE MEMBERS ABSENT Rep. Chris Sinicki; Sen. Jeff Plale and Public Member Susan Dreyfus, Stephen Hayes, and Mary Jane Proft.

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

APPEARANCES: Dale Langer, Manager, Adoption and Consultation Section, Bureau of Programs and Policies, Division of Children and Family Services, Department of Health and Family Services; Mary Sowinski, Assistant District Attorney, Milwaukee District Attorney's Office; and Representative David Ward.

Approval of the Minutes of the September 15, 2004 Meeting of the Special Committee

Representative Kestell moved, seconded by Senator Reynolds, to approve the minutes of the committee's September 15, 2004 meeting. The motion carried on a voice vote.

Testimony by Invited Speakers

Dale Langer, Manager, Adoption and Consultation Section, Bureau of Programs and Policies, Division of Children and Family Services, Department of Health and Family Services (DHFS). Mr. Langer described the Adoption Assistance Program and the procedure for requesting an amendment to adoption assistance. He noted that amendments can be requested annually, and are reviewed annually, if granted. An appeals process is available for families who are denied adoption assistance or an amendment to the assistance. Mr. Langer stated that 95% of the approximately 300 requests per year for adoption assistance amendments are approved. Assistance generally continues until age 18, but can be extended to age 21 in certain circumstances where the child has a mental or physical handicap.

Mr. Langer noted that 7,200 children are currently receiving adoption assistance, a steady increase over the past seven years. He said that the increase is probably due to efforts within the child welfare system to move children to permanent living situations. He noted that funding for the program is sum sufficient and the program has had to request supplemental funding from the Joint Finance Committee.

Mary Sowinski, Milwaukee District Attorney's Office; Captain of the Termination of Parental Rights (TPR) Unit. Ms. Sowinski directed the committee's attention to a memorandum she had prepared relating to TPR litigation in Milwaukee County. She noted the dramatic increase in TPRs in Milwaukee County, due in part to the marshalling of federal resources to this effort, and the establishment of a specialized TPR court in Milwaukee County. Ms. Sowinski emphasized that the trend could not continue without statutory changes to the TPR process. She noted that even with the increase in TPRs, the county is still failing to complete adoptions within the required time period under the federal Adoption and Safe Families Act (ASFA), and the Milwaukee Child Welfare System consent decree. She urged the committee to abolish the right to a jury trial in TPR cases, and to change the grounds in processing TPR cases, in order to expedite TPRs.

Ms. Sowinski then reviewed the memorandum prepared for the committee by Public Member Patrick Kenney, dated August 28, 2004. Part I of the memorandum focuses on technical changes to the TPR laws; Part II focuses on grounds for involuntary TPR; and Part III suggests substantive changes to increase the efficiency of TPR litigation.

Ms. Sowinski mentioned two additional items for committee consideration. First, she stated that she would be opposed to using the "failure to assume parental responsibility" language in determining whether a father had standing in such proceeding. She also said that using information about whether a father lives with his child in determining standing is difficult because this is not an easily ascertainable piece of information without going through a lot of discovery.

She also urged caution in changing the law to allow foster parents to file a TPR petition.

Representative David Ward. Representative Ward described two bills he had drafted for the 2003-04 Legislative Session relating to adoption issues. He noted that the bills had not been introduced, and asked the committee for its consideration of these drafts. The first, LRB-2972/2, provides that the time that a child spends in respite care in a foster home should be included in calculating the 15 of the 22 months of out-of-home placement under ASFA. Judge Foley suggested checking ASFA's language to see if it bars respite care days from being included in the 15-month time period.

Representative Ward then described LRB-0500/3, which addresses calculating the 15-month time in cases where a parent moves from one county to another.

Description of Materials Distributed

Ms. Sappenfield explained the contents of Memo No. 5, *Definition of "Relative" Following a Termination of Parental Rights*.

Ms. Sappenfield stated that the statute defining "relative" could be amended to clarify either that relatives, other than parents, continue to be the child's relatives following a TPR, or to provide that a child's relationship to all relatives is severed following a TPR.

Mr. Kenney added that in the Administrative Code, a relative is eligible for kinship care dollars after the TPR but before the adoption. The committee agreed to defer this item until the November meeting, when Mark Mitchell, DHFS, would be present.

Discussion of Committee Assignment

The committee then commenced discussion of each item in the August 28, 2004 Patrick Kenney memorandum that had been described earlier by Ms. Sowinski. The committee requested that item I. 1., amending s. 48.433, Stats., the permit biological siblings of adoptees to register their contact information with DHFS, be drafted by staff.

There was extensive committee discussion of item I. 2., which would permit a person in a voluntary TPR action to appear by telephone or videoconferencing. Many members expressed concern on how to verify the identity of an individual who is appearing over the telephone. After extensive discussion, the committee directed staff to draft this proposal, and to examine the laws of nearby midwestern states for comparison.

The committee then discussed item I. 3., providing notice in "Safe Haven" cases. Ms. Sowinski had noted earlier the conflicts between the Safe Haven and TPR laws regarding notice to putative fathers. Staff was directed to draft the proposal to provide for notice of a TPR via publication to the alleged parents in these proceedings. Staff was also directed to request DHFS to revise the brochure regarding the Safe Haven law to include information regarding the necessity for a court proceeding to terminate parental rights. Staff was also directed to draft item I. 4., which would require appellate counsel to provide notice when an appeal of a TPR is not going to be pursued.

After a brief discussion, the committee was also directed to draft items I. 5., concerning appeals of administrative law judge rulings relating to licensing; II. 1., relating to amending s. 48.415 (6), Stats.,

failure to assume parental responsibility; II. 2., to change one of the elements in the TPR ground under s. 48.415 (2), Stats., continuing need for protection and services; and II. 3., applying all grounds for TPR to alleged fathers.

The committee then discussed item II. 4, which concerns fathers incarcerated beyond the ASFA 15-month time limit. Representative Kestell and Senator Reynolds questioned the fairness of terminating parental rights of a person if incarcerated for 15 months or more. Mr. Kenney stated that the proposal was intended to apply only to children in foster care with no parent available to care for the child. Staff was directed to develop options relating to this proposal.

The committee deferred a discussion of item III. 1., the right to a jury trial in TPR and CHIPS cases, until the next meeting, when more members will be present.

The committee directed staff to draft item III. 2., clarifying the role of a guardian ad litem appointed for an incompetent parent in a TPR case. Regarding item III. 3., relating to the admissibility of psychological evaluations, staff was directed to draft this item, but to include warnings to the participant that they have Fifth Amendment protections against self-incrimination during these psychological evaluations.

With regard to item III. 4., Mr. Ehmann and Ms. Sowinski agreed to work on an alternative that would preserve some type of remedy for a parent where ineffective assistance of counsel leading to a missed deadline was present.

The committee deferred discussion of Memo No. 6 and the bill drafts listed on the agenda until the next meeting.

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 *Tuesday, November 9, 2004, at 10:00 a.m., in the Legislative Council Conference Room.*

Adjournment

The meeting was adjourned at 2:15 p.m.

LR:tlu