

Date: October 29, 2019

Re: Comments on Speakers Task Force on Adoption Bills - *Informational*

To: Chair Jessie Rodriguez and Members of the Assembly Committee on Family Law

From: Phyllis Greenberger, Lead Advocacy Specialist

Disability Rights Wisconsin appreciates the opportunity to provide these informational comments to the Assembly Committee on Family Law and we thank you for your consideration of our recommendations. Disability Rights Wisconsin is the Protection and Advocacy Agency for the State of Wisconsin, and our charge is to protect the rights of children and adults with disabilities in Wisconsin.

We thank the members of the Speakers Task Force on Adoption for their work to identify policy recommendations with the hope of benefiting many Wisconsin children and families. As advocates for parents and children with disabilities, assessing these policy changes may be very complex as we evaluate the impact on parents who have a disability and may experience disability related discrimination, and the needs of children, including those with disabilities, for permanence and a supportive family.

Given the complexity of the system and policy proposals you are considering today, DRW is concerned about the speed of the process with a hearing today and potentially going to the floor with these proposals next week. We support a slower process that will allow policy makers to carefully consider the input from stakeholders and from the legislative service bureaus. We are concerned that some of the proposals before you today could result in unintended consequences for parents with disabilities and their children, as well as for children with disabilities in the child welfare system.

### **Background**

DRW submitted comments to the Task Force regarding protecting the rights of parents with disabilities, how to provide better supports for families of children with disabilities to help eliminate the potential of abuse and neglect and additional measures that can be taken to ensure that children with disabilities are receiving appropriate supports and services in their homes, foster homes or adoptive homes. *A copy of those comments is also attached for your reference.*

As we consider the impact of the changes you are considering on parents with disabilities, it is vital that policy makers also consider options to fund and expand prevention and preservation services, and provide services to families while the children are maintained in the home. Research has shown that home services are most effective, particularly for parents with disabilities.

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These recommendations noted in our August testimony were especially important for families and could be helpful to guide Wisconsin policy makers:

1. There are numerous models in other states that acknowledge, support and protect the needs and rights of families where the parents or children have disabilities. Wisconsin has also developed some flagship programs that could be expanded.
2. Develop Family Resource Centers that will help families learn of resources and navigate the complex service system.
3. Provide means for parents to seek diagnoses for their children and offer screening for eligibility for services.
4. Provide support and training for parents and foster families to understand and support children with difficult diagnoses. Increase the capacity of those resources to improve access.
5. A collaborative agreement between DCF, DHS and DPI could identify children with disabilities and families in need of greater support services and information.
6. Foster and adoptive parents should be eligible for the same support resources, such as respite and child care, as natural parents.
7. Consider legislation to require safety services and foster care agencies to refer any child with a disability to their county disability services to conduct a functional screen for Wisconsin Medicaid Waiver programs such as Children's Long-Term Support Waiver, Children's Community Options, Comprehensive Community Services, and WRAP / Coordinated Services Teams (CST).

## **BACKGROUND**

### **Parents with Disabilities**

Any changes to the termination of parental rights laws and procedures need to take into account the impact on, and the rights of, parents with disabilities. Parents with disabilities face many obstacles and challenges in the child protective system. There is a significant need to improve the services provided to parents with disabilities and their children. The problems faced include failure to provide reasonable accommodations, lack of resources and services, lack of ongoing services, and stigma and bias against people with disabilities that influence official actions and decisions.

According to the National Council on Disability's 2012 Report, *Rocking the Cradle*, (<https://www.ncd.gov/publications/2012/Sep272012>), parents with disabilities are at greater risk for termination of parental rights: "Removal rates where parents have a psychiatric disability have been found to be as high as 70 percent to 80 percent; where the parent has an intellectual disability, 40 percent to 80 percent. In families where the parental disability is physical, 13 percent have reported discriminatory treatment in custody cases. Parents who are deaf or blind report extremely high rates of child removal and loss of parental rights."

Many parents with significant disabilities have raised their families successfully, yet they may be inappropriately stigmatized because of misguided presumptions about their parenting abilities. People with disabilities, especially those with intellectual and mental health disabilities, continue to

be stigmatized and unfairly judged. Sometimes parents with these disabilities have their children taken from them even before they leave the hospital. They are assumed to be incompetent parents by people who know little or nothing about the individuals involved or their disabilities.

### **Children with Disabilities**

Children with disabilities represent one-third of children in the child welfare system, according to this 2016 report by the Department of Children and Families (DCF):

<https://dcf.wisconsin.gov/files/cwportal/reports/pdf/act365.pdf>. Children with disabilities are over-represented in the child welfare system compared to the general population and are more likely to be involved in an out of home placement. In 2016, DCF reported that 12% of children in child welfare have a disability, but the Department of Public Instruction (DPI) and the Department of Health Services (DHS) showed an additional 25% of children had disabilities. Families of these children struggle to meet the needs of their children without necessary supports and services and often have never been directed to the appropriate supports and services in their communities.

### **Comments on Adoption Task Force Bills**

In reviewing these bills, DRW has assessed the impact these proposals will have on parents who have disabilities, families of children with disabilities who are at risk of child welfare intervention, children with disabilities in out of home placements, and children with disabilities adopted through the public system.

### **AB-559 – Grounds for Chips**

- DRW is concerned about the elimination of jury trial for parents who face termination of their parental rights. Parents who are at risk of losing their children should have the opportunity for a jury of their peers. We understand that policy makers are concerned with the challenge of educating jury members about such a complex system. However, if judges are the ultimate decision makers, judges will need training regarding parents with disabilities and accommodations under the American with Disabilities Act (ADA) to be able to participate fully in the proceeding. This should address the applicability of the ADA to TPR proceedings, and the duty of child welfare agencies and dependency courts to provide reasonable accommodations to parents with disabilities.
- DRW is concerned about how the additional grounds for TPR may affect parents with disabilities. People with mental illness represents a disproportionate amount of people in jails and prisons. Their incarceration can be a direct result of a mental health crisis or untreated mental illness, and the lack of access to treatment and prevention services. As a result, it is likely that parents with disabilities would be over-represented in the numbers of parents losing their right due to incarceration. We also recognize that the proposal indicates that this would apply if a parent is incarcerated for a substantial period of a child's youth, and that permanence is important to the child whose parent is incarcerated for years. By investing in treatment, support and prevention on the front end, there is the potential to reduce the number of parents with mental illness and other disabilities in the criminal justice system.

- If a failure to provide court ordered payments for child support is considered abandonment, would this have a disproportionate impact on some fathers with disabilities? This is a concern given the barriers to employment experienced by many individuals with disabilities and Wisconsin's history of limited opportunities for competitive employment for people with disabilities.

#### **AB -560- Terminating Parental Rights**

- DRW recommends the removal of the language "non-secured residential care center for children and youth" from the current bill. Some parents of children with disabilities have had to use the CHIPS/JIPS petition option to have their child placed in residential treatment for mental health services. Seeking residential treatment services for their child with a significant disability should not put them at risk for termination of parental rights.
- Parents of children with disabilities are often faced with the need to get additional services from the State and County to help their child. This can include the family initiating a petition under the CHIPS/JIPS process to get the needed services. Any changes to the law for TPR should include an exception for parents that initiate this process with their county.
- Minnesota has created a separate child welfare code for families of children with mental illness and developmental disabilities who need to use their state system to provide additional services. Wisconsin should consider these options for families of children with disabilities thus protecting them from the requirements of the TPR process. The following is a link to the Minnesota Statute: <https://www.revisor.mn.gov/statutes/cite/260D.01> Any consideration of such a change should be done carefully with stakeholder input including parents and disability advocates, given the complexity of the system.

#### **AB-566 Terminating Parental Rights**

- The Adoption Task Force chair recommended (in the Task Force report) that the Legislature require a parent to be represented by counsel in a CHIPS or JIPS proceeding, unless he or she waives counsels. Representation by council at the CHIPS/JIPS proceeding would provide better protections for both parents and children with disabilities.
- The bill requires the combination of the TPR with the CHIPS and would allow a right to counsel which is truly not an expansion of right to counsel in a CHIPS proceeding, as representation is already provided for a TPR.
- Combining the CHIPS/JIPS petition and TPR process may result in quicker termination which is rarely good for kids and could easily be used to discriminate against parents with disabilities and parents who are struggling to get the appropriate supports and services for their child with a disability.
- AB-566 raises the same concerns as AB-560 regarding the need to include an exception for parents that initiate the CHIPS/ JIPS process with their county to get services for their child.

#### **AB-564 – Adoption Assistance**

- While the statute takes into account many functional and behavioral conditions to calculate adoption assistance, it does not specifically address diagnosed disability. The addition of a disability as diagnosed by a medical professional could be added as an additional determination of adoption assistance.

- DRW recommends developing an amendment that adds a requirement for DCF to refer child to determine whether they qualify for Medicaid waivers and publicly administered mental health programs that could provide additional supports for families. Children should be screened for this at the time of the consideration of adoption assistance. This could include Children's Long-Term Support (CLTS), Children's Community Options Program (CCOP), Comprehensive Community Services (CCS), Coordinated Service Team (CST) and other wraparound services.

**AB-565 - Placement of a child with a relative under the Children's Code or the Juvenile Justice Code**

- Potential concern: If a child has a significant disability, the family may need a longer period to be able to have the child placed in their home and accommodate their needs. For example, if a child has a physical disability, the relative may need to move to accessible housing, or have home modifications in place.
- A possible amendment could be added to extend the timeframe for families who need additional time to prepare for placement of a child with disability.

Thank you for your consideration of these informational comments and your work to address the needs of Wisconsin families and children. Disability Rights Wisconsin would welcome the opportunity to discuss our comments on these proposals, and recommendations to support parents with disabilities, as well as children with significant disabilities in the child welfare system.

Please feel free to contact Barbara Beckert, Milwaukee Office Director, at [Barbara.Beckert@drwi.org](mailto:Barbara.Beckert@drwi.org) or 414-292-2724 with any questions or to schedule a time to meet with staff from Disability Rights Wisconsin.

August 28, 2019

To: Representative Dittrich, Chair of the Speaker's Task Force on Adoption and Representative Subeck, Vice-Chair of the Speaker's Task Force on Adoption and Committee Members

From: Disability Rights Wisconsin, Barbara Beckert, Milwaukee Office Director, 414-292-2724

Disability Rights Wisconsin appreciates the opportunity to provide input to the Speaker's Task Force on Adoption and we thank you for your consideration of our recommendations. Disability Rights Wisconsin is the Protection and Advocacy Agency for the State of Wisconsin, and our charge is to protect the rights of children and adults with disabilities in Wisconsin. Our testimony will address the needs of parents who have disabilities, families of children with disabilities who are at risk of child welfare intervention, children with disabilities in out of home placements, and children adopted through the public system. In addition, this testimony provides information and offers recommendations to address barriers in the current child welfare system. Many of the recommendations could be of benefit to all parents with disabilities, families of children with disabilities, foster families, and adoptive families.

### Parents with Disabilities

Any changes to the termination of parental rights laws and procedures need to take into account the impact on, and the rights of, parents with disabilities. Parents with disabilities face many obstacles and challenges in the child protective system. There is a significant need to improve the services provided to parents with disabilities and their children. The problems faced include failure to provide reasonable accommodations, lack of resources and services, lack of ongoing services, and stigma and bias against people with disabilities that influence official actions and decisions.

Many parents with significant disabilities have raised their families successfully, yet they may be inappropriately stigmatized because of misguided presumptions about their parenting abilities. People with disabilities, especially those with intellectual and mental health disabilities, continue to be stigmatized and unfairly judged. Sometimes parents with these disabilities have their children taken from them even before they leave the hospital. They are assumed to be incompetent parents by people who know little or nothing about the individuals involved or their disabilities.

Some deaf parents have also experienced disability related discrimination that has put them at risk of losing their parental rights. A November 2008 article in the Milwaukee Journal Sentinel (Court Leaves Deaf Parents in the Dark <http://archive.jsonline.com/watchdog/watchdogreports/34965539.html>) documents the communication roadblocks experienced by deaf parents, and further notes that court guidelines distributed to judges by the state Supreme Court were disregarded or ignored.

The fear of being judged because of their disabilities can cause people with disabilities not to seek help with parenting issues. Parents' disabilities are used against them by courts when deciding custody issues. Wisconsin has very limited capacity to offer preventative services and supports to assist people with disabilities to be better parents and cope with the problems they experience.

Once parents with disabilities are in the system, there is a lack of accommodations provided to them. Parenting programs often do not understand the unique problems and challenges of parents with disabilities. They are

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not prepared to offer various accommodations, such as the need is ASL interpreters or one-on-one assistance. Parents are sometimes subjected to court orders that their disabilities would never allow them to meet, such as following complicated instructions or reading lengthy documents. Even when parents with disabilities have met all the conditions set forth by the courts, DRW still sometimes hears that termination actions have continued against them.

There is a need for supported parenting services to help some parents with disabilities succeed. These services need to be available not just for a limited time but long term. In the past, these services were more widely available through Wisconsin counties. As the counties' role in providing disability services has changed and diminished, many of the county funded services to support parents with disabilities have disappeared. In Milwaukee County, for example, agencies that used to provide these services, such as Life Navigators, Lutheran Social Services, and MCFI, no longer do so. Services have been disappearing, yet the need continues to grow.

Recommendations:

Parents with intellectual disabilities have their parental rights terminated at rates as high as 50-80%. Wisconsin has an opportunity to develop a plan to better support struggling families who have a parent with a disability, and ultimately reduce the high rate of termination of parental rights and the accompanying trauma for children and parents. Other states have been successful with these efforts; for example, Vermont initiated a program that reduced the rate of termination of parental rights for those in the program to less than 2%.<sup>1</sup>

The following are examples of other states' programs, previous Wisconsin practices, possible future Wisconsin programs, and model legislation:

1. Vermont provides Disability Awareness Training to caseworkers in the child protective system, using skilled assessors with disability experience to do parenting skills assessments, hiring peer navigators who were either experienced parents with disabilities themselves or parents of children with disabilities who guide families to create plans, find resources and fill out paperwork.
2. Vermont provides Communication Support Specialists to persons with intellectual disabilities in legal and court settings. Also, Vermont offers ongoing supports to parents with intellectual disabilities to help them care for their children safely at home. The support continues as long as the need persists. Appropriate parenting skills training is also a critical necessity.
3. Wisconsin has some excellent programs that provide parenting services to help parents with disabilities succeed. We recommend using these programs as models and developing additional capacity. Examples of current programs are:
  - a. Mental Health America of Wisconsin--*Strong Families Health Homes* program provides in-home services and parenting and wellness education to parents & pregnant women with mental health and/or substance use challenges. For a more detailed description, follow this link: <http://www.mhawisconsin.org/menu-of-services.aspx>
  - b. Easter Seals--*Our Safe Babies Healthy Families* program. To participate in this program, parents must have a risk factor which includes depression or other psychiatric care or history of

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<sup>1</sup> *When Parents Have Disabilities: An Array of Supports*, Susan Yuan, Ph.D., University of Vermont

substance abuse. For a more detailed description, follow this link:

<http://www.easterseals.com/wi-se/our-programs/childrens-services/safe-babies-healthy-families.html>

- c. Brown County--*Positive Parenting Brown County* provides intensive, supportive services for families in which one or both parents have an intellectual disability. For a more detailed description, follow this link: <http://www.aspiroinc.org/positive-parenting.html>
- d. Catholic Charities--*Supported Parenting Program* serves "client families with developmental disabilities in Waukesha County, who have children from birth to age 7 or through first grade, whichever comes last." It includes home visitation, assessment and education. It assesses needs of the family, develops appropriate parenting goals, and connects families to others for socialization and supportive interaction. For a more detailed description, follow this link: <https://www.ccmke.org/Catholic-Charities/Get-Help/Supported-Parenting-Services.htm>
4. Wisconsin could adopt a parent peer mentoring program. Wisconsin is developing certification for Parent Peer Specialists, and they could be a resource to support parents who have a mental illness, substance use disorder or co-occurring needs. Parent Peer Mentors could also be a covered Medicaid service through Wisconsin programs already available to parents with disabilities, such as Comprehensive Community Services (CCS), Children's Long-Term Support Waiver (CLTS), Family Care and IRIS. The Vermont Family 360 Project includes use of peer navigators to support parents with disabilities and assist with system navigation and they can serve as a supportive peer. For a more detailed description, follow this link: <https://humanservices.vermont.gov/departments/ahs-fs-folder/peer-navigators/vermont-family-360-support-project>
5. Preventive and reunification services could be improved to better provide for the needs of parents with disabilities.
6. The Bazelon Center for Mental Health Law has proposed model legislation (attached) for supporting parents with psychiatric disabilities. We would suggest similar legislation in Wisconsin to assist parents with all types of disabilities.<sup>2</sup> Follow link for more information: <http://www.bazelon.org/wp-content/uploads/2017/04/Supporting-Parents-with-Psychiatric-Disabilities.pdf>

### **Parents of Children with Disabilities**

Children with disabilities represent one-third of children in the child welfare system, according to the 2016 report by the Department of Children and Families (DCF).<sup>3</sup> Follow link for more information: <https://dcf.wisconsin.gov/files/cwportal/reports/pdf/act365.pdf>

Children with disabilities are over-represented in the child welfare system compared to the general population and are more likely to be involved in an out of home placement. In 2016, DCF reported that 12% of children in child welfare have a disability, but the Department of Public Instruction (DPI) and the Department of Health

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<sup>2</sup> *Supporting Parents with Psychiatric Disabilities: A Model Reunification Statute*, Developed by: Jeniece Scott, J.D. Key Contributions by: Jennifer Mathis, Esq. & Ira Burnim, Esq. of the Bazelon Center for Mental Health Law.

<sup>3</sup> *Report on Children with Disabilities Served by the Child Welfare System*, Wisconsin Department of Children and Families, December 30, 2016

Services (DHS) showed an additional 25% of children had disabilities. Families of these children struggle to meet the needs of their children without necessary supports and services.

In 2016, DCF released a report, *Children with Disabilities Served by the Child Welfare System*. This report, as required by the 2015 Wisconsin ACT 365, was created to identify and address areas in which there were needs for improvement with practices used to investigate suspected or threatened child abuse or neglect of a child with a disability.

The report identified several risk factors for families of children with disabilities:

- Lack of services or supports to fully meet the child's needs, thus increasing demands and stress on parents.
- Inadequate supports to alleviate the demands on parents and to other caregivers while ensuring a safe environment
- The financial burden and stress due to the cost of meeting the child's needs.
- Increase of social isolation for the child or family due to lack of respite care or in-home supports.
- Heightened dependence on paid caregivers or informal childcare creating the potential for abuse

The possibility of an out of home placement grows with each risk factor, and the disability related support needs are often unidentified, leaving the family at high risk of removal of the child and eventual termination of parental rights.

Recommendations:

1. Adopt the recommendations proposed in the state budget to create Family Resource Centers, which would include Family Navigators and Benefits Specialists for children with disabilities and complex medical needs. Families would be able to have support to navigate these complicated systems, including Children's Long-Term Support Waivers, Children's Community Options Program, and Comprehensive Community Services.
2. Expand Medicaid programs such as Comprehensive Community Services (CCS), Children's Long-Term Support Waiver (CLTS), Family Care and IRIS to include parent mentoring, family navigation services, and parent education as covered services to help prevent out of home placements.
3. Consider legislation that would require safety services to refer any child with a disability to the county disability services to conduct a functional screen for Wisconsin Medicaid Waiver programs such as Children's Long-Term Support Waiver, Children's Community Options, and Comprehensive Community Services.

## Children with Disabilities in Out of Home Care and Public Adoption

Children in the child welfare system are considered "special needs" based on the following criteria, which also may align with a disability-related condition that impacts the child's functioning:

- Impact of Trauma
- Life Functioning including physical, mental, and dental health
- Social Skills
- Functioning at childcare or school setting
- Behavioral and emotional needs
- Risk Behaviors

A child currently in the system must have a total of five or more needs in the moderate or intensive areas for the adoptive family to receive assistance. Adoption assistance is a payment to the adoptive family that cannot exceed \$2,000 a month. The child is also eligible to receive Medicaid until the age of 18 for medical care. Often children with disabilities have significant needs that go above the monetary payment and above what services are provided through the child welfare system. There may be concerns that there are duplicative services or the overall assumption that kids in the child welfare system receive all the necessary supports and services while in out of home care and then through adoption assistance.

In recent conversations with Milwaukee County Disability Services, the administrator shared that many children in the child welfare system have never been screened for essential programs like the Children's Long-Term Support Waiver, Children's Community Options, and Comprehensive Community Services. Milwaukee County Disability Services has taken the step to reach out to Child Welfare to begin discussions on how to enroll children with disabilities who are in out of home care in the CLTS and CCOP programs, and they have started to identify the current barriers in the Medicaid system to this collaboration.

Last year DRW worked with a foster family and the child's biological parent to try and access additional services that could be made available through the Medicaid waiver--Children's Long-Term Support Wavier. This extra support for either the biological parent upon reunification or the possible adoptive family was imperative for this child with extreme behaviors related to the child's diagnosis of autism. The foster parent attempted several times to apply for these services and was turned away by the County since she was not the guardian. The foster care agency also did not initiate such a referral. The County required the referral needed to come from the parent even though the child had been in out of home care for almost a year. The biological parent tried to assist, but it was difficult given the current situation. Even with DRW's intervention, the referral proved challenging to complete. In this case, the child was removed from the current placement due to the foster parent needing additional supports, and we are not aware whether the child was eligible for additional supports.

Without much needed supports, any foster or adoptive family would struggle to meet the child's needs. In this case, DRW believes that the lack of supports caused a disruption in the child's care and a move to yet another out of home placement, causing additional trauma for the child.

In the 2016 report by DCF, child welfare workers around the state were asked to complete a survey; they identified barriers for children with disabilities as lack of enough disability-related resources for children and families, variation in availability of resources across the state, and lack of knowledge by the child welfare workers on how to access available resources. The state must do a better job at preparing child welfare

workers to meet the needs of families of children placed in out of home care and children looking for permanency through adoption.

Recruitment of adoptive parents for children with disabilities should not only include the potential parents' willingness but their ability to support their children. Adoptive parents need to have full disclosure about a child's disability, which leads to permanency stability. Adoptive parents who received all the needed information about the child reported greater satisfaction and stability in parenting their child. Parents also require greater post-adoptions services and supports, and adoption subsidies are not always enough.

#### Recommendations:

1. Collaboration between DCF, DHS, and DPI is needed to identify children in the child welfare system who have disabilities. these departments should coordinate care and resources between all parties. This requirement would support not only foster families but potential adoptive families.
2. Consider legislation to require a foster care agency to refer any child with a disability to the county disability services to conduct a functional screen for Wisconsin Medicaid Waiver programs such as Children's Long-Term Support Waiver, Children's Community Options, Comprehensive Community Services, and WRAP / Coordinated Services Teams (CST). The requirement would be similar to the requirement that all children under the age of three in the child welfare system are required to refer children to Birth to Three.
3. Adoptive parents of a child with a disability and/or complex medical needs should receive not only adoption assistance but resources for respite care, parent education on child-specific needs, support groups, benefits counselling for the child and family, and mental health supports. Follow link for additional information: [https://casw.umn.edu/wp-content/uploads/2013/12/Spring2013\\_360\\_web-FINAL.pdf](https://casw.umn.edu/wp-content/uploads/2013/12/Spring2013_360_web-FINAL.pdf)
4. Review the current adoption assistance rate structure to see if it is providing adequate resources for families who are adopting children with disabilities.
5. Consider the Institute for Human Services Competencies for Child Welfare caseworkers to provide effective child welfare services for children with special needs. These competencies were developed to help identify and serve children with a variety of disabilities in the welfare system. Follow the link for more information: <https://ici.umn.edu/products/impact/191/prof6.html>

Disability Rights Wisconsin would be interested in discussing any potential recommendations that the Task Force is considering or to answer any questions regarding the information we have provided. DRW's brief includes several links and attachments of the materials discussed and others that may be of interest to the Task Force.

Please feel free to contact Barbara Beckert, Milwaukee Office Director, at [Barbara.Beckert@drwi.org](mailto:Barbara.Beckert@drwi.org) or 414-292-2724 with any questions or to schedule a time to meet with staff from Disability Rights Wisconsin.