



WISCONSIN LEGISLATIVE COUNCIL

ADOPTION AND TERMINATION OF PARENTAL RIGHTS LAW

Legislative Council Conference Room
Madison, Wisconsin

December 14, 2004
9:30 a.m. - 1:50 p.m.

[The following is a summary of the December 14, 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 9:30 a.m.; 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, Mary Jane Proft, and Jodi Timmerman.

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: Colleen Ellingson, Executive Director, Adoption Resources of Wisconsin.

Approval of the Minutes of the October 13, 2004 Meeting of the Special Committee

Stephen Hayes moved, seconded by Representative Kestell, to approve the minutes of the committee's October 13, 2004 meeting. The motion carried on a voice vote.

Presentation by Invited Speaker

Connie Ellingson, Executive Director, Adoption Resources of Wisconsin. Ms. Ellingson said that Adoption Resources of Wisconsin provides various services to families that wish to adopt a special needs child and families that have adopted a special needs child with the goal of providing permanency and safety for the children of Wisconsin.

Ms. Ellingson said that in 2003, 1,158 special needs adoptions were completed. She said that often the children who are adopted as special needs children have several diagnoses and are on several medications. These children may have issues such as posttraumatic stress disorder, reactive attachment disorder, and depression. In addition, she said that children from other countries in which children are placed for adoption when they are older exhibit similar difficulties.

She said that families need respite care, mental health services, assistance to develop a resource plan that is individualized for a specific child, support from mentors and other parents, and on-going training and education.

Ms. Ellingson said that adoptive families often do not call for assistance with a child until problems have become very serious. She noted that, beginning in January, the application form for adoption assistance will require adoptive parents to waive having a post-adoptive resource center contact them. The resource centers will be able to contact each parent applying for adoption assistance who does not waive being contacted to notify them of available services. She said that this change will allow resource centers to be more proactive.

Ms. Proft said that for every call Ms. Ellingson's organization receives, there are probably 10 to 20 families who are not calling although they need services. She said that giving adoptive parents realistic expectations when they adopt a child would be a great help. She also said that it is very difficult to find good therapists who accept Medical Assistance (MA) and that there is no assistance for children once they reach age 18.

Ms. Dreyfus said that these children should be eligible for MA until reaching age 21. She also said that the state needs to find incentives for doctors, especially psychiatrists and dentists, to serve these children. She also said that counties need to recognize that these children have a right to receive services even after they have been adopted.

In response to comments from Ms. Dreyfus and Mr. Hayes, Ms. Ellingson said that she would support legislation to require private adoption agencies to provide 30 to 40 hours of training to prospective adoptive parents.

Ms. Ellingson said that perhaps MA funds could be used for care coordination. Chair Jeskewitz suggested that the committee send a letter to the chair of the Assembly Committee on Medicaid Reform expressing this concern.

Description of Materials Distributed

WLC: 0015/2

Ms. Sappenfield described WLC: 0015/2, relating to involuntary termination of parental rights (TPR) based on failure to assume parental responsibility and explained that the bill draft requires proof that the parent *has not had* a substantial parental relationship with the child instead of proof that the parent *does not have* a substantial parental relationship with the child, as was required in the first version of the bill draft.

Patrick Kenney moved, seconded by Stephen Hayes, that WLC: 0015/2 be approved. The motion was approved by a vote of Ayes, 10 (Reps. Jeskewitz and Kestell; Sens. Plale and Reynolds; and Public Members Dreyfus, Ehmann, Hayes, Kenney, Proft, and Timmerman); and Absent, 2 (Rep. Sinicki; and Public Member Foley).

WLC: 0016/1

Ms. Sappenfield described WLC: 0016/1, relating to adoption expenses.

Senator Plale moved, seconded by Stephen Hayes, that WLC: 0016/1 be approved. The motion was approved by a vote of Ayes, 10 (Reps. Jeskewitz and Kestell; Sens. Plale and Reynolds; and Public Members Dreyfus, Ehmann, Hayes, Kenney, Proft, and Timmerman); and Absent, 2 (Rep. Sinicki; and Public Member Foley).

WLC: 0026/1

Ms. Sappenfield described WLC: 0026/1, relating to fair hearing for head of foster, treatment foster, or group home. Mark Mitchell, Manager, Child Welfare and Family Violence Programs Section, Department of Health and Family Services (DHFS), expressed concern that the draft would require DHFS to release documents or information that DHFS would otherwise keep confidential. Ms. Sappenfield said that she would redraft the provision for the next meeting so that disclosure of confidential information would not be required.

WLC: 0028/1

Ms. Rose described WLC: 0028/1, relating to filing of notice of intent to appeal. Mr. Ehmann said that on page 1, line 5, "of appeal" should be stricken.

Patrick Kenney moved, seconded by Stephen Hayes, that WLC: 0028/1 be approved, as amended. The motion was approved by a vote of Ayes, 10 (Reps. Jeskewitz and Kestell; Sens. Plale and Reynolds; and Public

Members Dreyfus, Ehmann, Hayes, Kenney, Proft, and Timmerman); and Absent, 2 (Rep. Sinicki; and Public Member Foley).

WLC: 0035/1

Ms. Sappenfield described WLC: 0035/1, relating to notice of a TPR proceeding to parents of a child whose custody was relinquished and said that the bill draft should create s. 48.42 (4) (b) 1m.

Senator Plale moved, seconded by Representative Kestell, that WLC: 0035/1, be approved, as amended. The motion was approved by a vote of Ayes, 10 (Reps. Jeskewitz and Kestell; Sens. Plale and Reynolds; and Public Members Dreyfus, Ehmann, Hayes, Kenney, Proft, and Timmerman); and Absent, 2 (Rep. Sinicki; and Public Member Foley).

WLC: 0040/1

Ms. Rose described WLC: 0040/1, relating to permitting a parent who is unable to appear in person at a hearing on the voluntary termination of his or her parental rights to give consent by telephone or live audiovisual means. Senator Reynolds asked if there were concerns about receiving consent from the correct person. Mr. Kenney said that he and Judge Foley believe that there are adequate safeguards currently in place, under the statute that is cross-referenced in the draft.

Stephen Hayes moved, seconded by Senator Plale, that WLC: 0040/1, be approved. The motion was approved by a vote of Ayes, 10 (Reps. Jeskewitz and Kestell; Sens. Plale and Reynolds; and Public Members Dreyfus, Ehmann, Hayes, Kenney, Proft, and Timmerman); and Absent, 2 (Rep. Sinicki; and Public Member Foley).

WLC: 0043/1

Ms. Rose described WLC: 0043/1, relating to requiring a person to file a notice of abandonment of appeal within 30 days after service of the transcript in a TPR case. Mr. Ehmann said that he believes the bill draft is unnecessary and, though not significant, is an additional burden on defense counsel. Ms. Timmerman and Mr. Kenney said that they both had participated in cases in which the adoption was delayed because the prosecutor did not know if the parent was planning to appeal the termination of his or her parental rights.

Patrick Kenney moved, seconded by Jodi Timmerman, that WLC: 0043/1 be approved. The motion was approved by a vote of Ayes, 10 (Reps. Jeskewitz and Kestell; Sens. Plale and Reynolds; and Public Members Dreyfus, Ehmann, Hayes, Kenney, Proft, and Timmerman); and Absent, 2 (Rep. Sinicki; and Public Member Foley).

WLC: 0044/1

Ms. Rose described WLC: 0044/1, relating to the role of a guardian ad litem (GAL) appointed for a parent in a contested TPR proceeding involving a child found to be in need of protection or

services. Ms. Dreyfus and Senator Plale expressed concerns about the competence of GALs to represent the interests of an incompetent parent. Chair Jeskewitz stated that she is interested in pursuing the issue of the role and qualifications of GALs but that the Special Committee was not in the best position to do so.

Mr. Hayes said that he was concerned that the GAL would present information about whether it is in the incompetent parent's best interest to have his or her parental rights terminated. Ms. Rose said that she would redraft the bill draft to clarify what is meant by "information" on page 2, line 5.

WLC: 0070/1

Ms. Sappenfield described WLC: 0070/1, relating to grounds for involuntary TPR. Ms. Dreyfus asked if the bill draft was too broad. Mr. Kenney said that the prosecutor would still have the same responsibilities in the TPR proceeding. Libby Miller, Assistant District Attorney, Milwaukee, said that, under current law, there are more grounds for involuntary TPR that are applicable to adjudicated fathers than to fathers who do not attempt to establish a relationship with the child or have their paternity adjudicated.

Patrick Kenney moved, seconded by Stephen Hayes, that WLC: 0070/1 be approved. The motion was approved by a vote of Ayes, 10 (Reps. Jeskewitz and Kestell; Sens. Plale and Reynolds; and Public Members Dreyfus, Ehmann, Hayes, Kenney, Proft, and Timmerman); and Absent, 2 (Rep. Sinicki; and Public Member Foley).

WLC: 0073/1

Ms. Rose described WLC: 0073/1, relating to specifying the Milwaukee child welfare agency's right to appeal administrative hearing decisions on licensure of a foster home or treatment foster home and said that the new language would apply to all counties, in addition to the Bureau of Milwaukee Child Welfare.

Susan Dreyfus moved, seconded by Jodi Timmerman, that WLC: 0073/1 be approved. The motion was approved by a vote of Ayes, 10 (Reps. Jeskewitz and Kestell; Sens. Plale and Reynolds; and Public Members Dreyfus, Ehmann, Hayes, Kenney, Proft, and Timmerman); and Absent, 2 (Rep. Sinicki; and Public Member Foley).

WLC: 0074/1

Ms. Rose described WLC: 0074/1, relating to permitting placement of a child in the home of a proposed adoptive parent or parents who live out-of-state.

Stephen Hayes moved, seconded by Patrick Kenney, that WLC: 0074/1 be approved. The motion was approved by a vote of Ayes, 9 (Reps. Jeskewitz and Kestell; Sen. Plale; and Public Members Dreyfus, Ehmann, Hayes, Kenney, Proft, and Timmerman); and Absent, 3 (Rep. Sinicki; Sen. Reynolds; and Public Member Foley).

Letter to Helene Nelson, Secretary of Health and Family Services

Ms. Sappenfield described the letter. Ms. Dreyfus requested that the letter also ask DHFS to include a brief description of TPR procedure. Ms. Timmerman said that the brochure should state that the parent has the right to participate in the proceeding to terminate the parent's parental rights instead of the adoption proceeding. Ms. Sappenfield said that she would incorporate those changes into the letter.

WLC: 0038/2

Ms. Sappenfield explained that WLC: 0038/2, relating to declarations of paternal interest makes the following changes to the first version:

- Modifies TPR notification requirements for alleged fathers only for cases in which the child is under one year of age. In that case, a father who had filed a timely declaration of paternal interest or who had lived in a familial relationship with the child would be notified.
- Requires the mother of a child who is under one year of age to complete an affidavit relating to the identity of the father if the father's parental rights are sought to be terminated.
- Specifies how DHFS may publicize declarations of paternal interest and allows money collected for searches for such declarations to be used for publicity.

Mary Sowinski, Assistant District Attorney, Milwaukee, and Ms. Timmerman said that they will not be able to get mothers to sign the required affidavit. Mr. Hayes suggested that the bill be redrafted so that the affidavit is required only in private adoptions in which the mother has voluntarily terminated her parental rights. Ms. Sappenfield asked whether the newly created notice requirements should also apply only in those cases. There was consensus to change both the affidavit and notice requirements for TPR to an infant so that they apply only in cases of private adoptions if the mother has voluntarily terminated her parental rights.

Ms. Dreyfus and Representative Kestell stated that they did not support the language providing that a father who was identified in the affidavit would be given notice of the TPR proceeding only if he had filed a declaration of paternal interest or lived in a familial relationship with the child. Ms. Sappenfield suggested modifying the bill draft to require the adoption agency to contact a father identified in an affidavit in order to give him an opportunity to participate in the TPR proceeding. There was consensus to make this change to the bill draft.

WLC: 0030/1

Ms. Rose described WLC: 0030/1, relating to relating to creating a time limit for bringing a collateral attack against a judgment terminating parental rights. Mr. Ehmann said that, on page 1, line 8, "the date on which the judgment was entered" should be changed so that an appeal may not be commenced later than one year after the case is final. Ms. Rose said that she would redraft the bill draft to address this concern.

WLC: 0029/1

Ms. Sappenfield described WLC: 0029/1, relating to false statements in the course of a TPR proceeding and providing a penalty.

Stephen Hayes moved, seconded by Susan Dreyfus, that WLC: 0029/1 be approved. The motion was approved by a vote of Ayes, 8 (Reps. Jeskewitz and Kestell; and Public Members Dreyfus, Ehmann, Hayes, Kenney, Proft, and Timmerman); and Absent, 4 (Rep. Sinicki; Sens. Plale and Reynolds; and Public Member Foley).

WLC:0033/1

Ms. Sappenfield described WLC: 0033/1, relating to involuntary TPR ground of continuing need of protection and services. Mr. Kenney said that it is difficult to predict whether a parent will meet conditions to have a child return home in a year and that the court must look past the time at which the prosecutor may be required to file a TPR petition under the federal Adoption and Safe Families Act. Mr. Mitchell said that this would be difficult for parents in rural areas, however, because there can be a long waiting list for required services. There was consensus to consider the bill draft at a later meeting.

WLC: 0032/1

Ms. Sappenfield described WLC: 0032/1, relating to involuntary TPR on the ground that the child is in need of protection or services and that parental rights to another child have been terminated. Ms. Timmerman said that she suggested this bill draft for cases in which a mother has subsequent children after having parental rights to another terminated but does not progress in treatment. She said, however, that she would delete “(8)” from page 1, line 6. There was consensus to make this change.

Jodi Timmerman moved, seconded by Patrick Kenney, that WLC: 0032/1 be approved, as amended. The motion was approved by a vote of Ayes, 7 (Reps. Jeskewitz and Kestell; and Public Members Dreyfus, Ehmann, Kenney, Proft, and Timmerman); and Absent, 5 (Rep. Sinicki; Sens. Plale and Reynolds; and Public Members Foley and Hayes).

WLC: 0034/1

Ms. Sappenfield described WLC: 0034/1, relating to creating involuntary TPR ground of continuing incarceration. Mr. Ehmann said that there should be a reason, other than incarceration, to terminate a parent’s parental rights. There was consensus to prepare a bill draft to amend the TPR ground of continuing need of protection and services so that services need not be provided to an individual who is incarcerated for an extended period of time.

Discussion of Committee Assignment

Chair Jeskewitz stated that committee members should contact committee staff if there are issues they wish to discuss at the next meeting. She said that the committee would discuss the right to a jury trial in TPR proceedings at the next meeting.

Mr. Ehmann described a memo he distributed that sets forth statistics relating to the impact of jury trials and court trials for TPRs on the State Public Defender's workload.

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 *Friday, January 21, 2005, at 9:30 a.m., in the Legislative Council Conference Room.*

Adjournment

The meeting was adjourned at 1:50 p.m.

AS:tlu