

1993 Senate Bill 570

Date of enactment: **April 20, 1994**Date of publication*: **May 4, 1994**

1993 WISCONSIN ACT 395

AN ACT to repeal 48.462; to renumber and amend 48.27 (3) and 48.465; to amend 48.23 (3m), 48.235 (4) (b), 48.27 (5), 48.355 (2e) (c), 48.357 (1), 48.357 (2m), 48.38 (5) (a), 48.38 (5) (b), 48.38 (5) (d), 48.38 (5) (e), 48.415 (2) (c), 48.42 (3) (d), 48.43 (6), 48.57 (1) (i), 48.64 (4) (c), 48.68 (1), 48.78 (2) (a), 48.981 (7) (a) 11, 48.981 (7) (a) 11m, 49.19 (12), 252.15 (2) (b) 2, 808.04 (4), 808.04 (7), 809.30 (1) (a) and (b) and 809.40 (1m); and to create 48.13 (3m), 48.13 (10m), 48.205 (1) (am), 48.205 (1) (bm), 48.235 (1) (e), 48.27 (3) (b), 48.299 (6), 48.371, 48.38 (1) (am), 48.38 (5) (am), 48.38 (5m), 48.62 (3), 48.625 (2m), 48.64 (1r), 48.75 (1g), 48.75 (1r), 48.981 (7) (a) 10g and 10r, 48.981 (7) (a) 6m, 121.05 (3), 252.15 (5) (a) 19, 767.47 (10), 808.04 (7m), 809.107 and 809.62 (2r) of the statutes, **relating to:** juvenile court jurisdiction over a child who is alleged to be in need of protection or services based on abuse or neglect of another child in the home, the disclosure of child abuse reports and records, holding a child in physical custody based on abuse or neglect of another child in the home, the appointment of a guardian ad litem for a child placed in out-of-home care, notification to a putative father regarding proceedings to determine whether a child is in need of protection or services, paternity determination proceedings, the release of certain information regarding a foster child to foster parents, membership of permanency plan review panels, notice to and a statement by the foster parent of a child prior to a hearing on the removal of the child from the foster home, grounds for involuntary termination of parental rights, authorizing a county department of human services or social services to license foster homes in other counties, notifying foster parents of supplemental foster care payments, appeals of orders terminating parental rights, requiring an agency that licenses a foster home or group home or that places a school-age child in a foster home or group home to notify the school district in which the foster home or group home is located, a study of out-of-home placements of children and granting rule-making authority.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

PREFATORY NOTE: This bill was developed by the legislative council's special committee on foster care and other out-of-home placements.

A. JUVENILE COURT JURISDICTION

1. Current law

Juvenile courts have exclusive original jurisdiction over any child who is alleged to be in need of protection or services (these cases are commonly referred to as "CHIPS" cases). CHIPS jurisdiction applies to any child who meets certain criteria which include, among others:

- a. The child has been the victim of sexual or physical abuse.
- b. The child's parent, guardian or legal custodian neglects, refuses or is unable for reasons other than poverty to

provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child.

2. The bill

The bill expands the CHIPS jurisdiction of juvenile courts to include jurisdiction over both of the following:

- a. A child who is at substantial risk of becoming the victim of sexual or physical abuse, including injury that is self-inflicted or inflicted by another by other than accidental means, based on reliable and credible information that another child in the home has been the victim of sexual or physical abuse.
- b. A child whose parent, guardian or legal custodian is at substantial risk of neglecting, refusing or being unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of the child, based on reliable and credible information that the child's parent, guardian or legal

custodian has neglected, refused or been unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of another child in the home.

The bill also requires the juvenile court to appoint counsel for any child who is alleged to be in need of protection or services under the new CHIPS criteria, except that if the child is less than 12 years of age the court may appoint a guardian ad litem instead of counsel. The guardian ad litem or counsel for the child may not be the same as counsel for any party or any governmental or social agency involved.

B. CRITERIA FOR HOLDING A CHILD IN PHYSICAL CUSTODY

1. *Current law*

Currently, a child may be held in nonsecure physical custody under various criteria that include the following:

a. Probable cause exists to believe that if the child is not held he or she will commit injury to another person or to the property of others, cause injury to himself or herself or be subject to injury by others.

b. Probable cause exists to believe that the child's parent, guardian or legal custodian or another responsible adult is unavailable, unwilling or unable to provide adequate supervision and care for the child and that services to ensure the child's safety and well-being are not available or would be inadequate.

2. *The bill*

The bill permits an intake worker or juvenile court commissioner to hold or continue holding a child in physical custody under either of the following circumstances:

a. Probable cause exists to believe that, if the child is not held or continued to be held in custody, the child will be subject to injury by others, based on a determination that if another child in the home is not held that child will be subject to injury by others.

b. Probable cause exists to believe that the child's parent, guardian or legal custodian or another responsible adult is unavailable, unwilling or unable to provide adequate supervision and care for the child and that services to ensure the child's safety and well-being are not available or would be inadequate, based on a determination that another child in the home meets those criteria.

C. DISCLOSURE OF CHILD ABUSE AND NEGLECT REPORTS

1. *Current law*

Current law prohibits disclosure of child abuse and neglect reports and records except to specified persons.

2. *The bill*

The bill permits disclosure of child abuse or neglect reports and records concerning a child who is the subject of a child abuse or neglect investigation to the juvenile court or tribal court and to the attorneys in a proceeding concerning another child in the home who is alleged to be at a substantial risk of abuse or neglect.

D. GUARDIANS AD LITEM

1. *Current law*

Currently, a juvenile court may appoint a guardian ad litem in any appropriate matter relating to a child who is alleged or found to be in need of protection or services.

2. *The bill*

The bill makes the following changes in the law relating to the appointment and duties of a guardian ad litem for a child who is alleged or found to be in need of protection or services:

a. The bill requires the juvenile court to appoint a guardian ad litem for such a child if: 1) the juvenile court orders,

or a request or recommendation is made that the juvenile court order, the child to be placed out-of-home in a foster home, group home or residential treatment facility or with a relative; or 2) the dispositional order makes such a placement.

c. The bill requires a juvenile court to order the agency identified in a dispositional order as primarily responsible for the provision of services to a child who is found to be in need of protection or services to notify the guardian ad litem of the following actions: permanency planning for the child; a petition for a change in the placement of the child; a petition for termination of parental rights or other matters specified in s. 48.14, stats.; a petition for the revision or extension of a dispositional order; a petition for a temporary restraining order and injunction relating to child abuse; or a petition for relief from a judgment terminating parental rights. Under current law, a court may, but is not required to, order the agency to provide such notice.

E. NOTIFICATION OF PUTATIVE FATHERS

1. *Current law*

Under current law, after a citation is issued or a petition has been filed with the juvenile court, the juvenile court must notify the child's parent, guardian and legal custodian of all hearings, with certain exceptions, that involve the child. The juvenile court must also make a reasonable effort to identify and notify of hearings involving the child any person who has filed a declaration of parental interest in matters involving the child and any person who has been adjudged to be the biological father of the child and whose parental rights have not been terminated.

2. *The bill*

Under the bill, in CHIPS cases that involve nonmarital children for whom paternity has not been established, the court must also send notice to a person who: a) has filed a declaration of paternal interest in matters involving the child; b) is alleged to be the father of the child. An exception provides that notice to a person who may be the father of a child conceived as a result of a sexual assault is not required.

If a man to whom such notice is given comes forward and wishes to have his paternity determined, the matter must be referred to the appropriate state or county authority for a determination of whether to file a paternity petition and begin paternity proceedings under ch. 767, stats. The juvenile court may order a record to be made of any testimony of the child's mother relating to the child's paternity for use in the paternity proceedings.

F. RELEASE OF INFORMATION TO FOSTER PARENTS

1. *Current law*

Under current law, testing of an individual for the presence or other indicator of the human immunodeficiency virus (HIV) may only be done with the informed consent of the person to be tested or, if the person is under 14 years of age, with the informed consent of the person's parent or guardian. There are, however, various exceptions to this requirement that relate to medical emergencies, blood and sperm banks or the protection of health care providers who may have been exposed to the virus.

HIV test results generally may not be disclosed except as authorized by the person who was tested or, if the person is under 14 years of age, the person's parent, except under statutorily specified circumstances. Persons to whom the test results are lawfully disclosed must also keep those test results confidential.

2. *The bill*

The bill expressly permits the HIV test results of a child for whom placement in a foster home, group home or child caring institution is recommended to be disclosed to the

1993 Senate Bill 570

– 3 –

agency preparing the child's required court report or permanency plan.

Also, the bill requires the agency that prepares a permanency plan to provide to a foster parent or operator of a group home or child caring institution with whom a child has been placed any information contained in the court report or permanency plan relating to the following:

a. Results of tests for HIV. For children under 14 years of age, the agency must provide this information only if the child's parent or a temporary or permanent guardian of the child consents to the HIV testing and the release of the HIV test results.

b. Results of tests for hepatitis-B.

c. Findings or opinions of the juvenile court, or the agency that prepared the permanency plan or the court report, relating to any mental, emotional, cognitive, developmental or behavioral disability of the child.

The information must be provided to the foster parent or the operator of the group home or child caring institution at the time of placement or, if unavailable at that time, within 30 days after the placement of the child in the foster home, group home or child caring institution.

G. PERMANENCY PLANNING

1. *Current law*

Currently, a permanency plan is required for each child who is living in a foster home, group home, child caring institution, secure detention facility or shelter care facility. A permanency plan is a plan designed to ensure that a child is reunified with his or her family whenever possible, or that the child quickly attains a placement or home providing long-term stability.

Agencies that are authorized to prepare permanency plans for a child are agencies that have placed the child in an out-of-home placement or that are primarily responsible for providing services to the child and include the department of health and social services (DHSS), county departments of human services or social services (county departments) and licensed child welfare agencies.

Current law provides that either the juvenile court that has jurisdiction over a child or, if the juvenile court does not elect to do so, a permanency plan review panel must review the child's permanency plan every 6 months from the date on which the child was first held in physical custody or placed outside of his or her home. The permanency plan review panel must consist of at least 3 persons appointed by the agency that prepared the permanency plan. At least one person on the panel must be a person who is not employed by the agency that prepared the permanency plan and who is not responsible for providing services to the child or the parents of the child whose permanency plan is the subject of review.

When reviewing a child's permanency plan, the permanency plan review panel must determine each of the following:

a. The continuing necessity for, and the appropriateness of, the placement.

b. The extent of compliance with the permanency plan by the agency and any other service providers, the child's parents and the child.

c. The extent of any efforts to involve appropriate service providers, in addition to the agency staff, in planning to meet the special needs of the child and the child's parents.

d. The progress toward eliminating the causes for the child's placement outside of his or her home and toward

returning the child to his or her home or obtaining a permanent placement for the child.

e. The date by which it is likely that the child will be returned to his or her home, placed for adoption, placed under legal guardianship or otherwise permanently placed.

f. If the child has been placed outside of his or her home for 2 years or more, the appropriateness of the permanency plan and the circumstances which prevent any of the following:

1) Returning the child to his or her home.

2) Filing a petition on behalf of the child for the involuntary termination of the parental rights (TPR) of the child's parents.

3) Placing the child for adoption.

4) Placing the child in sustaining care.

g. Whether reasonable efforts were made by the agency to make it possible for the child to return to his or her home.

2. *The bill*

The bill makes the following changes in current law:

a. Authorizes juvenile courts to appoint permanency plan review panels consisting either of persons designated by the agency that prepared the permanency plan or persons designated by an independent agency.

b. Ensures that a majority of persons appointed to a permanency plan review panel are neither employed by the agency that prepared the plan nor responsible for providing services to the child or the child's parents.

c. Requires advance notice of a permanency plan review, with solicitation of written comments, to parents, foster parents, the child, the child's attorney and guardian ad litem and the attorney representing the interests of the public. Currently, only the parents, the foster parents and the child, if 12 years of age or older, are entitled to advance notice of a permanency plan review.

d. Requires counties to submit annual reports on the composition and operation of review panels to DHSS.

H. TERMINATION OF PARENTAL RIGHTS BASED ON CONTINUING NEED OF PROTECTION OR SERVICES

1. *Current law*

Currently, a child's continuing need of protection or services may be grounds for involuntary TPR of the child's parents if the following conditions are met:

a. The juvenile court has determined that the child is in need of protection or services and has placed the child, or continued the child in a placement, outside of the child's home.

b. The parent or parents are informed of any statutory grounds for involuntary TPR that may be applicable to them and of the conditions necessary for the child to be returned to the home.

c. The agency responsible for the care of the child and the family has made diligent efforts to provide the services ordered by the juvenile court.

d. The child has been in a placement outside of the home for a cumulative total period of one year or longer, the parent has substantially neglected, wilfully refused or been unable to meet the conditions established for the return of the child to the home and there is a substantial likelihood that the parent will not meet those conditions in the future.

2. *The bill*

The bill amends the grounds for involuntary TPR based on continuing need for protection or services as follows:

a. By reducing the period of time that a child must be in a placement outside of the home from one year to 6 months if

the child had not attained the age of 3 years at the time of the initial order placing the child outside of the home.

b. By allowing involuntary TPR if the parent has failed to demonstrate substantial progress toward meeting the juvenile court's conditions for return of the child to the home, rather than requiring a showing that the parent has substantially neglected, wilfully refused or been unable to meet those conditions.

c. By requiring a showing that there is a substantial likelihood that the parent will not meet the juvenile court's conditions within one year after the TPR fact-finding hearing, rather than at any time in the future.

J. OUT-OF-COUNTY FOSTER HOME LICENSURE

1. *Current law*

Under current law, a county department that provides child welfare services may license foster homes within the county of the county department.

2. *The bill*

The bill allows county departments that provide child welfare services to license foster homes located in other counties if any of the following applies:

a. The person who will operate the foster home is a relative or guardian of the child who will be placed in the foster home.

b. A foster parent licensed by the county department moves with a foster child to the other county.

c. The 2 counties are contiguous.

d. The county of the county department issuing the license has a population of 500,000 or more and the placement is for adoption.

The license shall specifically identify each child to be placed in the foster home and shall terminate upon removal of all of those children from the foster home.

Under the bill, a county department that provides child welfare services may not license a foster home located in another county unless that county department has notified the county department that provides child welfare services in the other county and the 2 county departments have entered into a written agreement specifying the responsibilities of the licensing county department relating to the foster home. A county department that provides child welfare services is not required to enter into any agreements permitting another county department that provides child welfare services to license foster homes within its jurisdiction.

The written agreement must include all of the following:

a. A statement that the county department issuing the license is responsible for providing services to the child who is placed in the foster home, as specified in the agreement.

b. A statement that the county department issuing the license is responsible for the costs of the placement and any related costs, as specified in the agreement.

c. A description of the procedures to be followed in providing emergency services to the child who is placed in the foster home and to the foster parent, as specified in the agreement.

If the county department issuing the license violates the written agreement, the county department that provides child welfare services in the county in which the foster home is located may terminate the agreement and, subject to ss. 48.357 and 48.64, stats., relating to changes in placement, require the county department that issued the license to remove the child from the foster home within 30 days after receipt of notification of the termination of the agreement.

K. NOTIFICATION REGARDING SUPPLEMENTAL FOSTER CARE PAYMENTS

1. *Current law*

Currently, DHSS is required to make supplemental payments to eligible foster parents for special needs and initial clothing allowances. Those payments, which are established by DHSS by administrative rule, may increase the foster care monthly payment by up to a maximum of \$2,200.

2. *The bill*

The bill expands supplemental foster care payments to include payments for "exceptional circumstances" and requires DHSS, or a county department or a child welfare agency that is authorized to license foster homes, to provide written information to the licensee upon initial licensure and upon license renewal regarding basic foster care rates and supplemental payments, including payment amounts, eligibility requirements for supplemental payments and the procedures for applying for supplemental payments.

L. APPEALS OF ORDERS TERMINATING PARENTAL RIGHTS

1. *Current law*

Currently, orders granting or denying TPR are final orders that are appealable as are other circuit court final orders as follows:

a. A notice of intent to appeal must be filed with the trial court by a party other than the state within 40 days after the entry of the order. The state must file an appeal within 45 days after the entry of the order.

b. The appellant must request a transcript of the trial court proceedings within 30 days after filing the notice of intent to appeal and the court reporter must file the transcript with the trial court and serve a copy of the transcript on the appellant within 60 days after the request for the transcript.

c. The appellant has 60 days from receipt of the transcript to file the official notice of appeal.

d. The appellant's brief must be filed within 40 days after the filing of the record on appeal and the respondent's brief must be filed within 30 days after service of the appellant's brief.

e. If a guardian ad litem participates in the appeal, he or she must file briefs within the same time period as the party whose position the guardian ad litem is supporting.

f. The court of appeals has no specific time frame within which to rule on the appeal. Appeals in TPR and adoption proceedings are to be given preference over other types of appeals.

g. A petition to appeal a TPR case to the supreme court must be filed within 30 days after the decision of the court of appeals.

2. *The bill*

Under the bill:

a. A notice of intent to appeal a TPR judgment or order must be filed with the trial court within 15 days after the entry of the TPR judgment or order.

b. The appellant must request a transcript of the trial court proceedings within 15 days after filing the notice of intent to appeal; the court reporter must file the transcript with the trial court and serve a copy on the appellant within 30 days after the request.

c. The appellant has 15 days from the date of service of the transcript to file the official notice of appeal.

d. The briefing schedule is shortened from 70 days after the filing of the record on appeal (40 days for the appellant's brief and 30 days for the respondent's brief) to 25 days after the filing of the record on appeal (15 days for the appellant's

1993 Senate Bill 570

– 5 –

brief and 10 days for the respondent's brief) plus 10 days for the appellant's reply brief, if any.

e. The court of appeals must give TPR appeals preference and must decide a TPR appeal within 45 days after the filing of the record on appeal.

f. A petition for the supreme court to review an appeal of a TPR case must be filed within 15 days after the date of the decision of the court of appeals.

M. STUDIES

The bill requires DHSS to study:

1. Long-term, out-of-home placements of children, including procedures for referring a child who is at risk of remaining in a long-term, out-of-home placement for the purpose of initiating TPR proceedings and placing the child for adoption and a mechanism for collecting funds from counties to reimburse agencies for providing services related to TPR proceedings and placement for adoption of those children.

SECTION 1. 48.13 (3m) of the statutes is created to read:

48.13 (3m) Who is at substantial risk of becoming the victim of sexual or physical abuse, including injury that is self-inflicted or inflicted by another by other than accidental means, based on reliable and credible information that another child in the home has been the victim of sexual or physical abuse;

NOTE: Creates a new basis for jurisdiction of a juvenile court over a child based on information that another child in the home has been the victim of sexual or physical abuse.

SECTION 2. 48.13 (10m) of the statutes is created to read:

48.13 (10m) Whose parent, guardian or legal custodian is at substantial risk of neglecting, refusing or being unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of the child, based on reliable and credible information that the child's parent, guardian or legal custodian has neglected, refused or been unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of another child in the home;

NOTE: Creates a new basis for jurisdiction of a juvenile court over a child based on information that another child in the home has been the victim of neglect.

SECTION 3. 48.205 (1) (am) of the statutes is created to read:

48.205 (1) (am) Probable cause exists to believe that if the child is not held he or she will be subject to injury by others, based on a determination under par. (a) or a finding under s. 48.21 (4) that if another child in the home is not held that child will be subject to injury by others;

NOTE: Creates new grounds for taking a child into, and holding the child in, physical custody, based on a determination that another child in the home will be subject to injury by others.

SECTION 4. 48.205 (1) (bm) of the statutes is created to read:

48.205 (1) (bm) Probable cause exists to believe that the child meets the criteria specified in par. (b), based on a determination under par. (b) or a finding under s. 48.21 (4) that another child in the home meets those criteria.

NOTE: Creates new grounds for taking a child into, and holding the child in, physical custody, based on a determination that another child in the home will be neglected.

SECTION 5. 48.23 (3m) of the statutes is amended to read:

48.23 (3m) GUARDIANS AD LITEM OR COUNSEL FOR ABUSED OR NEGLECTED CHILDREN. The court shall appoint counsel for any child alleged to be in need of protection or services under s. 48.13 (3), (3m), (10) and (10m) and (11), except that if the child is less than 12 years of age the court may appoint a guardian ad litem instead of counsel. The guardian ad litem or counsel for the child shall not be the same as counsel for any party or any governmental or social agency involved.

NOTE: Requires the appointment of a guardian ad litem or legal counsel for a child who is subject to the new jurisdictional provisions in s. 48.13 (3m) and (10m), as created by this bill.

SECTION 6. 48.235 (1) (e) of the statutes is created to read:

48.235 (1) (e) The court shall appoint a guardian ad litem, or extend the appointment of a guardian ad litem previously appointed under par. (a), for any child alleged or found to be in need of protection or services, if the court has ordered, or if a request or recommendation has been made that the court order, the child to be placed out of his or her home under s. 48.345 or 48.357.

NOTE: Requires a juvenile court to appoint a guardian ad litem for any child who is alleged or found to be in need of protection or services if the juvenile court orders, or if a request or recommendation is made that the juvenile court order, the child to be placed, out-of-home in a foster home, group home or residential treatment facility or with a relative. Currently, a juvenile court may appoint a guardian ad litem "in any appropriate matter under" ch. 48, stats.

Under the bill, as under current law, the decision regarding whether to appoint a guardian ad litem for a child who is alleged to be in need of protection or services and who is the subject of a consent decree under s. 48.32, stats., continues to be discretionary with the juvenile court.

SECTION 10. 48.235 (4) (b) of the statutes is amended to read:

48.235 (4) (b) The court ~~may~~ shall order the agency identified under s. 48.355 (2) (b) 1. as primarily responsible for the provision of services to notify the guardian ad litem, ~~if any,~~ regarding actions to be taken under par. (a).

NOTE: Amends current law to require, rather than authorize, a juvenile court to order the agency identified in a dispositional order as responsible for the provision of services to a child to notify the guardian ad litem of the following actions:

1. Permanency planning under ss. 48.38 and 48.43 (5), stats.
2. A petition for a change in the placement of the child under s. 48.357, stats.
3. A petition for TPR (or other matters specified in s. 48.14, stats.) or a petition under s. 48.46, stats., for relief from a TPR judgment.

4. A petition for the revision or extension of a dispositional order under s. 48.363 or 48.365, stats.

5. A petition for a temporary restraining order and injunction, under s. 813.122, stats., relating to child abuse.

SECTION 12. 48.27 (3) of the statutes is renumbered 48.27 (3) (a) and amended to read:

48.27 (3) (a) The court shall also notify, under s. 48.273, the child ~~and~~ any parent, guardian and legal custodian of the child and any person specified in par. (b), if applicable, of all hearings involving the child except hearings on motions for which notice need only be provided to the child and his or her counsel. Where parents entitled to notice have the same place of residence, notice to one shall constitute notice to the other. The first notice to any interested party shall be written and have a copy of the petition attached to it. Thereafter, notice of hearings may be given by telephone at least 72 hours before the time of the hearing. The person giving telephone notice shall place in the case file a signed statement of the time notice was given and the person to whom he or she spoke.

NOTE: Requires notice to be provided to putative fathers of proceedings to determine whether a child is in need of protection or services.

SECTION 13. 48.27 (3) (b) of the statutes is created to read:

48.27 (3) (b) 1. Except as provided in subd. 2, if the petition that was filed relates to facts concerning a situation under s. 48.13 and if the child is a nonmarital child who is not adopted or whose parents do not subsequently intermarry as provided under s. 767.60 and if paternity has not been established, the court shall notify, under s. 48.273, all of the following persons:

a. A person who has filed a declaration of interest under s. 48.025.

b. A person alleged to the court to be the father of the child or who may, based on the statements of the mother or other information presented to the court, be the father of the child.

2. A court is not required to provide notice, under subd. 1, to any person who may be the father of a child conceived as a result of a sexual assault if a physician attests to his or her belief that there was a sexual assault of the child's mother that may have resulted in the child's conception.

NOTE: Requires a juvenile court to notify any of the following putative fathers of pending proceedings to determine whether a child is in need of protection or services, if the child is a nonmarital child, the child is not adopted, the child's parents have not intermarried and paternity has not been established:

1. A person who has filed a declaration of paternal interest.

2. A person who is alleged to be the father of the child.

Creates an exemption from the new notification requirement so that notice to the father is not required if the child may have been conceived as a result of a sexual assault.

SECTION 14. 48.27 (5) of the statutes is amended to read:

48.27 (5) ~~The Subject to sub. (3) (b), the~~ court shall make every reasonable effort to identify and notify any person who has filed a declaration of interest under s. 48.025 and any person who has been adjudged to be the biological father of the child in a judicial proceeding unless the biological father's rights have been terminated.

NOTE: Reflects the creation of s. 48.27 (3) (b) by this bill.

SECTION 15. 48.299 (6) of the statutes is created to read:

48.299 (6) If a man who has been given notice under s. 48.27 (3) (b) 1. appears at any hearing for which he received the notice, alleges that he is the father of the child and states that he wishes to establish the paternity of the child, the court shall refer the matter to the state or to the attorney responsible for support enforcement under s. 59.458 (1) for a determination, under s. 767.45, of whether an action should be brought for the purpose of determining the paternity of the child. The court may stay the proceedings under this chapter pending the outcome of the paternity proceedings under ss. 767.45 to 767.60 if the court determines that the paternity proceedings will not unduly delay the proceedings under this chapter and the determination of paternity is necessary to the court's disposition of the child if the child is found to be in need of protection or services. As part of the proceedings under this chapter, the court may order that a record be made of any testimony of the child's mother relating to the child's paternity. A record made under this subsection is admissible in a proceeding to determine the child's paternity under ss. 767.45 to 767.60.

NOTE: Provides that, if a putative father, who has been given notice under s. 48.27 (3) (b) 1., as created by this bill, of a proceeding relating to a child alleged to be in need of protection or services, wishes to have his paternity established, the juvenile court may refer the matter to the proper authority for the possible filing of a paternity action. The juvenile court may also order that a record be made of the mother's testimony relating to the child's paternity, which is admissible in the paternity action.

SECTION 16. 48.355 (2e) (c) of the statutes is amended to read:

48.355 (2e) (c) Either the court or the agency that prepared the permanency plan shall furnish a copy of the original plan and each revised plan to the child's parent or guardian ~~and~~ to the child or the child's counsel or guardian ad litem and to the person representing the interests of the public.

NOTE: Requires the juvenile court or the agency that prepared the permanency plan for a child who is placed out-of-home to furnish a copy of the original plan and each revised plan to the corporation counsel or district attorney who is representing the interests of the public.

SECTION 16m. 48.357 (1) of the statutes is amended to read:

1993 Senate Bill 570

48.357 (1) The person or agency primarily responsible for implementing the dispositional order may request a change in the placement of the child, whether or not the change requested is authorized in the dispositional order and shall cause written notice to be sent to the child or the child's counsel or guardian ad litem, parent, foster parent, guardian and legal custodian. The notice shall contain the name and address of the new placement, the reasons for the change in placement, a statement describing why the new placement is preferable to the present placement and a statement of how the new placement satisfies objectives of the treatment plan ordered by the court. Any party person receiving the notice under this subsection or notice of the specific foster placement under s. 48.355 (2) (b) 2. may obtain a hearing on the matter by filing an objection with the court within 10 days of receipt of the notice. Placements shall not be changed until 10 days after such notice is sent to the court unless the parent, guardian or legal custodian and the child, if 12 or more years of age, sign written waivers of objection, except that placement changes which were authorized in the dispositional order may be made immediately if notice is given as required in this subsection. In addition, a hearing is not required for placement changes authorized in the dispositional order except where an objection filed by a party person who received notice alleges that new information is available which affects the advisability of the court's dispositional order. If a hearing is held under this subsection and the change in placement would remove a child from a foster home, the foster parent may submit a written statement prior to the hearing.

SECTION 16p. 48.357 (2m) of the statutes is amended to read:

48.357 (2m) The child, parent, guardian, legal custodian or any person or agency primarily bound by the dispositional order, other than the person or agency responsible for implementing the order, may request a change in placement under this subsection. The request shall contain the name and address of the place of the new placement requested and shall state what new information is available which affects the advisability of the current placement. This request shall be submitted to the court. In addition, the court may propose a change in placement on its own motion. The court shall hold a hearing on the matter prior to ordering any change in placement under this subsection if the request states that new information is available which affects the advisability of the current placement, unless written waivers of objection to the proposed change in placement are signed by all parties entitled to receive notice under sub. (1) and the court approves. If a hearing is scheduled, the court shall notify the child, parent, foster parent, guardian, legal custodian and all parties who are bound by the dispositional order at least 3 days prior to the hearing. A copy of the request or proposal for the change in placement shall be

attached to the notice. If all the parties consent, the court may proceed immediately with the hearing. If a hearing is held under this subsection and the change in placement would remove a child from a foster home, the foster parent may submit a written statement prior to the hearing.

SECTION 17. 48.371 of the statutes is created to read:
48.371 Access to certain information by substitute care provider. At the time of placement of a child in a foster home, group home or child caring institution under s. 48.345 or 48.357, or, if the information specified in this section is not available at that time, within 30 days after the date of the placement, the agency that prepared the child's permanency plan shall provide the foster parent or operator of the group home or child caring institution with any information contained in the court report submitted under s. 48.33 or permanency plan submitted under s. 48.38, relating to any of the following:

(1) Results of a test or a series of tests of the child to determine the presence of HIV, as defined in s. 968.38 (1) (b), antigen or nonantigenic products of HIV, or an antibody to HIV, if the child's parent or a temporary or permanent guardian appointed by the court has consented to the test under s. 252.15 (2) (a) 4. b. and release of the test results under s. 252.15 (5) (a) 19. and the agency directed to prepare the permanency plan notifies the foster parent or operator of the group home or child caring institution of the confidentiality requirements under s. 252.15 (6).

(2) Results of any tests of the child to determine the presence of viral hepatitis, type B. The foster parent or operator of a group home or child caring institution receiving information under this subsection shall keep the information confidential.

(3) Findings or opinions of the court or agency that prepared the court report or permanency plan relating to any mental, emotional, cognitive, developmental or behavioral disability of the child. The foster parent or operator of a group home or child caring institution receiving information under this subsection shall keep the information confidential.

NOTE: Requires the agency that prepares a permanency plan to provide to a foster parent or operator of a group home or child caring institution with whom a child has been placed any information contained in the court report or permanency plan relating to:

1. Results of tests for HIV. For children under 14 years of age, the agency must provide this information only if the child's parent or a temporary or permanent guardian consents to the HIV testing and the release of the HIV test results.

2. Results of tests for hepatitis-B.

3. Findings or opinions of the juvenile court or the agency that prepared the permanency plan or the court report, relating to any mental, emotional, cognitive, developmental or behavioral disability of the child.

The information must be provided to the foster parent or the operator of a group home or child caring institution at the time of placement or, if unavailable at that time, within 30

days after the placement of the child in the foster home, group home or child caring institution.

SECTION 18. 48.38 (1) (am) of the statutes is created to read:

48.38 (1) (am) “Independent agency” means a private, nonprofit organization, but does not include a licensed child welfare agency that is authorized to prepare permanency plans or that is assigned the primary responsibility of providing services under a permanency plan.

NOTE: Defines “independent agency” for purposes of s. 48.38 (5) (am), as created by this bill.

SECTION 19d. 48.38 (5) (a) of the statutes is amended to read:

48.38 (5) (a) ~~Either the court or, if the court does not elect to do so, a panel consisting of at least 3 persons appointed by the agency that prepared the permanency plan~~ The court or a panel appointed under this paragraph shall review the permanency plan every 6 months from the date on which the child was first held in physical custody or placed outside of his or her home. At least one person ~~If the court elects not to review the permanency plan, the court shall appoint a panel to review the permanency plan. The panel shall consist of 3 persons who are either designated by an independent agency that has been approved by the chief judge of the judicial administrative district or designated by the agency that prepared the permanency plan. A voting majority of persons on each panel shall be a person who is~~ persons who are ~~not employed by the agency that prepared the permanency plan and who is~~ are ~~not responsible for providing services to the child or the parents of the child whose permanency plan is the subject of the review.~~

NOTE: Amends current law relating to permanency plan review panels to:

1. Authorize juvenile courts to appoint review panels consisting either of persons designated by the agency that prepared the permanency plan or persons designated by an independent agency.
2. Ensure that a majority of persons appointed to the review panel are neither employed by the agency that prepared the plan nor responsible for providing services to the child or the child’s parents.

SECTION 20. 48.38 (5) (am) of the statutes is created to read:

48.38 (5) (am) The court may appoint an independent agency to designate a panel to conduct a permanency plan review under par. (a). If the court appoints an independent agency under this paragraph, the county department of the county of the court shall authorize and contract for the purchase of services from the independent agency.

NOTE: Authorizes a juvenile court to appoint an independent agency to designate a panel, for appointment by the juvenile court, to conduct a permanency plan review.

SECTION 21. 48.38 (5) (b) of the statutes is amended to read:

48.38 (5) (b) The court or the agency shall notify the parents of the child, the child if he or she is 12 years of age

or older and the child’s foster parent or operator of the facility in which the child is living of the date, time and place of the review, of the issues to be determined as part of the review, of the fact that they may submit written comments not less than 10 working days before the review and of the fact that they may participate in the review. The court or agency shall notify the person representing the interests of the public, the child’s counsel and the child’s guardian ad litem of the date of the review, of the issues to be determined as part of the review and of the fact that they may submit written comments not less than 10 working days before the review. ~~The notice notices under this paragraph shall be provided in writing not less than 40 30 days before the review and a copy copies of the notices shall be filed in the child’s case record.~~

NOTE: Amends the notice requirement for permanency plan reviews to require 30 days’ advance notice, rather than 10 days’ advance notice; to require that notice be provided to the corporation counsel or district attorney and the child’s legal counsel and guardian ad litem; and to permit written comments to be submitted by parents, foster parents, the child, if 12 years of age or older, the corporation counsel or district attorney, and the child’s legal counsel and guardian ad litem.

Under current law, parents, foster parents and the child may also participate in the review other than through the submission of written comments. The bill does not extend that right to the person representing the interests of the public, the child’s counsel and the child’s guardian ad litem.

SECTION 22. 48.38 (5) (d) of the statutes is amended to read:

48.38 (5) (d) Notwithstanding s. 48.78 (2) (a), the agency that prepared the permanency plan shall, at least 5 days before a review by a review panel, provide to each person appointed to the review panel, the person representing the interests of the public, the child’s counsel and the child’s guardian ad litem a copy of the permanency plan and any written comments submitted under par. (b). ~~Notwithstanding s. 48.78 (2) (a), a person appointed to a review panel who is not an employe of an agency, the person representing the interests of the public, the child’s counsel and the child’s guardian ad litem may have access to the child’s any other records concerning the child for the purpose of participating in the review. A person permitted access to a child’s records under this paragraph may not disclose any information from the records to any other person.~~

NOTE: Requires that, at least 5 days prior to a permanency plan review, panel members receive a copy of the permanency plan and any written comments provided by persons receiving notice of the review. The bill also authorizes the corporation counsel or district attorney, the child’s counsel and the child’s guardian ad litem to receive copies of the plan and written comments and to have access to other records concerning the child.

Under current law, there is no requirement that panel members be given a copy of the permanency plan prior to the review. Current law provides general authority for a person appointed to a review panel to have access to any records about the child for the purpose of participating in the plan review.

1993 Senate Bill 570

SECTION 23. 48.38 (5) (e) of the statutes is amended to read:

48.38 (5) (e) Within 30 days, the agency shall prepare a written summary of the determinations under par. (c) and shall provide a copy to the court that entered the order, the child or the child's counsel or guardian ad litem, the person representing the interests of the public, the child's parent or guardian and the child's foster parent or operator of the facility where the child is living.

NOTE: Requires the written summary of a permanency plan review panel's determinations to be provided to the corporation counsel or district attorney in addition to the juvenile court, the child or the child's counsel or guardian ad litem, the child's parent or guardian and the child's foster parent or operator of the facility where the child is living as under current law.

SECTION 24. 48.38 (5m) of the statutes is created to read:

48.38 (5m) ANNUAL REPORT. Not later than March 1 annually, each county department shall submit to the department a report identifying the membership of the review panels appointed during the previous year, data on each of the determinations of the review panels required under sub. (5) (c) and any other information specified by the department by rule.

NOTE: Creates a new annual reporting requirement relating to review panel composition and determinations.

SECTION 25. 48.415 (2) (c) of the statutes is amended to read:

48.415 (2) (c) That the child has been outside the home for a cumulative total period of one year or longer pursuant to such orders, or, if the child had not attained the age of 3 years at the time of the initial order placing the child outside of the home, that the child has been outside the home for a cumulative total period of 6 months or longer pursuant to such orders; and that the parent has substantially neglected, wilfully refused or been unable to meet failed to demonstrate substantial progress toward meeting the conditions established for the return of the child to the home and there is a substantial likelihood that the parent will not meet these conditions ~~in the future within the 12-month period following the fact-finding hearing under s. 48.424.~~

NOTE: Amends the grounds for involuntary TPR based on continuing need for protection or services as follows:

1. By reducing the period of time that a child must be in a placement outside of the home from one year to 6 months if the child had not attained the age of 3 years at the time of the initial order placing the child outside of the home.

2. By allowing involuntary TPR if the parent has failed to demonstrate substantial progress toward meeting the juvenile court's conditions for return of the child to the home, rather than requiring a showing that the parent has substantially neglected, wilfully refused or been unable to meet these conditions.

3. By requiring a showing that there is a substantial likelihood that the parent will not meet the juvenile court's conditions within one year after the TPR fact-finding hearing, rather than at any time in the future.

SECTION 27. 48.42 (3) (d) of the statutes is amended to read:

48.42 (3) (d) Advise the parties that if the court terminates parental rights, a notice of intent to pursue relief from the judgment must be filed in the trial court within 40 15 days after the judgment is entered for the right to pursue such relief to be preserved.

NOTE: Reflects treatment of s. 808.04 (7), stats., by this bill.

SECTION 28. 48.43 (6) of the statutes is amended to read:

48.43 (6) Judgments under this subchapter terminating parental rights are final, and are appealable under s. 808.03 (1) ~~and given preference for appeal under s. 48.465 according to the procedure specified in s. 809.107.~~

NOTE: Creates a cross-reference to the new TPR appeals section created by the bill.

SECTION 29. 48.462 of the statutes is repealed.

NOTE: Repeals a current provision requiring notice of a TPR appeal to be provided to the guardian ad litem and the child's custodian; this requirement is recreated in s. 809.107 (2), as created by this bill.

SECTION 30. 48.465 of the statutes is renumbered 48.915 and amended to read:

48.915 (title) Adoption appeals given preference.

An appeal from a judgment ~~terminating or denying termination of parental rights or~~ granting or denying an adoption shall be given preference.

NOTE: Deletes references to preference for TPR appeals from current law. Preference for these appeals is provided in s. 808.107 (7) (e), as created by this bill.

SECTION 31. 48.57 (1) (i) of the statutes is amended to read:

48.57 (1) (i) To license foster homes ~~in the county~~ in accordance with s. 48.75.

NOTE: Reflects the creation of s. 48.75 (1g) by this bill. [Section 48.57, stats., lists the powers and duties of county departments of human services or social services that provide child welfare services.]

SECTION 31m. 48.62 (3) of the statutes is created to read:

48.62 (3) When the department, a county department or a child welfare agency issues a license to operate a foster home, the department, county department or child welfare agency shall notify the clerk of the school district in which the foster home is located that a foster home has been licensed in the school district.

SECTION 31p. 48.625 (2m) of the statutes is created to read:

48.625 (2m) When the department issues a license to operate a group home, the department shall notify the clerk of the school district in which the group home is located that a group home has been licensed in the school district.

SECTION 31r. 48.64 (1r) of the statutes is created to read:

48.64 (1r) NOTIFICATION OF SCHOOL DISTRICT. When an agency places a school-age child in a foster home or a group home, the agency shall notify the clerk of the school district in which the foster home or group home is located that a school-age child has been placed in a foster home or group home in the school district.

SECTION 31t. 48.64 (4) (c) of the statutes is amended to read:

48.64 (4) (c) The circuit court for the county where the child is has jurisdiction upon petition of any interested party over a child who is placed in a foster home or group home. The circuit court may call a hearing, at which the head of the home and the supervising agency under sub. (2) shall be present, for the purpose of reviewing any decision or order of said agency involving the placement and care of the child. If the child has been placed in a foster home, the foster parent may present relevant evidence at the hearing. The court shall determine the case so as to promote the best interests of the child.

SECTION 32. 48.68 (1) of the statutes is amended to read:

48.68 (1) After receipt of an application for a license, the department shall investigate to determine if the applicant meets all minimum requirements for a license adopted by the department under s. 48.67. Upon satisfactory completion of this investigation and payment of the fee required under s. 48.615 (1) (a) or (b), 48.625 (2) (a) or 48.65 (3) (a), the license shall be granted. At the time of initial licensure and license renewal, the department shall provide a foster home licensee with written information relating to the age-related monthly foster care rates and supplemental payments specified in s. 49.19 (12), including payment amounts, eligibility requirements for supplemental payments and the procedures for applying for supplemental payments.

NOTE: Requires DHSS to provide foster parents with written information relating to basic rates and supplemental payments at the time of initial licensure and license renewal (generally every 2 years).

SECTION 33. 48.75 (1g) of the statutes is created to read:

48.75 (1g) (a) A county department may license a foster home only if the foster home is located in the county of the county department, except that a county department may license a foster home located in another county if any of the following applies:

1. The person who will be licensed to operate the foster home is a relative, as defined in s. 48.02 (15) or as specified in s. 49.19 (1) (a) 2. a., or a guardian of the child who will be placed in the foster home.

2. A foster parent licensed by the county department moves to the other county with a child who has been placed in the foster parent's home and the license will allow the foster parent to continue to care for that child.

3. The county of the county department issuing the license and the county in which the foster home is located are contiguous.

4. The county of the county department issuing the license has a population of 500,000 or more and the placement is for adoption under s. 48.833 or 48.837.

(b) A license issued under this subsection shall specifically identify each child to be placed in the foster home and shall terminate on the removal of all of those children from the foster home.

(c) No license may be issued under this subsection unless the county department issuing the license has notified the county department of the county in which the foster home will be located of its intent to issue the license and the 2 county departments have entered into a written agreement under this paragraph. A county department is not required to enter into any agreement under this paragraph allowing the county department of another county to license a foster home within its jurisdiction. The written agreement shall include all of the following:

1. A statement that the county department issuing the license is responsible for providing services to the child who is placed in the foster home, as specified in the agreement.

2. A statement that the county department issuing the license is responsible for the costs of the placement and any related costs, as specified in the agreement.

3. A description of the procedures to be followed in providing emergency services to the child who is placed in the foster home and to the foster parent, as specified in the agreement.

(d) If the county department issuing a license under this subsection violates the agreement under par. (c), the county department of the county in which the foster home is located may terminate the agreement and, subject to ss. 48.357 and 48.64, require the county department that issued the license to remove the child from the foster home within 30 days after receipt, by the county department that issued the license, of notification of the termination of the agreement.

NOTE: Allows a county department that provides child welfare services to license a foster home in another county in certain circumstances, but only if that county department and the county department that provides child welfare services in the county in which the foster home will be located have entered into a written agreement that includes certain provisions. A county department is not required to enter into any agreements allowing another county department to license foster homes located within its jurisdiction.

SECTION 34. 48.75 (1r) of the statutes is created to read:

48.75 (1r) At the time of initial licensure and license renewal, the child welfare agency or county department issuing a license under sub. (1) or (1g) shall provide the licensee with written information relating to the age-related monthly foster care rates and supplemental pay-

1993 Senate Bill 570

ments specified in s. 49.19 (12), including payment amounts, eligibility requirements for supplemental payments and the procedures for applying for supplemental payments.

NOTE: Requires licensing authorities other than DHSS to provide foster parents with written information relating to basic rates and supplemental payments at the time of initial licensure and license renewal.

SECTION 35. 48.78 (2) (a) of the statutes is amended to read:

48.78 (2) (a) No agency may make available for inspection or disclose the contents of any record kept or information received about an individual in its care or legal custody, except as provided under sub. (3) or s. ~~48.371, 48.38 (5) (b) or (d).~~ 48.432, 48.433, 48.93 or 48.981 (7) or by order of the court.

NOTE: Reflects the creation of s. 48.371 and the treatment of s. 48.38 (5) (b) and (d), stats., by this bill.

SECTION 35r. 48.981 (7) (a) 6m of the statutes is created to read:

48.981 (7) (a) 6m. A person employed by a child advocacy center recognized by the county board or the county department, to the extent necessary to perform the services for which the center is recognized by the county board or the county department.

SECTION 36. 48.981 (7) (a) 10g and 10r of the statutes are created to read:

48.981 (7) (a) 10g. A court conducting proceedings related to a petition under s. 48.13 (3m) or (10m) or a court conducting dispositional proceedings under subch. VI in which an issue is the substantial risk of abuse or neglect of a child who, during the time period covered by the report or record, was in the home of the child who is the subject of the report or record.

10r. A tribal court, or other adjudicative body authorized by a tribe or band to perform child welfare functions, that exercises jurisdiction over children alleged to be in need of protection or services for use in proceedings in which an issue is the substantial risk of abuse or neglect of a child who, during the time period covered by the report or record, was in the home of the child who is the subject of the report or record.

SECTION 37. 48.981 (7) (a) 11. of the statutes is amended to read:

48.981 (7) (a) 11. The county corporation counsel or district attorney representing the interests of the public and the counsel or guardian ad litem representing the interests of a child in proceedings under subd. 10 or 10g.

SECTION 38. 48.981 (7) (a) 11m of the statutes is amended to read:

48.981 (7) (a) 11m. An attorney representing the interests of an Indian tribe or band or of an Indian child in proceedings under subd. 10m or 10r.

NOTE: The creation of s. 48.981 (7) (a) 10g and 10r and the treatment of s. 48.981 (7) (a) 11. and 11m, stats., by this bill, expand the list of persons who may have access to reports of child abuse or neglect to include the juvenile court, the

tribal court and the attorneys in proceedings concerning another child in the home who is alleged to be at a substantial risk of abuse or neglect.

SECTION 39. 49.19 (12) of the statutes, as affected by 1993 Wisconsin Act 16, is amended to read:

49.19 (12) Monthly payments in foster care shall be provided according to the age-related rates specified in this subsection. Beginning on January 1, 1993, the age-related rates are: \$240 for children aged 4 and under; \$267 for children aged 5 to 11; \$327 for children aged 12 to 14 and \$337 for children aged 15 to 17. Beginning on January 1, 1994, the age-related rates are: \$276 for children aged 4 and under; \$301 for children aged 5 to 11; \$344 for children aged 12 to 14; and \$361 for children aged 15 to 17. Beginning on January 1, 1995, the age-related rates are: \$282 for children aged 4 and under; \$307 for children aged 5 to 11; \$349 for children aged 12 to 14; and \$365 for children aged 15 to 17. In addition to these grants for basic maintenance, the department shall make supplemental payments for special needs, exceptional circumstances and initial clothing allowances according to rules that promulgated by the department shall ~~promulgate~~.

NOTE: Inserts "exceptional circumstances" as an additional reason for which foster parents may receive supplemental payments. Supplemental payments are in addition to the basic monthly foster care reimbursement. DHSS rules currently allow supplemental payments in "exceptional circumstances".

SECTION 39m. 121.05 (3) of the statutes is created to read:

121.05 (3) Beginning in the 1994-95 school year, the school board of a school district in which a foster or group home that is not exempt under s. 70.11 is located may submit a report to the state superintendent. If the school board submits a report, it shall submit it by June 30. The report shall indicate, on a full-time equivalent basis, the number of pupils residing in such foster or group homes who were provided educational services by the school district during the current school year but were not included in the September or January membership count under sub. (1) (a). The state superintendent shall adjust the school district's membership based on the report. The state superintendent shall make proportional adjustments to the memberships of the school districts in which the pupil was previously enrolled during that school year. The state superintendent shall obtain from such school districts the information necessary to make such adjustments. The state superintendent shall promulgate rules to implement and administer this subsection.

SECTION 40. 252.15 (2) (b) 2. of the statutes, as affected by 1993 Wisconsin Act 27, is amended to read:

252.15 (2) (b) 2. A statement of explanation to the potential test subject that the test results may be disclosed as specified under sub. (5) (a) and either a listing that duplicates the persons or circumstances specified under

sub. (5) (a) 2. to ~~48~~ 19 or a statement that the listing is available upon request.

NOTE: Reflects a provision created by this bill permitting disclosure of HIV test results to an agency preparing a court report or a permanency plan regarding a child for whom placement in a foster home, group home or child caring institution is recommended and, by that agency, to the child's foster parent or operator of the group home or child caring institution.

SECTION 41. 252.15 (5) (a) 19. of the statutes is created to read:

252.15 (5) (a) 19. If the test was administered to a child for whom placement in a foster home, group home or child caring institution is recommended under s. 48.33 (4), to an agency directed by a court to prepare a court report under s. 48.33 (1) or a permanency plan under s. 48.38 regarding the child and, by that agency, to the child's foster parent or the operator of the group home or child caring institution in which the child is placed, as provided in s. 48.371.

NOTE: Permits persons who have access to HIV test results of a child to disclose the test results to an agency preparing a court report or a permanency plan for the child pursuant to a recommendation that the child be placed in foster care or in a group home or child caring institution and permits that agency to disclose the test results to the foster parent or operator of the group home or child caring institution as provided in proposed s. 48.371, as created by this bill.

SECTION 42. 767.47 (10) of the statutes is created to read:

767.47 (10) A record of the testimony of the child's mother relating to the child's paternity, made as provided under s. 48.299 (6), is admissible in evidence on the issue of paternity.

NOTE: Provides that, in a paternity action under ss. 767.45 to 767.60, stats., a record of the testimony of the child's mother relating to the child's paternity made in a proceeding, under ch. 48, stats., relating to whether the child is in need of protection or services, is admissible on the issue of paternity.

SECTION 43. 808.04 (4) of the statutes is amended to read:

808.04 (4) ~~An Except as provided in sub. (7m), an~~ appeal by the state in either a criminal case under s. 974.05 or a case under ch. 48 shall be initiated within 45 days of entry of the judgment or order appealed from.

NOTE: Revises a reference in current law relating to the time for initiating appeals to reflect the shortened time period for filing appeals in TPR cases under s. 808.04 (7m), as created by this bill.

SECTION 44. 808.04 (7) of the statutes is amended to read:

808.04 (7) An appeal by a party other than the state from a judgment or order ~~terminating parental rights or~~ granting adoption shall be initiated by filing the notice required by s. 809.30 (2) (b) within 40 days of the date of entry of the judgment or order appealed from. Notwithstanding s. 809.82 (2) (b), this time may not be enlarged.

NOTE: Reflects the creation of proposed s. 808.04 (7m) by this bill.

SECTION 45. 808.04 (7m) of the statutes is created to read:

808.04 (7m) An appeal from a judgment or order terminating parental rights or denying termination of parental rights shall be initiated by filing the notice required by s. 809.107 (2) within 15 days after the date of entry of the judgment or order appealed from. Notwithstanding s. 809.82 (2) (b), this time period may not be enlarged.

NOTE: Amends current law by shortening the time for filing a notice of intent to appeal a TPR judgment or order from 40 days to 15 days.

SECTION 46. 809.107 of the statutes is created to read:

809.107 Appeals in proceedings related to termination of parental rights. (1) **APPLICABILITY.** This section applies to the appeal of an order or judgment under s. 48.43 and supersedes all inconsistent provisions of this chapter.

(2) **INITIATING THE APPEAL.** A person shall initiate an appeal under this section by filing, within the time specified in s. 808.04 (7m), a notice of intent to appeal with the clerk of the trial court in which the judgment or order appealed from was entered. Also within that time period, the person shall serve a copy of the notice on the person representing the interests of the public, opposing counsel, the guardian ad litem appointed under s. 48.235 (1) (c) for the child who is the subject of the proceeding, the child's parent and any guardian and any custodian appointed under s. 48.427 (3) or 48.428 (2). The notice shall include the following:

(a) The case name and court caption.

(b) An identification of the judgment or order from which the person filing the notice intends to appeal and the date on which it was granted or entered.

(c) The name and address of the person filing the notice of intent to appeal and the person's trial counsel.

(d) For a person other than the state, whether the trial counsel for the person filing the notice of intent to appeal was appointed by the state public defender and, if so, whether the person's financial circumstances have materially improved since the date on which the person's indigency was determined.

(e) For a person other than the state, whether the person filing the notice of intent to appeal will represent himself or herself or will be represented by retained counsel or requests the state public defender to appoint counsel for the appeal. If the person has retained counsel, the counsel's name and address shall be included.

(3) **DUTIES OF CLERK OF TRIAL COURT.** Within 5 days after a notice under sub. (2) is filed, the clerk shall:

(a) If the person filing the notice of intent to appeal under sub. (2) requests representation by the state public defender for purposes of the appeal, send to the state public defender's appellate intake office a copy of the notice, a copy of the judgment or order specified in the notice and a list of the court reporters for each proceeding in the action in which the judgment or order was entered.

1993 Senate Bill 570

- 13 -

(b) If the person filing the notice of intent to appeal does not request representation by the state public defender for purposes of the appeal, send or furnish to the person, if the person is appearing without counsel, or to the person's attorney, if one has been retained, a copy of the judgment or order specified in the notice and a list of the court reporters for each proceeding in the action in which the judgment or order was entered.

(4) TRANSCRIPT. A person filing a notice of intent to appeal under sub. (2) shall order a transcript of the reporter's notes within 15 days after filing the notice. The court reporter shall file the transcript with the trial court and serve a copy of the transcript on the person filing the notice of intent to appeal within 30 days after the ordering of the transcript.

(5) NOTICE OF APPEAL; TRANSMITTAL OF RECORD. Within 15 days after service of the transcript, the person filing a notice of intent to appeal under sub. (2) shall file a notice of appeal and docketing statement as provided in s. 809.10 (1) (a) and serve a copy of the notice on the persons required to be served under sub. (2). The clerk of the trial court shall transmit the record to the court of appeals as soon as the record is prepared but in no event more than 15 days after the filing of the notice of appeal.

(6) SUBSEQUENT PROCEEDINGS IN COURT OF APPEALS; PETITION FOR REVIEW IN SUPREME COURT. Subsequent proceedings in the appeal are governed by the procedures for civil appeals and the procedures under subch. VI, except as follows:

(a) The appellant shall file a brief within 15 days after the filing of the record on appeal.

(b) The respondent shall file a brief within 10 days after the service of the appellant's brief.

(c) The appellant shall file within 10 days after the service of the respondent's brief a reply brief or statement that a reply brief will not be filed.

(d) If the guardian ad litem appointed under s. 48.235 (1) (c) for the child who is the subject of the proceeding takes the position of the appellant, the guardian ad litem's brief shall be filed within 15 days after the filing of the record on appeal with the court of appeals. If the guardian ad litem takes the position of a respondent, the guardian ad litem's brief shall be filed within 10 days after service of the appellant's brief.

(e) Cases appealed under this section shall be given preference and shall be taken in an order that ensures that a decision is issued within 45 days after the filing of the record on appeal with the court of appeals.

(f) A petition for review of an appeal in the supreme court, if any, shall be filed within 15 days after the date of the decision of the court of appeals. The supreme court shall give preference to a petition for review of an appeal filed under this paragraph.

NOTE: Shortens various time periods for appeals relating to TPR, as follows:

1. A notice of intent to appeal must be filed with the trial court within 15 days after the entry after a TPR judgment or order, rather than 40 days.

2. The appellant must request a transcript of the trial court proceedings within 15 days after filing the notice of intent to appeal, rather than 30 days; the court reporter must file the transcript with the trial court and serve a copy on the appellant within 30 days after the request, rather than 60 days.

3. The appellant has 15 days from the date of service of the transcript to file the official notice of appeal, rather than 60 days.

4. The briefing schedule is shortened from 70 days after the filing of the record on appeal to 25 days after the filing of the record on appeal plus 10 days for the appellant's reply brief, if any.

5. The court of appeals must give TPR appeals preference and must decide a TPR appeal within 45 days after the filing of the record on appeal. There is no specific time period under current law within which the court of appeals must decide a TPR appeal.

6. A petition for the supreme court to review an appeal of a TPR case must be filed within 15 days after the date of the decision of the court of appeals, rather than 30 days.

SECTION 47. 809.30 (1) (a) and (b) of the statutes are amended to read:

809.30 (1) (a) "Postconviction relief" means, in a felony or misdemeanor case, an appeal or a motion for postconviction relief other than a motion under s. 973.19 or 974.06. In a ch. 48, 51 or 55 case, other than a termination of parental rights case under s. 48.43, it means an appeal or a motion for reconsideration by the trial court of its final judgment or order; in such cases a notice of intent to pursue such relief or a motion for such relief need not be styled as seeking "postconviction" relief.

(b) "Sentencing" means, in a felony or misdemeanor case, the imposition of a sentence, fine or probation. In a ch. 48, 51 or 55 case, other than a termination of parental rights case under s. 48.43, it means the entry of the trial court's final judgment or order.

NOTE: Creates exception to appellate procedure under s. 809.30, stats., for TPR cases to reflect creation by this bill of s. 809.107, which governs TPR appellate procedure.

SECTION 48. 809.40 (1m) of the statutes is amended to read:

809.40 (1m) Subsection (1) does not apply to an appeal from an order denying a petition under s. 48.375 (7), which is governed by the procedures specified in s. 809.105, or to an appeal from an order or judgment under s. 48.43, which is governed by the procedures specified in s. 809.107.

NOTE: Reflects the creation of proposed s. 809.107 by this bill.

SECTION 49. 809.62 (2r) of the statutes is created to read:

809.62 (2r) This section applies to petitions for review of an appeal under s. 809.107, except as provided in s. 809.107 (6) (f).

NOTE: Amends provisions regarding appellate procedures in the supreme court to reflect the creation of time peri-

ods for appeals involving TPR under s. 809.107 (6) (f), as created by this bill.

SECTION 50. Nonstatutory provisions; health and social services. (1) The department of health and social services shall submit a report by the first day of the 12th month beginning after the effective date of this subsection to the joint committee on finance, and to the appropriate standing committees in the manner provided under section 13.172 (3) of the statutes, on the issue of long-term, out-of-home placements of children. The report shall include all of the following:

(a) The number of children in each county who are under an order placing them in foster homes, group homes or child caring institutions and the number of caseworkers in each county overseeing those children.

(b) The number of children in each county who are 6 years of age or older and who have been placed in a foster home, group home or child caring institution for 18 months or more, and the number of children under the age of 6 years who have been placed in one of those placements for 12 months or more.

(c) Criteria for determining which children are at risk of remaining in long-term, out-of-home placements.

(d) What type of procedure should be created for referring children who are at risk of remaining in long-term, out-of-home placements for the purpose of initiating termination of parental rights proceedings with respect to those children and placing those children for adoption. The department of health and social services shall specifically study the feasibility of referring those children to licensed child welfare agencies for that purpose.

(e) A mechanism by which the department of health and social services can collect funds from counties to reimburse agencies for providing services related to termination of parental rights proceedings and placement for adoption of children who are at risk of being in long-term, out-of-home placements.

NOTE: Requires DHSS to study:

1. Long-term, out-of-home placements of children, including procedures for referring a child who is at risk of remaining in a long-term, out-of-home placement for the purpose of initiating TPR proceedings and placing the child

for adoption and a mechanism for collecting funds from counties to reimburse agencies for providing services related to TPR proceedings and placement for adoption of those children.

SECTION 51. Initial applicability. (1) CONTINUING NEED OF PROTECTION OR SERVICES. The treatment of section 48.415 (2) (c) of the statutes first applies to court orders placing a child, or continuing a child in placement, outside of the home under section 48.345, 48.357, 48.363 or 48.365 of the statutes entered on the effective date of this subsection.

(3) TERMINATION OF PARENTAL RIGHTS APPEALS. The treatment of sections 808.04 (4), (7) and (7m) and 809.107 of the statutes first applies to judgments or orders entered under section 48.43 of the statutes on the effective date of this subsection.

(4) NOTICE TO PUTATIVE FATHERS. The treatment of sections 48.27 (3), 48.299 (6) and 767.47 (10) of the statutes and the creation of section 48.27 (3) (b) of the statutes first apply to notices issued under section 48.27 (3) of the statutes, as affected by this act, on the effective date of this subsection.

NOTE: Subsection (1) specifies that the new provisions of this bill relating to TPR based on a finding of continuing need of protection or services first apply to children placed, or continued in a placement, outside the home by a court order entered on the effective date of this bill.

Subsection (3) specifies that the provisions of the bill relating to appeals of orders terminating parental rights or denying TPR first apply to trial court orders or judgments entered on the effective date of this bill.

Subsection (4) specifies that the provisions of this bill relating to notification of putative fathers first apply to notices issued on the effective date of this bill.

SECTION 52. Effective dates. This act takes effect on January 1, 1994, or on the day after publication, whichever is later, except as follows:

(1) SUPPLEMENTAL FOSTER CARE PAYMENTS. The treatment of sections 48.68 (1) and 48.75 (1g) of the statutes takes effect on July 1, 1994.

NOTE: Subsection (1) specifies that the provisions of the bill relating to notifying foster parents of supplemental foster care payments takes effect on July 1, 1994.