



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 3

TO: MEMBERS OF THE SPECIAL COMMITTEE ON PERMANENCY FOR YOUNG CHILDREN IN THE CHILD WELFARE SYSTEM

FROM: Melissa Schmidt and Margit Kelley, Staff Attorneys

RE: Options for Legislation

DATE: September 5, 2012

This Memo provides a list of options discussed by the Special Committee on Permanency for Young Children in the Child Welfare System at the June 27 and July 24, 2012, meetings, or provided to us in correspondence from committee members.

This summary is not exhaustive of the options that may be available to the committee in considering its recommendations to revise Wisconsin law. Rather, it is intended to help focus and facilitate discussion for any further research and potential bill drafts.

CHILD IN NEED OF PROTECTION OR SERVICES (CHIPS) ADJUDICATION PROCEDURES

1. Jury Trial in a CHIPS Action

- Eliminate the right of a parent, legal custodian, or Indian custodian to request a jury trial in CHIPS actions under s. 48.31 (2), Stats.

2. Parent's Right to Representation in CHIPS Action

- Codify Wisconsin case law that allows a juvenile court to appoint counsel to a parent who is party to a CHIPS action. Currently, the statutes prohibit a juvenile court from appointing counsel to a parent in CHIPS actions. However, the Wisconsin Supreme Court declared that the law is unconstitutional. [See *Joni B. v. State*, 202 Wis. 2d 1, 10 and 18 (1996), and *State v. Tammy L.D.* (In Int. of Xena X. D.-C.), 2000 WI App 200, ¶ 32.]

- Allow the court to appoint a State Public Defender (SPD) to represent a parent in a CHIPS action, and specify whether this includes representation for any party to a CHIPS action, including a legal custodian or Indian custodian. Prior statutes permitted a court to appoint an SPD to represent any party to a CHIPS action.
- Create a pilot program in a specified number of counties that allows a court to appoint an SPD to represent a party in a CHIPS action.
- Provide state funding to pay for the representation of a parent in a CHIPS action.

3. ***Jurisdiction of Court in a CHIPS Action***

- Create a new ground for court jurisdiction over newborns for whom at least one parent has had a prior involuntary termination of parental rights (TPR) within the last three years. This option should include a definition of “newborn.”

4. ***Reasonable Efforts not Required***

- Prohibit reasonable efforts from being required to prevent a child from being removed from the home or to reunify the family under current circumstances when reasonable efforts are not required, unless reasonable efforts towards safe reunification are in the best interests of the child.
- Allow an agency to request the court to terminate reasonable efforts for reunification if a parent has not made progress to meet the conditions for safe return of the child, giving the parent the right to request reinstatement of the reasonable efforts at any time during the proceedings.

5. ***Pending Criminal Proceedings***

- Specify that good cause does not exist for granting an extension for any proceedings under ch. 48, Stats., if the reason for the extension is a pending criminal proceeding against a child’s parent.
- Require a court to prioritize any criminal proceeding in which the defendant is also a parent who is party to a ch. 48, Stats., action. Specify that the juvenile court must notify the criminal court of its ch. 48, Stats., proceeding.

6. ***Expedited Appellate Procedures***

- Require expedited appellate procedures under s. 809.107, Stats., for any action under ch. 48, Stats. Under current law, only TPR appeals are expedited.

7. ***Alternative Dispute Resolution: Family Group Decision Making***

- Create an alternative dispute resolution process for any ch. 48, Stats., actions, similar to Minnesota’s Family Group Decision Making process. Under Minnesota’s process, a court may authorize parties and participants in a CHIPS action, permanency planning

process, or TPR to resolve part or all of a matter before the court, at any point in the proceedings, if the court determines that this process is in the best interests of the child. In the Minnesota model, Family Group Decision Making brings together family, extended family, friends, service providers, attorneys, social services, and others to share information about the child or family and decide upon a plan that is in the child's best interests. [See s. 260C.163, Minn. Stat.]

- Specify the types of proceedings for which Family Group Decision Making may be used (i.e., any ch. 48, Stats., actions; CHIPS actions; permanency planning; or TPR proceedings).
- Create a pilot program in a specified number of counties to implement a Family Group Decision Making process.

8. *Peer Specialist Program for Parents*

- Create a statewide peer specialist program through the Department of Children and Families (DCF), encouraging a parent who previously experienced having a child removed from the home and was a party to a CHIPS action to mentor a parent who is currently involved in a CHIPS action and is working to be reunited with a child.
- Create a peer specialist pilot program in a specified number of counties.

9. *Training for Attorneys Representing a Party in any Ch. 48, Stats., Action*

- Direct DCF to create an optional training program for attorneys involved in any ch. 48, Stats., action. The committee could specify what content should be included in the training program and the required number of training hours to be offered.

10. *Permanency Planning and Relatives*

- Require concurrent planning to include placement with a fit and willing relative as the child's permanent placement goal unless it is not in the child's best interests.
- Order a child who is in need of protection or services to have visitation with any of the child's siblings, if it is in the best interests of the child. Include a provision for providing the child with sibling visitation in the child's permanency plan, if it is in the best interests of the child.

GROUND FOR INVOLUNTARY TPR

1. *Continuing Need of Protection or Services*

- Specify that the continuing CHIPS requirement for an agency to have made reasonable efforts in providing services is not required if a court made a finding at the initial temporary physical custody hearing that no reasonable efforts were required due to specific aggravated circumstances.

- Eliminate the continuing CHIPS requirement of showing that there is a substantial likelihood that the parent will not meet the conditions for safe return of the child in the next nine months.
- Eliminate the continuing CHIPS requirement of showing that there is a substantial likelihood that the parent will not meet the conditions for the safe return of the child in the next nine months, and instead require the court to find that the parent has failed to meet the conditions necessary for the child's safe return with the following presumption provisions:
 - A failure to correct the conditions is presumed if the child has been placed outside the home for a cumulative period of 12 months within the preceding 22 months.
 - For a child under age eight at the time the CHIPS petition was filed, a failure to correct the conditions is presumed if the child has been placed outside the home for a cumulative period of six months.
 - The presumptions do not apply if the parent is complying with the out-of-home placement plan and the parent has maintained regular contact with the child.
- Eliminate the continuing CHIPS requirements of showing that the parent has failed to meet the conditions established for the safe return of the child and that there is a substantial likelihood that the parent will not meet those conditions in the next nine months, and instead require a showing of one of the following:
 - The parent has failed or is substantially likely to fail in meeting the conditions on the date that the child began or will begin the 15th of the prior 22 months of placement outside the home.
 - The parent has failed to make reasonable progress toward the return of the child within nine months after issuance of the CHIPS dispositional order.

2. *Continuing Parental Disability*

- Revise the continuing parental disability's requirement that the parent has been an inpatient in one or more hospitals or facilities for a cumulative total period of at least two of the last five years to instead require that the parent has been such an inpatient for 15 of the last 22 months prior to the filing of the TPR petition.

3. *Parenthood as a Result of Sexual Assault*

- Revise the TPR ground of parenthood as a result of sexual assault so that it also applies to termination of a mother's parental rights.
- Eliminate the requirement for a physician's statement as to a belief that there was a sexual assault. Instead, revise the exception from notice to an alleged father in a CHIPS or TPR action to allow proof of sexual assault by a final judgment of conviction or other

evidence, but require notice in all cases in which the alleged perpetrator was 17 years of age or under at the time of the alleged assault.

4. *Child Abuse; Homicide of Parent; and Felony Against a Child*

- Allow evidence of criminal conduct to be produced at a fact-finding hearing, in addition to the current requirement for evidence of a final judgment of conviction, to show that there are grounds for TPR based on child abuse, homicide of a parent, or a felony against a child.

5. *Long-Term Incarceration of a Parent*

- Create a ground for TPR on the basis of the parent's incarceration for a felony conviction if the incarceration will continue for an extended period of time. The court could be required to find all of the following:
 - The parent is incarcerated, or is substantially likely to be, for the next [three or five] years from the date of filing of the petition for TPR.
 - The child or unborn child is adjudicated in need of protection or services or is the subject of a CHIPS order during the incarceration.

INVOLUNTARY TPR PROCEDURES

1. *When Filing of TPR Petition is Required*

- Require, subject to the exceptions under current law, that a TPR petition be filed if a child in need of protection or services has been placed outside the home for the last six months.
- Require, subject to the exceptions under current law, that a TPR petition be filed if a child in need of protection or services has been placed outside the home for a cumulative total period of six months, if any of the following applies:
 - The child was seven years of age or younger when placed outside the home.
 - The child was eight years of age or older when placed outside the home and the goal of the permanency plan is placement for adoption.
 - The child was eight years of age or older when placed outside the home, the permanency plan indicates that a safe and appropriate placement with a proposed adoptive parent is available, and the child has expressed the wish to be adopted.
- Create a ground for involuntary TPR if a child in need of protection or services has been placed outside the home for 15 of the most recent 22 months, unless any of the exceptions under current law apply.

2. *Jury Trial in a TPR Determination*

- Eliminate the right of any party to request a jury trial in a TPR proceeding.
- Eliminate a parent's right to request a jury trial in a TPR proceeding.

3. *Standards for Parental Participation*

- Allow counsel for a parent to be excused if a parent has failed to participate in the proceedings as evidenced by specific conditions.
- Specify that a parent of any age who was ordered to appear in person at all hearings, but fails to appear, without just cause, is considered to have waived the right to counsel. In addition, specify that:
 - The initial order to appear must include a warning that failure to appear, without just cause, is considered a knowing and voluntary waiver of the right to counsel.
 - A lack of just cause may be presumed from a repeated failure to appear.
 - A minor parent may not otherwise waive counsel.
- Require a parent's signature, in addition to counsel's signature, on a notice of intent to appeal a TPR determination, petition for rehearing, or motion for postdisposition relief.

4. *Uninvolved Alleged Father*

- Specify that for further participation in TPR proceedings only an alleged father who has filed a declaration of paternal interest or who has lived in a familial relationship with the child is entitled to further participation after paternity has been established.

5. *Timelines Applicable to TPR Proceedings*

- Reduce the specified timeline for holding the initial, fact-finding, and dispositional hearings. For example, require the initial hearing within 20 days (currently 30), fact-finding hearing within 30 days (currently 45), and dispositional hearing within 30 days (currently 45).

6. *Timelines Applicable to an Appeal of a TPR Determination*

- Reduce the specified timelines required for each step in the appellate process. For example, require filing of the notice of intent to appeal within 20 days of the final judgment (currently 30), request for the transcript and record within 10 days (currently 15), service of the transcript and record within 20 days (currently 30), filing of the notice of appeal within 20 days (currently 30), brief within 10 days (currently 15), response within five days (currently 10), and reply within five days (currently 10).

7. *Challenge Based on Ineffective Assistance of Counsel*

- Specify that, if an adoption is pending, a TPR appeal based on ineffective assistance of counsel must be filed within 30 days of the final judgment, or within one year of the final judgment (but before the adoption is granted), whichever is later.

ACCESS TO MENTAL HEALTH CARE

1. *Medicaid*

- Reduce the timeline for reimbursement from Medicaid for services provided (by increasing staff for processing of claims, and assisting providers in submitting proper claims). Current regulations require the Department of Health Services (DHS) to issue payment in a timely manner on a claim for covered services that is properly completed and submitted by a provider. Regulations specify that DHS must issue payment on at least 95% of proper claims within 30 days of receipt, at least 99% within 90 days of receipt, and 100% within 180 days of receipt. [s. DHS 106.04 (1) (a), Wis. Adm. Code.]
- Increase the reimbursement rate from Medicaid for services provided, by increasing the maximum allowable fees-for-service set by DHS.
- Reduce the requirements for obtaining prior authorization for outpatient mental health services to be covered by Medicaid, as itemized in the *Wisconsin Medicaid Provider Handbook*, Topic No. 6121.

FAMILY FUNDING

1. *Definition of Family Finding*

- Define when an agency must attempt to find family members of a child.

2. *Standard of Reasonable Efforts for Family Finding*

- Create a standard to clarify when reasonable efforts for finding family members have been met and are no longer required.

3. *State Funding for Family Finding*

- Provide state funding for county social service departments or child welfare agencies to conduct family findings. Currently, some receive federal grant funding for this purpose.

ADOPTION PROCEDURES

1. *Confidentiality of Permanent and Pre-Adoptive Placement*

- Allow a court to order that the name and address of either a permanent or pre-adoptive placement be kept confidential from the parent or guardian if the court finds that

confidentiality is in the best interests of the child. [See ss. 48.33 (5) and 48.355 (2) (b) 2., Stats.]

2. *Customary Adoption*

- Create a tribal customary adoption procedure as an alternative permanent placement option for an Indian child, if a court determines that it is in the best interests of the child. Under customary adoptions, a parent's rights would be suspended, not terminated. Also, the adoptive parent would be an extended family member of the child according to the child's tribal laws or customs. The tribal customary adoption placement option could apply only to new CHIPS cases or to both new and existing cases that have not yet gone through the TPR process.

3. *Filing Adoption Petitions*

- Revise the responsibility for filing a petition for adoption from a contract adoption agency to the county, and provide county funding for the purpose.

4. *Disclosure of Certain Adoption Papers*

- Permit records and papers related to an adoption proceeding to be disclosed for purposes of determining the availability of a placement for a child with an adoptive parent or proposed adoptive parent of a sibling. Currently, adoption records and papers may not be disclosed for this purpose.

5. *Pre-Adoption Investigative Home Study*

- Reduce or eliminate the home study process of an adoptive family that is also a licensed foster home and is the foster family for the prospective adoptive child. If the committee chooses to reduce the home study, it should specify what information should remain in the home study investigation.

6. *Post-Termination Contract Agreement (Open Adoption)*

- Allow adoptive parents and birth parents to enter into a post-termination contract agreement, commonly known as an open adoption agreement. The agreement would specify what contact or interaction the birth parent may have with the child after the adoption is finalized, and must contain certain elements, such as an acknowledgement of the parties' knowing and voluntary entry to the agreement.