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Governor Scott Walker  
Secretary Eloise Anderson

Secretary's Office

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Date: August 28, 2018  
To: Members of the Legislative Council Study Committee on Minor Guardianships  
From: Randy Keys, Chief Legal Counsel  
Therese Durkin, Legal Counsel  
Re: Minor Guardianship Legislation

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Chairman Steineke, Vice-Chairwoman Johnson and Members of the Committee:

Thank you for the opportunity for the Department of Children and Families to comment on the Study Committee's work and more specifically on the proposed children's guardianship bill draft. We support improving the law related to private minor guardianships to better meet the special needs of minors and clarify private guardianship procedures. However, we are concerned that the draft bill goes beyond the scope of private guardianship actions and has repercussions on the public child welfare system.

We are concerned about the challenges of combining private guardianship procedures with the public child welfare procedures, and impacts of moving the private guardianship provisions into the Chapter 48 public child welfare provisions. Chapter 48 provides protections for children who are under the care of public agencies because they do not have anyone to protect them. As the Wisconsin Supreme Court said in *Sate Ex Rel. Harris v. Larson*, 64 Wis. 2d 335 (1974), Chapter 48 is a chapter of carefully defined child welfare procedures and dispositions and carefully detailed public agency and judicial authorities. The guardianship bill modifies public child welfare authorities and creates uncertainty about the interplay of private guardianship and public child welfare procedures.

The bill draft impacts public funding and resources. It expands publicly funded child welfare programs such as subsidized guardianships by opening them up to more children, including it seems, to children under private guardianships. It imposes burdens on public agencies to provide information and to conduct investigations and assessments in private guardianship proceedings. The bill as drafted potentially impacts federal foster care funding by authorizing private custody actions for children in the care of public child welfare and delinquency systems which potentially may violate federal funding requirements.

Because we believe that Chapter 48 should be reserved for addressing public child welfare matters we recommend that the fixes to the private minor guardianship law be made in Chapter 54 or a separate statutory chapter. There are some provisions in Chapter 48 related to parental delegation that could be moved to and combined with the new guardianship provisions.

There are other chapters of the statutes that also pertain to child custody matters, for example, Chapter 767 pertains to private actions affecting the family, including private child custody and visitation actions, and may be a more appropriate place for private guardianship actions.

We look forward to continuing to work with you on this important legislation.