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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS

2001-02

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on ... Children and Families (AC-CF)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
  (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
  (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (May 2012)

Assembly

Record of Committee Proceedings

Committee on Children and Families

Assembly Bill 809

Relating to: permanency planning for a child placed outside the home, required juvenile court findings when a child is placed outside the home, the expiration date of a juvenile court order placing or continuing the placement of a child outside the home, the requirement that a termination of parental rights petition be filed under certain circumstances, statements by foster parents at juvenile court hearings, and prohibiting a person who has committed an alcohol-related felony within the last 5 years from being licensed to operate a foster home or treatment foster home.

By Representative Kestell; cosponsored by Senator Robson.

February 12, 2002 Referred to Committee on Children and Families.

February 14, 2002 **PUBLIC HEARING HELD**

Present: (7) Representatives Kestell, Lippert, Bies, Grothman, Jeskewitz, Miller and Sinicki.

Absent: (0) None.

Appearances for

- Michelle Jensen, DHFS
- Representative Steve Kestell, 27th Assembly District
- Lisa Hilbert Maroney, Wisconsin Council on Children and Families, Madison, WI
- Mark Mitchell, DHFS
- Gary Radloff, DHFS

Appearances against

- None.

Appearances for Information Only

- None.

Registrations for

- Representative Bonnie Ladwig, 63rd Assembly District
- Mark Matthews, Children's Service Society of Wisconsin, Milwaukee, WI
- Kathy Soderbloom, Senator Robson's office

Registrations against

- None.

February 20, 2002 **EXECUTIVE SESSION**

Present: (7) Representatives Kestell, Lippert, Bies, Grothman, Jeskewitz, Miller and Sinicki.
Absent: (0) None.

Moved by Representative Bies, seconded by Representative Miller, that **Assembly Amendment 1** be recommended for introduction and adoption.

Ayes: (7) Representatives Kestell, Lippert, Bies, Grothman, Jeskewitz, Miller and Sinicki.
Noes: (0) None.
Absent: (0) None.

INTRODUCTION AND ADOPTION RECOMMENDED, Ayes 7, Noes 0, Absent 0

Moved by Representative Jeskewitz, seconded by Representative Lippert, that **Assembly Bill 809** be recommended for passage as amended.

Ayes: (6) Representatives Kestell, Lippert, Bies, Jeskewitz, Miller and Sinicki.
Noes: (1) Representative Grothman.
Absent: (0) None.

PASSAGE AS AMENDED RECOMMENDED, Ayes 6, Noes 1, Absent 0

Dave Matzen
Committee Clerk

Vote Record

Assembly - Committee on Children and Families

Date: 2-20-02
Moved by: ~~[illegible]~~ Bies
Seconded by: Miller
Clearinghouse Rule:
AB: 809 SB:
Appointment:
AJR: SJR:
Other:
AR: SR:

A/S Amdt: 1 (a 1288/3)
A/S Amdt: to A/S Amdt:
A/S Sub Amdt:
A/S Amdt: to A/S Sub Amdt:
A/S Amdt: to A/S Amdt: to A/S Sub Amdt:

Be recommended for:
- ☐ Passage
- ☒ Introduction
- ☒ Adoption
- ☐ Rejection
- ☐ Indefinite Postponement
- ☐ Tabling
- ☐ Concurrence
- ☐ Nonconcurrence
- ☐ Confirmation

Committee Member	Aye	No	Absent	Not Voting
Rep. Steve Kestell, Chair	☒	☐	☐	☐
Rep. MaryAnn Lippert	☒	☐	☐	☐
Rep. Garey Bies	☒	☐	☐	☐
Rep. Glenn Grothman	☒	☐	☐	☐
Rep. Suzanne Jeskewitz	☒	☐	☐	☐
Rep. Mark Miller	☒	☐	☐	☐
~~Rep. C. Spencer Coggs~~	☐	☐	☐	☐
Rep. Christine Sinicki	☒	☐	☐	☐
Totals:	7	0	0	0

☒ Motion Carried ☐ Motion Failed

Vote Record

Assembly - Committee on Children and Families

Date: 2-20-02
Moved by: Jeskewitz
Seconded by: Lippert
Clearinghouse Rule:
Appointment:
Other:

AB: 809 SB:
AJR: SJR:
AR: SR:

A/S Amdt:
A/S Amdt: to A/S Amdt:
A/S Sub Amdt:
A/S Amdt: to A/S Sub Amdt:
A/S Amdt: to A/S Amdt: to A/S Sub Amdt:

Be recommended for:
- [X] Passage (as amended)
- [ ] Introduction
- [ ] Adoption
- [ ] Rejection
- [ ] Indefinite Postponement
- [ ] Tabling
- [ ] Concurrence
- [ ] Nonconcurrence
- [ ] Confirmation

Committee Member	Aye	No	Absent	Not Voting
Rep. Steve Kestell, Chair	X			
Rep. MaryAnn Lippert	X			
Rep. Garey Bies	X			
Rep. Glenn Grothman		X		
Rep. Suzanne Jeskewitz	X			
Rep. Mark Miller	X			
~~Rep. G. Spencer Coggs~~				
Rep. Christine Sinicki	X			
Totals:	6	1	0	0

- [X] Motion Carried
- [ ] Motion Failed

State of Wisconsin
Department of Health and Family Services

Scott McCallum, Governor
Phyllis J. Dubé, Secretary

Date: February 11, 2002

To: Members of the Assembly Children and Families Committee

From: Gary Radloff, Legislative Liaison
Department of Health and Family Services

Re: Statutory Proposals Related to the Federal Adoption and Safe Families Act (LRB-4375/2)

LRB-4375/2 will accomplish the following changes to procedures related to children and youth and their families under Wisconsin's Children's Code and Juvenile Justice Code:

- Contrary to welfare language
  This is specific court order language that is a primary consideration in the determination of a child's eligibility for Title IV-E funding. Under this proposal, the court finding must be made in the first court order that authorizes removal.

- Bona fide consideration of an agency's recommendation for placement
  Under ASFA, if the court disagrees with the agency's placement recommendation and does not give bona fide consideration to that recommendation, the child's placement will not be Title IV-E reimbursable.

- Reasonable efforts to prevent removal
  This is a specific judicial finding that determines whether a child's placement costs will be Title IV-E reimbursable. The court must find that reasonable efforts were made to prevent the placement within 60 days of the child's removal from the home.

- Reasonable efforts to finalize the permanency plan
  This is a specific judicial finding and the court must make a finding that reasonable efforts were made to finalize the permanency plan to determine whether a child's placement costs will be Title IV-E reimbursable. This finding must be made within 12 months from the date the child enters care and every 12 months thereafter.

- Permanency plan reviews
  Timely and adequate permanency plan reviews is a primary consideration related to the reimbursement of a child's placement. This bill replaces annual dispositional hearings with annual permanency hearings for children in out-of-home care.

- Permanency plan hierarchy
  Under ASFA, permanence options for children are organized into a hierarchy (e.g., reunification with the family, adoption, guardianship, and placement with a relative). Certain existing permanence goals (e.g., long-term foster care) are discouraged and, under some circumstances, are prohibited by ASFA.

- Permanency plan contents
  Currently, Wisconsin statutes, in the context of permanency plan contents, lists only a few of the Title IV-E required elements. Others have been established by various federal laws but have never been codified in Chapter 48 and Chapter 938. As a result, permanency plans sometimes do not include all of the federally required elements.

- Determination of 15 of 22 months
  Given the very tight time frames for filing a termination of parental rights under ASFA, it is critical that there be uniformity in determining when the "clock starts ticking." Related to this are the proposed changes regarding certain conditions that are not included in determining the 15 of 22 month standard. Also, termination of parental rights petitions, if an exception does not apply, must be filed by the end of the 15th month the child is in out-of-home care.

- Permanency Planning in Relative Placements
  Under ASFA, relatives caring for children under a court order must be treated the same as non-relative foster parents. Numerous counties currently treat them differently, thus risking Wisconsin's compliance with ASFA. This bill would require permanency plans for children placed with relatives by the agency under a voluntary placement order or the court whether or not the relative is licensed under Chapter 48.

- Compelling reasons for not filing a termination of parental rights petition
  Language incorporated into the statutes by 1997 Wisconsin Act 237 is, in some cases, less restrictive than ASFA and, in other cases, is more stringent. These need to be clarified in order to assure that exceptions to the federal law are appropriate and allowed.

The final federal regulation to implement provisions of ASFA prescribes new Title IV-E procedural requirements and outlines significant financial penalties for a State's failure to comply with the new mandates. For example, failure to obtain certain judicial findings in the specified time-frames will bar the State from claiming Federal Title IV-E administrative, maintenance and training funds for the entire out-of-home stay for each child welfare or juvenile justice case that does not contain the appropriate documentation of the procedural requirements.

Please feel free to contact me at 266-3262 regarding any questions or concerns with this draft.


FORWARD
E PLURIBUS UNUM

WISCONSIN COUNCIL ON CHILDREN and FAMILIES

RESEARCH • EDUCATION • ADVOCACY

February 14, 2002

TO: Members of the Assembly Committee on Children and Families
FROM: Lisa Maroney
RE: Assembly Bill 809

On behalf of the Wisconsin Council on Children and Families, we are writing in support of the following aspect of Assembly Bill 809. We support Section 70 with the understanding that the Department of Health and Family Services will work with us to reach mutually agreeable language regarding Section 70 of the bill, which spells out the goals of the permanency plan.

We support a change in the language that would clarify that when reunification is not the appropriate option the permanency plan (placement for adoption, placement with a guardian or permanent placement with a fit and willing relative) will be based on the best interest of the child rather than hierarchical preferences as stated in the bill. The federal Adoption and Safe Families Act does not require that the options be considered in any preferential order.

We have discussed this change with representatives from DHFS and are eager to work with them. This is the only issue we have had time to pursue. This is a long and complicated document which was released quite recently.

Thank you for your consideration. I am happy to discuss this matter with you at your convenience.

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WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director
Laura D. Rose, Deputy Director

TO: REPRESENTATIVE STEVE KESTELL AND MEMBERS OF THE ASSEMBLY COMMITTEE ON CHILDREN AND FAMILIES

FROM: Anne Sappenfield, Senior Staff Attorney

RE: 2001 Assembly Bill 809, Relating to Conforming the Children's Code and the Juvenile Justice Code to the Federal Adoption and Safe Families Act

DATE: February 18, 2002

This memorandum describes 2001 Assembly Bill 809, relating to modifying the Children's Code [ch. 48, Stats.] and the Juvenile Justice Code [ch. 938, Stats.] so that they conform with the requirements of the federal Adoption and Safe Families Act.

The bill was introduced on February 12, 2002, by Representative Kestell; cosponsored by Senator Robson. The bill has been referred to the Assembly Committee on Children and Families, which held a public hearing on the bill on February 14, 2002.

This memorandum describes the bill as it applies to proceedings for children in need of protection or services (CHIPS) under ch. 48, Stats. It should be noted, however, that the bill makes the same changes for juvenile delinquency and juveniles in need of protection or services proceedings under ch. 938, Stats., and proceedings for unborn children in need of protection or services under ch. 48, Stats.

COURT FINDINGS FOR CHILDREN PLACED OUTSIDE THE HOME

Dispositional Orders

Current Law

Under current law, if a child is placed outside the home, the child's dispositional order must contain a finding that continued placement of the child in his or her home would be contrary to the

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health, safety and welfare of the child.* The order must also contain a finding as to whether the county department of social or human services ("county department"), the Department of Health and Family Services (DHFS) (for Milwaukee County), or the child welfare agency primarily responsible for providing services under the court order has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's health and safety are the paramount concerns, or, if applicable, a finding as to whether the agency primarily responsible for providing services has made reasonable efforts to make it possible for the child to return safely to his or her home.

The second finding is not required under any of the following circumstances:

1. The parent has subjected the child to aggravated circumstances. Under current law, "aggravated circumstances" include abandonment, torture, chronic abuse, and sexual abuse.

2. The parent has committed, has aided or abetted the commission of, or has solicited, conspired or attempted to commit first- or second-degree intentional homicide, first-degree reckless homicide, or felony murder and that the victim of the homicide or attempted homicide was a child of the parent.

3. The parent has committed substantial battery, first- or second-degree sexual assault, first- or second-degree sexual assault of a child, engaging in repeated acts of sexual assault of the same child, or intentionally or recklessly causing great bodily harm to a child if the violation resulted in great or substantial bodily harm to the child or another child of the parent.

4. The parental rights of the parent to another child have been involuntarily terminated.

5. The parent has been found to have relinquished custody of the child when the child was 72 hours old or younger.

If the juvenile court (i.e., the court authorized to exercise jurisdiction under chs. 48 and 938, Stats.) ("court") makes one of the above findings, the court must hold a hearing within 30 days after the date of that finding to determine the permanency plan for the child. If a hearing is held, the agency responsible for preparing the permanency plan must file the plan with the court not less than five days before the date of the hearing.

The Bill

Under the bill, a court order placing a child outside his or her home must also include a finding that the county department, DHFS, or the child welfare agency has made reasonable efforts to achieve the goal of the child's permanency plan, unless return of the child to the home is the goal of the permanency plan and the court finds that any of the circumstances under which there is no requirement

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* Under the Juvenile Justice Code, a dispositional order for a juvenile who is placed outside of his or her home in a delinquency proceeding must include a finding that the juvenile's current residence will not safeguard the welfare of the juvenile or the community due to the serious nature of the act for which the juvenile was adjudicated delinquent. The bill maintains that requirement for juveniles who are adjudged delinquent but requires a finding that continued placement of the juvenile in his or her home would be contrary to the welfare of the juvenile for all other dispositional orders under the Juvenile Justice Code that place a juvenile outside his or her home.

to make reasonable efforts to return the child to his or her home apply. Evidence with respect to the court's required findings must be presented by a county department, DHFS, or a licensed child welfare agency that is recommending placement of the child in a foster home, treatment foster home, group homes, or child caring institution or in the home of a relative.

The bill specifies that the court must make its findings regarding the child's welfare and whether reasonable efforts have been made on a case-by-case basis based on circumstances specific to the child and must document or reference the specific information on which those findings are based in the court order. A court order that merely references this statutory requirement or incorporates the court report or any other document without documenting that specific information in the court order, or an amended court order that retroactively corrects an earlier court order that does not comply with this provision is not sufficient to meet the requirements for documentation. This documentation requirement also applies to the court's finding that a circumstance under which reasonable efforts are not required exists.

If the court finds that any of the circumstances under which there is no requirement to make reasonable efforts to return the child to his or her home applies with respect to a parent, the judge or juvenile court commissioner must hold a hearing within 30 days after the date of that finding to determine the permanency plan for the child. If such a hearing is held, the agency responsible for preparing the permanency plan must file the plan with the court not less than five days before the date of the hearing. The court must notify the child, any parent, guardian and legal custodian of the child, and any foster parent, treatment foster parent or other physical custodian of the child of the time, place and purpose of the hearing at least 10 days before the hearing. Those who receive notice must be permitted to give a written or oral statement upon oath or affirmation. Such notice and opportunity does not make them a party to the proceedings.

The bill specifies that if the court finds that any of the circumstances under which there is no requirement to make reasonable efforts to return the child to his or her home apply with respect to a parent, the order must include a determination that the county department, DHFS, or the child welfare agency primarily responsible for providing services under the court order is not required to make reasonable efforts with respect to the parent to make it possible for the child to return safely to his or her home.

Others Orders

The bill applies the above provisions to additional orders and to consent decrees. These are described below.

Temporary Physical Custody Order

Under current law, a child may be taken into temporary physical custody, generally for safety reasons, before a CHIPS petition is filed. If a child is taken into custody, a hearing must be held within 48 hours, excluding weekends and holidays. At that hearing, the court must determine whether to order the child to be held in temporary physical custody.

Under the bill, the court must include in an order for temporary physical custody the findings that placement in the home would be contrary to the welfare of the child and that reasonable efforts have been made, if required, to return the child to his or her home, as described above. If, for good cause shown, sufficient information is not available for the judge or the juvenile court commissioner to make

those findings, the judge or juvenile court commissioner must order the county department, DHFS, or the child welfare agency primarily responsible for providing services to the child to file with the court sufficient information to make those findings no later than five days after the date of the temporary physical custody order.

Under current law, a parent, guardian, or legal custodian may waive his or her right to a temporary physical custody hearing. After any waiver, however, a hearing must be granted at the request of any interested party. Under the bill, the parent, guardian, or legal custodian may waive his or her right to participate in the temporary physical custody hearing. After a waiver, a rehearing must be granted at the request of the parent, guardian, legal custodian, or any other interested party for good cause shown.

Consent Decrees

Under current law, at any time after a CHIPS petition is filed, but before the entry of a final judgment, the judge or juvenile court commissioner may suspend the proceedings and place the child under supervision in the home or the present placement of the child. This is called a "consent decree" and must be agreed upon by all of the parties.

Under the bill, if the child is placed outside the home at the time the parties enter into the consent decree and if the consent decree maintains that placement, the consent decree must include the finding that placement of the child in his or her home would be contrary to the welfare of the child. The consent decree must also include a finding that reasonable efforts to return the child to his or her home have been made, unless such a finding is not required.

Change in Placement

Under current law, the person or agency primarily responsible for implementing the dispositional order, the district attorney (DA), or the corporation counsel may request a change in the placement of the child, whether or not the change requested is authorized in the dispositional order. The child, the parent, guardian or legal custodian of the child or any person or agency primarily bound by the dispositional order, other than the person or agency responsible for implementing the order, may also request a change in placement. Finally, the court may propose a change in placement on its own motion.

If a hearing is held on a change in placement request that would place the child outside the home in a placement recommended by the person or agency primarily responsible for implementing the dispositional order, the change in placement order must include a statement that the court approves the placement recommended or, if the child is placed outside the home in a placement other than a placement recommended by that person or agency, a statement that the court has given bona fide consideration to the recommendations made by that person or agency and all parties relating to the child's placement.

Under the bill, if a proposed change in placement would change the placement of a child placed in the home to a placement outside the home, the person or agency primarily responsible for implementing the dispositional order, the DA, or the corporation counsel must submit the request to the court. The request must contain specific information showing that continued placement of the child in his or her home would be contrary to the welfare of the child. The request must also contain specific information showing that the agency primarily responsible for implementing the dispositional order has

made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's health and safety are the paramount concerns, unless reasonable efforts are not required.

The court must hold a hearing for a request to change placement of a child placed in the home to a placement outside the home. If the court changes the child's placement from a placement in the child's home to a placement outside the child's home, the change in placement order must contain the finding that continued placement of the child in his or her home would be contrary to the welfare of the child and a finding that reasonable efforts to prevent the removal of the child from the home have been made, unless not required, as described above.

Extension of Dispositional Orders

Under current law, the parent, child, guardian, legal custodian, any person or agency bound by the dispositional order, the DA or corporation counsel of the county in which the dispositional order was entered, or the court by its own motion, may request an extension of a dispositional order. A hearing must be held before the court may order an extension. At the hearing, any party may present evidence relevant to the issue of extension. The judge must make findings of fact and conclusions of law based on the evidence. The findings of fact must include a finding as to whether reasonable efforts were made by the agency primarily responsible for providing services to the child to make it possible for the child to return to his or her home, unless any circumstances that exempt the case from reasonable efforts requirement exists.

Under the bill, the court's findings of fact must include a finding as to whether reasonable efforts were made by the agency primarily responsible for providing services to the child to achieve the goal of the child's permanency plan, unless returning the child to the home is the goal and the judge finds that a circumstance under which reasonable efforts to return the child to his or her home are not required exists.

CHIPS PETITION

Current Law

Under current law, a CHIPS petition must set forth with specificity, among other information, reliable and credible information which forms the basis of the allegations necessary to invoke the jurisdiction of the court and to provide reasonable notice of the conduct or circumstances to be considered by the court together with a statement that the child is in need of supervision, services, care, or rehabilitation.

The Bill

Under the bill, if the child is being held in custody outside of his or her home at the time the petition is filed, the petition must set forth reliable and credible information showing that continued placement of the child in his or her home would be contrary to the welfare of the child. In addition, unless any of the circumstances under which reasonable efforts to return a child to his or her home are not required exist, the petition must provide reliable and credible information showing that the person who took the child into custody and the intake worker have made reasonable efforts to prevent the

removal of the child from the home, while assuring that the child's health and safety are the paramount concerns, and to make it possible for the child to return home.

DELAYS, CONTINUANCES AND EXTENSIONS

Current Law

Under current law, specified time periods are excluded in computing time requirements for proceedings under the Children's Code. In addition, the court may grant a continuance upon a showing of good cause.

The Bill

Under the bill, no continuance of a time limit specified in the Children's Code may be granted and no period of delay may be excluded in computing a time limit if, as a result of the continuance, extension or exclusion, the time limits for the court to make a finding that reasonable efforts have been made to prevent the removal of the child from the home, an initial finding that those efforts are not required, or an initial finding that the agency primarily responsible for providing services to the child has made reasonable efforts to achieve the goals of the permanency plan would be exceeded.

The bill specifies that failure to comply with either of the above time limits does not deprive the court of jurisdiction or of competency to exercise that jurisdiction. If a party does not comply with one of the above time limits, however, the court may dismiss the proceeding with or without prejudice, release the child from custody, or grant any other relief that the court considers appropriate.

PERMANENCY PLANS

Current Law

Under current law, for each child living outside his or her home in a licensed facility (e.g., a foster home), the agency that placed the child or arranged the placement or the agency assigned primary responsibility for providing services to the child must prepare a written permanency plan if one of the following conditions exists:

1. The child is being held in temporary physical custody.
2. The child is in the legal custody of the agency.
3. The child is under the supervision of an agency under a court order.
4. The child is in the out-of-home placement under a voluntary agreement between the agency and the child's parent.
5. The child is under the guardianship of the agency.
6. The child meets the requirements for aid under the former Aid to Families with Dependent Children Program.

The agency must file the permanency plan with the court within 60 days after the date on which the child was first held in physical custody or placed outside of his or her home under a court order.

The permanency plan must include a description of all of the following:

1. The services offered and any service provided in an effort to prevent holding or placing the child outside of his or her home, while assuring that the health and safety of the child are the paramount concerns, and to make it possible for the child to return safely home. The permanency plan need not include a description of those services offered or provided with respect to a parent of the child if there are circumstances under which reasonable efforts to return a child to his or her home are not required.

2. The basis for the decision to hold the child in custody or to place the child outside of his or her home.

3. The availability of a safe and appropriate placement with a relative of the child and, if a decision is made not to place the child with an available relative, why placement with the relative is not safe or appropriate.

4. The location and type of facility in which the child is currently held or placed, and the location and type of facility in which the child will be placed.

5. If the child is living more than 60 miles from his or her home, documentation that placement within 60 miles of the child's home is either unavailable or inappropriate or that the placement is in the child's best interest.

6. The safety and appropriateness of the placement and of the services provided to meet the needs of the child and family.

7. The services that will be provided to the child, the child's family and the child's foster parent, treatment foster parent or the operator of the facility where the child is living to carry out the dispositional order.

8. If the permanency plan calls for placing the child for adoption, with a guardian or in some other alternative permanent placement, the efforts made to do so.

9. The conditions, if any, upon which the child will be returned safely to his or her home, including any changes in the parents' conduct or the nature of the home.

The Bill

Under the bill, a permanency plan must also be prepared for a child who is placed in the home of a relative. This requirement is phased-in through November 1, 2002. In addition, permanency plans must be prepared for a child who is in an out-of-home placement under a consent decree.

Under the bill, the agency must file the permanency plan with the court within 60 days after the date on which the child was first removed from his or her home.

The bill modifies what must be included in the permanency plan so that, in addition to what is required under current law, the following must be included in the plan:

1. A description of the services offered and any services provided to achieve the goal of the permanency plan, which may or may not be returning the child to his or her home.

2. The name, address, and telephone number of the child's parent, guardian, and legal custodian.

3. The date on which the child was removed from his or her home and the date on which the child was placed in out-of-home care.

4. A statement as to the availability of a safe and appropriate placement with a ***fit and willing*** relative.

5. Information about the child's education, including all of the following:

   a. The name and address of the school in which the child is or was most recently enrolled.

   b. Any special education programs in which the child is or was previously enrolled.

   c. The grade level in which the child is or was most recently enrolled and all information that is available concerning the child's grade level performance.

   d. A summary of all available education records relating to the child that are relevant to any education goals included in the education services plan prepared for the report to the court prior to disposition.

6. If, as a result of the placement, the child has been or will be transferred from the school in which the child is or most recently was enrolled, documentation that a placement that would maintain the child in that school is either unavailable or inappropriate or that a placement that would result in the child's transfer to another school would be in the child's best interests.

7. Medical information relating to the child, including all of the following:

   a. The names and addresses of the child's physician, dentist, and any other health care provider.

   b. The child's immunization record.

   c. Any known medical condition for which the child is receiving medical care or treatment and any known serious medical condition for which the child has previously received medical care or treatment.

   d. Any medication that is being administered to the child and any medication that causes the child to suffer an allergic or other negative reaction.

8. A plan for ensuring the safety and appropriateness of the placement.

9. The goal of the permanency plan or, if the agency is making cocurrent reasonable efforts to return the child to the home and to find a permanent placement for the child, the goals of the permanency plan in the order of preference listed below. If a goal of the permanency plan is any goal other than returning the child to his or her home, the permanency plan must include the rationale for deciding on that goal. If a goal of the permanency plan is an alternative placement, listed under item e., below, the permanency plan must document a compelling reason why it would not be in the best interest of the child to pursue a goal listed in items a. to d., below. The agency must determine the goal or goals of the permanency plan in the following order of preference:

    a. Return of the child to the child's home.

    b. Placement of the child for adoption.

    c. Placement of the child with a guardian.

    d. Permanent placement of the child with a fit and willing relative (other than adoption by or under the guardianship of a relative).

    e. Some other alternative permanent placement, including sustaining care, independent living, or long-term foster care.

10. If the goal of the permanency plan is to place the child for adoption, with a guardian, with a fit and willing relative, or in some other alternative permanent placement, the efforts made to achieve that goal.

11. If the child is 15 years old or older, a description of programs and services that are or will be provided to assist the child in preparing for the transition from out-of-home care to independent living. The description must include all of the following:

    a. The anticipated age at which the child will be discharged from out-of-home care.

    b. The anticipated amount of time available in which to prepare the child for the transition from out-of-home care to independent living.

    c. The anticipated location and living situation of the child on discharge from out-of-home care.

    d. A description of the assessment processes, tools, and methods that have been or will be used to determine the programs and services that are or will be provided to assist the child in preparing for the transition from out-of-home care to independent living.

    e. The rationale for each program or service that is or will be provided to assist the child in preparing for the transition from out-of-home care to independent living, the time frames for delivering those programs or services, and the intended outcome of those programs or services.

PERMANENCY PLAN REVIEWS

Current Law

Under current law, the court or a panel appointed by the court must review a permanency plan every six months from the date on which the child was first held in physical custody or placed outside of his or her home. If the court elects not to review the permanency plan, the court must appoint a panel to review the plan. The panel must consist of three persons who are either designated by an independent child welfare agency that has been approved by the chief judge of the judicial administrative district or designated by the child welfare agency that prepared the permanency plan.

The court or the panel must determine each of the following:

1. The continuing necessity for and the safety and appropriateness of the placement.

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

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

4. The progress toward eliminating the causes for the child's placement outside of his or her home and toward returning the child safely to his or her home or obtaining permanent placement for the child.

5. The date by which it is likely that the child will be returned to his or her home or placed for adoption, with a guardian or in some other alternative permanent placement for the child.

6. If the child has been placed outside of his or her home for 15 of the most recent 22 months, the appropriateness of the permanency plan and the circumstances which prevent the child from any of the following:

   a. Being returned safely to his or her home.

   b. Being placed in the home of a relative of the child.

   c. Having a petition for the involuntary termination of parental rights (TPR) filed on behalf of the child.

   d. Being placed for adoption.

   e. Being placed in sustaining care.

7. Whether reasonable efforts were made by the agency to make it possible for the child to return safely to his or her home, except that the court or panel need not determine whether those reasonable efforts were made with respect to a parent of the child if any of the circumstances that under which reasonable efforts to return the child to his or her home are not required applies to that parent.

The Bill

Under the bill, the court or a panel appointed by the court must review the permanency plan not later than six months after the date on which the child was first removed from his or her home and every six months after a previous review for as long as the child is placed outside the home. However, for the review that is required to be conducted not later than 12 months after the child was first removed from his or her home (i.e., the second review) and the reviews that are required to be conducted every 12 months after that review, the court must hold a hearing on the permanency plan. This hearing may be held in place of a review or in addition to a review.

As noted above, the court must hold a permanency plan hearing no later than 12 months after the date on which the child was first removed from his or her home and every 12 months thereafter for as long as the child is placed outside the home. At the permanency plan hearing, the court is required to make written findings of fact and conclusions of law relating to the determinations required under the permanency plan review, as described above. If these findings and conclusions conflict with the child's dispositional order or provide for any additional services not specified in the dispositional order, the court must revise the order or order a change in placement, as appropriate.

The bill also modifies some of the determinations that must be made at a permanency plan review or hearing. For determining that a child has been placed outside of his or her home for 15 of the most recent 22 months, the bill provides that this time period does not include any period during which the child was a runaway from the out-of-home placement or the child was returned to his or her home for a trial visit of six months or less. For these children, the court or panel must determine the appropriateness of the permanency plan and the circumstances which prevent the child from any of the following:

1. Being returned safely to his or her home.

2. Being placed with a guardian.

3. Being placed with a fit and willing relative.

4. Having a TPR petition filed on behalf of the child.

5. Being placed for adoption.

6. Being placed in some other alternative permanent placement, including sustaining care, independent living, or long-term foster care.

In addition, the court or panel must determine whether the agency has made reasonable efforts to achieve the goal of the permanency plan, as required.

TERMINATION OF DISPOSITIONAL ORDERS

Current Law

Under current law, dispositional orders, and extensions or revisions to a dispositional order, terminate at the end of one year, unless the judge specifies a shorter period of time.

The Bill

Under the bill, dispositional orders, and extensions or revisions to a dispositional order, made before the child reaches 18 years of age that place or continue the placement of a child in his or her home terminate at the end of one year after entry of the order, unless the judge specifies a shorter period of time or terminates the order sooner. An order or an extension or revision of an order made before the child reaches 18 years of age that places or continues placement of the child in an out-of-home placement terminates when the child reaches 18 years of age, at the end of one year after entry of the order or, if the child is a full-time student at a secondary school or its vocational or technical equivalent and is reasonably expected to complete the program before reaching age 19, when the child reaches age 19, whichever is later, unless the judge specifies a shorter period of time or terminates the order sooner.

PETITION OF INVOLUNTARY TPR

Current Law

Under current law, an agency or the DA or corporation counsel must file a TPR petition, or must join a TPR petition that has already been filed, if any of the following conditions exist:

1. The child has been placed outside of his or her home for 15 of the most recent 22 months.

2. A court has found that the child was abandoned when he or she was under one year of age.

3. A court has found that the parent has committed, has aided or abetted the commission of, or has solicited, conspired, or attempted to commit first- or second-degree intentional homicide, first-degree reckless homicide or felony murder and that the victim of the homicide is a child of the parent.

4. The parent has committed substantial battery, first- or second-degree sexual assault, first- or second-degree sexual assault of a child, engaging in repeated acts of sexual assault of the same child, or intentionally or recklessly causing great bodily harm to a child if the violation resulted in great or substantial bodily harm to the child or another child of the parent.

However, an agency or the DA or corporation counsel need not file or join a TPR petition if any of the following circumstances apply:

1. The child is being cared for by a relative.

2. The child's permanency plan indicates that TPR is not in the best interests of the child.

3. The agency primarily responsible for providing services to the child and the family under a court order has not, if so required, provided the family of the child, consistent with the time period in the permanency plan, the services necessary for the safe return of the child to his or her home.

The Bill

Under the bill, in determining that a child has been placed outside of his or her home for 15 of the most recent 22 months, the bill provides that the time period does not include any period during which the child was a runaway from the out-of-home placement or the child was returned to his or her home for a trial visit of six months or less.

Under circumstances under which an agency, DA or corporation counsel is required to file or join in a TPR petition because the child has been placed outside the home for 15 of the most recent 22 months, the bill requires the petition to be filed or joined in by the last day of the 15th month for which the child was placed outside the home. For the provision relating to child abandonment, the petition must be filed or joined in within 60 days after the date on which a court of competent jurisdiction finds that the child was abandoned. For the crimes committed against a child of the parent, the petition must be filed or joined within 60 days after the date on which the juvenile court determines that reasonable efforts to make it possible for the child to return safely to his or her home are not required.

Under the bill, an agency or the DA or corporation counsel need not file or join a TPR petition if any of the following circumstances apply:

1. The child is being cared for by a fit and willing relative.

2. The child's permanency plan indicates and provides documentation that TPR is not in the best interests of the child.

3. The agency primarily responsible for providing services to the child and the family under a court order has not, if so required, provided the family of the child, consistent with the time period in the permanency plan, the services necessary for the safe return of the child to his or her home.

4. Grounds for involuntary TPR do not exist.

If you have any questions or would like further information on this topic, please feel free to contact me at the Legislative Council Staff offices.

AS:tlu:rv;jal


FORWARD
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Department of Health and Family Services

Division of Children and Family Services
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Madison WI 53708-8916
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Fax

To:	Representative Kestell	**From:**	Jennifer Jones, DHFS
Fax:	(608) 282-3627	**Date:**	February 19, 2002
Phone:		**Pages:**	3
Re:		**CC:**	

☐ **Urgent** ☑ **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**

•Comments:

State of Wisconsin
Department of Health and Family Services

Scott McCallum, Governor
Phyllis J. Dubé, Secretary

DATE: February 19, 2002

TO: Representative Kestell

FROM: [redacted] Gary Radloff

RE: [redacted]

The following changes reflect our discussion with Gordon Malaise, based on conversations that we have had with the Chief Judges of the Judicial Administrative Districts, the Children and Law Section of the Wisconsin State Bar Association and the Wisconsin Council on Children and Families. Please note that these same changes need to be made to Chapter 938, Stats.

1. Page 9, lines 11-13, take out the new language "unless the parent has waived his or her right to participate in the hearing, in which case the parent shall be granted a rehearing upon request." Leave "for good cause shown."
2. Page 10, lines 1- 3, take out all of the new language.
3. Page 10, line 16, take out "those findings," and replace with "the reasonable efforts to prevent removal finding..."
4. Page 10, line 20, take out "those findings," and replace with "that reasonable efforts to prevent removal finding..."
5. Page 14, line 20, remove the period after "appropriate" and replace with a comma and add "while assuring the safety of the child."
6. Page 34, lines 4 – 5, remove "child was returned to his or her home for a trial home visit of 6 months or less," and replace with "first 6 months of any trial home visit."
7. Page 41, line 11 – 12, put a period after "plan," and remove "in the order of preference specified in subds. 1 to 5."
8. Page 41, lines 17 – 18 remove "the goal or goals of a child's permanency plan in the following order of preference," and replace with "one or more of the following goals for a child's permanency plan."
9. Page 44, line 16 remove "child was returned to his or her home for a trial home visit of 6 months or less," and replace with "first 6 months of any trial home visit."
10. Page 45, line 19, after "the child;" add "child's legal counsel or guardian ad litem;"
11. Page 47, lines 19 – 20 remove "child was returned to his or her home for a trial home visit of 6 months or less," and replace with "first 6 months of any trial home visit."

ADDRESSES CONCERNS OF WI COUNCIL ON Children's Families

In addition, after further review of the federal rule, we feel there needs to be language included in Chapter 48 and 938, that states for a delinquent and JIPS juvenile who is first placed in secure detention or a juvenile correctional institution and then moved to out-of-home care more than 60 days later, that the time period for the mandatory termination petition deadline runs from the date the child is placed in a Title IV-E reimbursable placement.

Dept. of Corrections

See p. 4

#32, #33 on amendment

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State of Wisconsin
Department of Health and Family Services

Scott McCallum, Governor
Phyllis J. Dubé, Secretary

DATE: February 19, 2002

TO: Representative Kestell

FROM: Gary Radloff

RE: Amendments to AB809

The following changes reflect our discussion with Gordon Malaise, based on conversations that we have had with the Chief Judges of the Judicial Administrative Districts, the Children and Law Section of the Wisconsin State Bar Association and the Wisconsin Council on Children and Families. Please note that these same changes need to be made to Chapter 938, Stats.

1. Page 9, lines 11-13, take out the new language "unless the parent has waived his or her right to participate in the hearing, in which case the parent shall be granted a rehearing upon request." Leave "for good cause shown."
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FORWARD
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WISCONSIN LEGISLATIVE COUNCIL
AMENDMENT MEMO

2001 Assembly Bill 809	Assembly Amendment 1
Memo published: February 21, 2002	***Contact*: Anne Sappenfield, Senior Staff Attorney (267-9485)**

PARENTS' PARTICIPATION IN TEMPORARY CUSTODY HEARING

Under current law, a child may be taken into temporary physical custody, generally for safety reasons, before a children in need of protection or services (CHIPS) petition is filed. If a child is taken into custody, a hearing must be held within 48 hours, excluding weekends and holidays. At that hearing, the juvenile court ("court") must determine whether to order the child to be held in temporary physical custody. A parent, guardian, or legal custodian may waive his or her right to a temporary physical custody hearing. After any waiver, however, a hearing must be granted at the request of any interested party. Also, a parent who is not present or not represented by counsel at the temporary physical custody hearing must be granted a rehearing upon request.

Under the bill, the parent, guardian, or legal custodian may waive his or her right to participate in the temporary physical custody hearing. After a waiver, a rehearing must be granted at the request of the parent, guardian, legal custodian, or any other interested party for good cause shown. A parent who waives his or her right to participate in the temporary physical custody hearing may be granted a rehearing if he or she is not present or is not represented by counsel at the temporary physical custody hearing only for good cause shown.

→ Assembly Amendment 1 provides that any parent who is not present at the temporary physical custody hearing must be granted a rehearing upon request for good cause shown and any parent not represented by counsel must be granted a rehearing upon request. Whether or not they have waived the right to participate in the temporary physical custody hearing is not a factor for these requests under the amendment.

FINDINGS AT THE TEMPORARY PHYSICAL CUSTODY HEARING

Under the bill, the court must include in an order for temporary physical custody the findings that placement of the child in his or her home would be contrary to the welfare of the child and that

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reasonable efforts have been made, if required, to return the child to his or her home. If, for good cause shown, sufficient information is not available for the judge or the juvenile court commissioner to make those findings, the judge or juvenile court commissioner must order the county department of human or social services, the Department of Health and Family Services (DHFS), or the child welfare agency primarily responsible for providing services to the child to file with the court sufficient information to make those findings no later than five days after the date of the temporary physical custody order.

(3) → Under the amendment, the finding that placement of the child in his or her home is contrary to the child's welfare must be made at the temporary custody hearing. If sufficient information is not available for the judge or juvenile court commissioner to make the findings that reasonable efforts were made to prevent the removal of the child from his or her home and to make it possible for the child to return safely home, the judge or juvenile court commissioner must order the county department, DHFS, or the child welfare agency primarily responsible for providing services to the child to file with the court sufficient information to make those findings no later than five days after the date of the temporary physical custody order.

(ok) ***PETITION FOR INVOLUNTARY TERMINATION OF PARENTAL RIGHTS***

Under current law, a county department, DHFS, or a licensed child welfare agency, or the district attorney (DA) or corporation counsel must file a termination of parental rights (TPR) petition, or must join a TPR petition that has already been filed, if a child has been placed outside of his or her home for 15 of the most recent 22 months.

Under the bill, in determining that a child has been placed outside of his or her home for 15 of the most recent 22 months, the bill provides that the time period does not include any period during which the child was a runaway from the out-of-home placement or the child was returned to his or her home for a trial visit of six months or less.

→ The amendment provides that the period that the child has been placed outside of his or her home does not include the first six months of any trial visit, instead of any trial visit of six months or less. ~~In addition, under the amendment~~, if a juvenile is placed in a secured placement under the Juvenile Justice Code for 60 days or more and then moved to a nonsecured out-of-home placement, the juvenile is considered to be placed outside of his or her home on the date he or she is moved to the nonsecured placement.

(ok) ***PERMANENCY PLAN GOALS***

Under the bill, a child's permanency plan must include the goal of the permanency plan. The agency must determine the goal or goals of the permanency plan in the following order of preference:

a. Return of the child to the child's home.

b. Placement of the child for adoption.

c. Placement of the child with a guardian.

d. Permanent placement of the child with a fit and willing relative (other than adoption by or under the guardianship of a relative).

e. Some other alternative permanent placement, including sustaining care, independent living, or long-term foster care.

→ Under the amendment, the agency must determine one or more of the listed possible goals to be the goal or goals of the permanency plan.

DELAYS AND CONTINUANCES (OK)

Under the bill, no continuance of a time limit specified in the Children's Code or the Juvenile Justice Code may be granted and no period of delay may be excluded in computing a time limit if, as a result of the continuance, extension or exclusion, the time limits for the court to make a finding that reasonable efforts have been made to prevent the removal of the child from the home, an initial finding that those efforts are not required, or an initial finding that the agency primarily responsible for providing services to the child has made reasonable efforts to achieve the goals of the permanency plan would be exceeded.

The bill specifies that failure to comply with any of the above time limits does not deprive the court of jurisdiction or of competency to exercise that jurisdiction. If a party does not comply with one of the above time limits, however, the court may dismiss the proceeding with or without prejudice, release the child from custody, or grant any other relief that the court considers appropriate.

→ Under the amendment, if the court grants a remedy for an exceeded time limit, it must do so while assuring the safety of the child.

NOTICE OF PERMANENCY PLAN HEARING (OK)

Under the bill, not less than 30 days before a permanency plan hearing, the court must notify the child; the child's parent, guardian, and legal custodian; the child's foster parent, treatment foster parent, the operator of the facility where the child is living, or the relative with whom the child is living; the child's court-appointed special advocate; the agency that prepared the permanency plan; and the DA or corporation counsel of the date, time, and place of the hearing.

→ Under the amendment, the court must also notify the child's counsel and the child's guardian ad litem.

→ The Assembly Committee on Children and Families unanimously recommended adoption of Assembly Amendment 1 and passage of Assembly Bill 809, as amended, on a vote of ayes, 6; Noes, 1, on February 20, 2002.

AS:ksm:tlu;ksm

WISCONSIN LEGISLATIVE COUNCIL
AMENDMENT MEMO

2001 Assembly Bill 809	Assembly Amendments 1 and 2
Memo published: February 27, 2002	*Contact*: **Anne Sappenfield, Senior Staff Attorney (267-9485)**

ASSEMBLY AMENDMENT 1

Parents' Participation in Temporary Custody Hearing

Under current law, a child may be taken into temporary physical custody, generally for safety reasons, before a children in need of protection or services (CHIPS) petition is filed. If a child is taken into custody, a hearing must be held within 48 hours, excluding weekends and holidays. At that hearing, the juvenile court ("court") must determine whether to order the child to be held in temporary physical custody. A parent, guardian, or legal custodian may waive his or her right to a temporary physical custody hearing. After any waiver, however, a hearing must be granted at the request of any interested party. Also, a parent who is not present or not represented by counsel at the temporary physical custody hearing must be granted a rehearing upon request.

Under the bill, the parent, guardian, or legal custodian may waive his or her right to participate in the temporary physical custody hearing. After a waiver, a rehearing must be granted at the request of the parent, guardian, legal custodian, or any other interested party for good cause shown. A parent who waives his or her right to participate in the temporary physical custody hearing may be granted a rehearing if he or she is not present or is not represented by counsel at the temporary physical custody hearing only for good cause shown.

Assembly Amendment 1 provides that any parent who is not present at the temporary physical custody hearing must be granted a rehearing upon request for good cause shown and any parent not represented by counsel must be granted a rehearing upon request. Whether or not they have waived the right to participate in the temporary physical custody hearing is not a factor for these requests under the amendment.

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Findings at the Temporary Physical Custody Hearing

Under the bill, the court must include in an order for temporary physical custody the findings that placement of the child in his or her home would be contrary to the welfare of the child and that reasonable efforts have been made, if required, to return the child to his or her home. If, for good cause shown, sufficient information is not available for the judge or the juvenile court commissioner to make those findings, the judge or juvenile court commissioner must order the county department of human or social services, the Department of Health and Family Services (DHFS), or the child welfare agency primarily responsible for providing services to the child to file with the court sufficient information to make those findings no later than five days after the date of the temporary physical custody order.

Under the amendment, the finding that placement of the child in his or her home is contrary to the child's welfare must be made at the temporary custody hearing. If sufficient information is not available for the judge or juvenile court commissioner to make the findings that reasonable efforts were made to prevent the removal of the child from his or her home and to make it possible for the child to return safely home, the judge or juvenile court commissioner must order the county department, DHFS, or the child welfare agency primarily responsible for providing services to the child to file with the court sufficient information to make those findings no later than five days after the date of the temporary physical custody order.

Petition for Involuntary Termination of Parental Rights

Under current law, a county department, DHFS, or a licensed child welfare agency, or the district attorney (DA) or corporation counsel must file a termination of parental rights (TPR) petition, or must join a TPR petition that has already been filed, if a child has been placed outside of his or her home for 15 of the most recent 22 months.

Under the bill, in determining that a child has been placed outside of his or her home for 15 of the most recent 22 months, the bill provides that the time period does not include any period during which the child was a runaway from the out-of-home placement or the child was returned to his or her home for a trial visit of six months or less.

The amendment provides that the period that the child has been placed outside of his or her home does not include the first six months of any trial visit, instead of any trial visit of six months or less. In addition, under the amendment, if a juvenile is placed in a secured placement under the Juvenile Justice Code for 60 days or more and then moved to a nonsecured out-of-home placement, the juvenile is considered to be placed outside of his or her home on the date he or she is moved to the nonsecured placement.

Permanency Plan Goals

Under the bill, a child's permanency plan must include the goal of the permanency plan. The agency must determine the goal or goals of the permanency plan in the following order of preference:

a. Return of the child to the child's home.

b. Placement of the child for adoption.

c. Placement of the child with a guardian.

d. Permanent placement of the child with a fit and willing relative (other than adoption by or under the guardianship of a relative).

e. Some other alternative permanent placement, including sustaining care, independent living, or long-term foster care.

Under the amendment, the agency must determine one or more of the listed possible goals to be the goal or goals of the permanency plan.

Delays and Continuances

Under the bill, no continuance of a time limit specified in the Children's Code or the Juvenile Justice Code may be granted and no period of delay may be excluded in computing a time limit if, as a result of the continuance, extension or exclusion, the time limits for the court to make a finding that reasonable efforts have been made to prevent the removal of the child from the home, an initial finding that those efforts are not required, or an initial finding that the agency primarily responsible for providing services to the child has made reasonable efforts to achieve the goals of the permanency plan would be exceeded.

The bill specifies that failure to comply with any of the above time limits does not deprive the court of jurisdiction or of competency to exercise that jurisdiction. If a party does not comply with one of the above time limits, however, the court may dismiss the proceeding with or without prejudice, release the child from custody, or grant any other relief that the court considers appropriate.

Under the amendment, if the court grants a remedy for an exceeded time limit, it must do so while assuring the safety of the child.

Notice of Permanency Plan Hearing

Under the bill, not less than 30 days before a permanency plan hearing, the court must notify the child; the child's parent, guardian, and legal custodian; the child's foster parent, treatment foster parent, the operator of the facility where the child is living, or the relative with whom the child is living; the child's court-appointed special advocate; the agency that prepared the permanency plan; and the DA or corporation counsel of the date, time, and place of the hearing.

Under the amendment, the court must also notify the child's counsel and the child's guardian ad litem.

ASSEMBLY AMENDMENT 2

Under current law, foster parents, treatment foster parents, and other physical custodians are given notice of and the opportunity to submit a written or oral statement to the court for various hearings under the Children's Code and the Juvenile Justice Code. Some of the provisions permitting the submission of a written or oral statement require that the statement be made under oath or affirmation.

The bill requires that any written or oral statement to the court by a foster parent, treatment foster parent, or physical custodian be made under oath or affirmation.

Assembly Amendment 2 removes the requirement that such statements be made under oath or affirmation.

The Assembly adopted Assembly Amendments 1 and 2 on a voice vote and passed Assembly Bill 809 on a vote of Ayes, 97; Noes, 2, on February 26, 2002.

AS:tlu:ksm;ksm;tlu


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State of Wisconsin
Department of Health and Family Services

Scott McCallum, Governor
Phyllis J. Dubé, Secretary

RATIONALE FOR PROPOSED LEGISLATIVE CHANGES RELATED TO THE FEDERAL ADOPTION AND SAFE FAMILIES ACT

Why does Wisconsin need to federalize our statutes to comply with the federal Adoption and Safe Families Act? It is critical that the legislative proposals incorporated in the attached document be enacted. This is important for several reasons:

- Wisconsin will be out of compliance with federal law if the changes are not enacted.
- Lack of compliance with the federal law can result in significant financial penalties to the state (primarily related to Title IV-E of the Social Security Act).
- It will be difficult for the state to meet federal requirements related to the Child and Family Services Review to be conducted in Wisconsin by the US Department of Health and Human Services in the summer of 2003.
- While some of these changes can be implemented via administrative rule or numbered memo, many of these requirements relate to the courts, District Attorneys and Corporation Counsels and other actors outside of the direct purview of county child welfare agencies who rely almost exclusively on specific statutory language to determine how they function on individual cases.

To determine Wisconsin's level of compliance with Title IV-E mandates, the U.S. Department of Health and Human Services (HHS) will be conducting the Title IV-E Eligibility Review in March 2002. A mock Title IV-E eligibility audit revealed that Wisconsin exceeds the federal threshold of a 10% error rate. **A conservative estimate of the federal funds that could be lost is $10 million if the federal review mirrors the findings of the mock audit.** There is the potential that this financial loss figure could rise if a secondary review shows that the State has not improved its Title IV-E program after implementation of a one-year program improvement plan.

There is also the potential for additional financial penalties if the State is found to be in nonconformance with 14 national performance standards (7 outcomes and 7 systemic factors) that will be audited by HHS in the Child and Family Services Review to be held in Summer 2003. The estimated penalty for noncompliance per national standard during the initial review is approximately $150,000. The penalties remain in place until corrections are made.


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DHFS

Date??

AB 809 TALKING POINTS

- It is critical that AB 809 passes the Assembly for two reasons:

  1. This is good policy and emphasizes best practices for children and their families who are involved with the child welfare and juvenile justice system in our state;

  2. This puts Wisconsin in compliance with the federal Adoption and Safe Families Act and the final administrative rule implementing the act. Lack of compliance with the federal law can result in significant loss of federal revenue under Title IV-E of the Social Security Act and possible financial penalties to the state.

- The Adoption and Safe Families Act emphasizes the following themes:

  1. The safety of the child must be paramount;

  2. Permanency decisions for children must be timely;

  3. States must meet a set of child well-being outcomes;

  4. Permanency for the child must be the top priority when considering a placement.

- Many of the requirements of ASFA were incorporated into Wisconsin Statutes by 1997 Wisconsin Act 237. AB809 clarifies and adds to those changes based on the final federal rules implementing ASFA.

DHFS

What are the highlights of AB809?

A. Physical Custody Hearings

- Physical custody hearings are required in all cases.
- Requires the court to make contrary to welfare and reasonable efforts to prevent removal at the temporary physical custody hearing.

B. Judicial Findings

- A newly created judicial finding that reasonable efforts to finalize the permanency plan must be made within 12 months of the child's removal from the home and every 12 months thereafter.
- Requires a statement of the factual basis for the contrary to welfare, reasonable efforts to prevent removal and the reasonable efforts to finalize the permanency plan finding be stated or referenced.

C. Termination of Orders

- Removes the requirement that the court order expires after 1 year in cases where the child is placed in out-of-home care.
- Requires a permanency hearing every 12 months, which reduces the number of court hearings that would be held because dispositional hearings and permanency plan reviews may not be on the same time line under current statutes.

D. Reasonable Efforts to Prevent Removal and to Return Home Not Required

- In specified situations, the court can make a finding that reasonable efforts are not required.
- If made at the time of the removal the permanency hearing must be held within 30 days.

E. Permanency Goals

- When determining the permanency options for a child, the agency shall consider one or more of the following goals: 1) reunification with the family; 2) adoption; 3) placement with a guardian; 4) permanent placement with a fit and willing relative; and 5) alternative placement (i.e. long-term foster care).

F. Permanency Planning Required with Court Order Relative Placements

- Affords the child and the relative the same level of services regardless if the placement is with a relative or non-relative.

G. Petition for Termination of Parental Rights

- A petition must be filed to terminate parental rights if a child has been in foster care under the responsibility of the State for 15 of the most recent 22 months, unless a filing with exception applies.

DHFS

What is the amount of federal funds that will be lost if this does not pass?

- **Title IV-E Eligibility Review**
  To determine Wisconsin's level of compliance with Title IV-E mandates the U.S. Department of Health and Human Services (HHS) is conducting the Title IV-E eligibility review in March 2002. A statewide sample of 80 cases for which IV-E reimbursement was claimed will be reviewed. If any of the 80 cases are found to have an error regarding the IV-E eligibility of the child or the reimbursability of a period in care, a case specific disallowance will be made. If more than 10% of the cases have an error, then the state will fail the initial review and be subject to a larger secondary review of 150 cases.

  For the larger secondary review, if both the case errors and dollar amount of the case specific disallowances exceed the 10% error threshold, then a one-time disallowance will be extrapolated against the entire IV-E claim submitted by the state in that year. **A conservative estimate of the federal funds that could be lost is $10 million.**

  To minimize the potential for federal penalties, state statutory changes have been proposed in AB809 to clarify how IV-E eligibility and reimbursability requirements must be implemented under state law.

- **Children and Family Services Review**
  There is also the potential for additional financial penalties if the state is found to be in nonconformance with 14 national performance standards (7 outcomes and 7 systemic factors) during the Children and Family Services Review to be held in August 2003. The outcome portion involves review of state outcome data and on-site case reviews of a random sample of cases from 3 sites. The systemic portion involves review of state policies and overall program operations.

  Fiscal penalties for each of the 14 items can be imposed against IV-B and IV-E funds received by the state. Penalties start at 1% per item, which would be approximately $150,000 per item for Wisconsin and continues until the state comes into compliance. The penalty increases to 2% and then 3% per item if noncompliance continues at subsequent reviews.

1. What outcomes are states measured on?

A. Outcome Measures
- Safety Outcome 1 – Protection of children from abuse and neglect.
- Safety Outcome 2 – Maintain children safely in their homes where appropriate.
- Permanency Outcome 1 – Permanence and stability of living situations.
- Permanency Outcome 2 – Preserving continuity of family relationships.
- Well-Being Outcome 1 – Enhancing capacity of families to provide for children.
- Well-Being Outcome 2 – Educational services to children.
- Well-Being Outcome 3 – Physical and mental health services.

B. Systemic Factors
- Information System Capacity – implementation of a Statewide Automated Child Welfare Information System (SACWIS).
- Case Review System – written case plans and regular permanency hearings.
- Quality Assurance – state program standards and quality assurance activities.
- Staff and Provider Training – training for local agency staff and foster parents.
- Service Array – needs assessment and services to children and families.
- Responsiveness to the Community – annual reports and consultation with stakeholders.
- Foster and Adoptive Parent Licensing, Recruitment and Retention – standards for licensing, criminal background checks and recruitment.

2. If the Adoption and Safe Families Act passed in 1997 why didn't we do this sooner?

The Adoption and Safe Families Act (ASFA) legislation became effective in November of 1997. Many of the requirements of ASFA were incorporated into Wisconsin statutes by 1997 Wisconsin Act 237. The final federal rule for ASFA became effective in March of 2000. AB809 clarifies and adds to Wisconsin statutes based on the final federal rules implementing ASFA.

3. Is there anything in the legislation that isn't tied directly to the federal law?

There is one provision within AB809 requiring permanency planning for children placed with a relative by court order. While the provision is consistent with the intent of ASFA to achieve timely permanence for children, it is unclear whether this is a direct mandate. When a child is removed from his or her home, the clear intent of ASFA is to ensure that permanence is achieved for a child regardless of the child's placement with a relative or in a foster home. Relatives providing care to children should be afforded the same opportunity to services as a foster parent. Representative Ladwig introduced similar language in this session as AB596.

(*) technical changes from DHFS, Dept. of Corrections

ASSEMBLY AMENDMENT ,

TO 2001 ASSEMBLY BILL 899

(*) introduce as a committee amendment

At the locations indicated, amend the bill as follows:

1. Page 9, line 11: delete lines 11 to 13 and substitute "be granted a rehearing upon request for good cause shown.".

2. Page 9, line 20: delete lines 20 to 25.

3. Page 10, line 1: delete lines 1 to 5.

4. Page 10, line 9: delete "and, unless" and substitute ". Unless".

5. Page 10, line 11: after "applies," insert "the order shall in addition include".

6. Page 10, line 14: after "and" insert "a finding as to whether the person who took the child into custody and the intake worker have made reasonable efforts".

7. Page 10, line 16: delete "those findings," and substitute "a finding as to whether those reasonable efforts were made to prevent the removal of the child from