



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX - **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 09/09/2008 (Per: GMM)



 Appendix A ... Pt. 02D of 09

 The 2007 drafting file for LRB-0174

has been transferred to the drafting file for

2009 LRB-0150

☛ This cover sheet, the final request sheet, and the final version of the 2007 draft were copied on yellow paper, and returned to the original 2005 drafting file.

☛ The attached 2007 draft was incorporated into the new 2009 draft listed above. For research purposes, this cover sheet and the complete drafting file were transferred, as a separate appendix, to the 2009 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

(INSERT 15-1)

SECTION 1. 48.028 of the statutes is repealed and recreated to read:

48.028 Indian child welfare. (1) DECLARATION OF POLICY. In Indian child custody proceedings, the best interests of the Indian child shall be determined consistent with the federal Indian Child Welfare Act, 25 USC 1901 to 1963. It is the policy of this state to do all of the following:

(a) Cooperate fully with Indian tribes in order to ensure that the federal Indian Child Welfare Act is enforced in this state.

(b) Protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by ^{establishing} ~~the establishment of~~ minimum standards for the removal of Indian children from their families and ^{placing} ~~the placement of~~ those children in out-of-home care placements, preadoptive placements, or adoptive placements that will reflect the unique value of Indian culture.

(2) DEFINITIONS. In this section:

(a) "Extended family member" means a person who is defined as a member of an Indian child's extended family by the law or custom of the Indian child's tribe or, in the absence of such a law or custom, a person who has attained the age of 18 years and who is the Indian child's grandparent, aunt, uncle, brother, sister, brother-in-law, sister-in-law, niece, nephew, first cousin, 2nd cousin, or stepparent.

(b) "Former Indian custodian" means a person who was the Indian custodian of an Indian child before termination of parental rights to and adoption of the Indian child.

(c) "Former parent" means a person who was the parent of an Indian child before termination of parental rights to and adoption of the Indian child.

"(a)" adoptive placement" means the permanent placement of an Indian child for adoption

(am) (b)

3. A preadoptive placement - 2 -

4. A termination of parental rights, as defined in s. 48.40(2) to an Indian child
P(E) = Out-of-home care placement

(d) "Indian child custody proceeding" means a proceeding governed by the federal Indian Child Welfare Act, 25 USC 1901 to 1963, in which any of the following may occur:

1. An adoptive placement, which means the permanent placement of an Indian child for adoption. ~~keep~~

2. An out-of-home care placement, which means the removal of an Indian child from his or her parent or Indian custodian for temporary placement in a foster home, treatment foster home, group home, or residential care center for children and youth or in the home of a guardian, from which placement the parent or Indian custodian cannot have the child returned upon demand. ✓

3. A preadoptive placement, which means the temporary placement of an Indian child in a foster home, treatment foster home, group home, or residential care center for children and youth or in the home of a guardian after a termination of parental rights but prior to or in lieu of an adoptive placement.

4. A termination of parental rights, as defined in s. 48.40(2), to an Indian child. ✓

NOTE: Most of the definitions found in 25 USC 1903 are used throughout ch. 48. Accordingly, those definitions are incorporated in s. 48.02.

(3) JURISDICTION OVER INDIAN CHILD CUSTODY PROCEEDINGS. (a) *Exclusive tribal jurisdiction.* 1. An Indian tribe shall have exclusive jurisdiction over any Indian child custody proceeding involving an Indian child who resides or is domiciled within the reservation of the tribe, except when that jurisdiction is otherwise vested in the state by federal law and except as provided in subd. 2. If an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction regardless of the residence or domicile of the child. ✓

~~to hold~~ holding

2. Subdivision 1. does not prevent an Indian child who resides or is domiciled within a reservation, but who is temporarily located off the reservation, from being taken into and held in custody under ss. 48.19 to 48.21 in order to prevent imminent physical harm or damage to the Indian child. The person taking the Indian child into custody or the intake worker shall immediately release the Indian child from custody upon determining that ~~continuing~~ the Indian child in custody is no longer necessary to prevent imminent physical damage or harm to the Indian child and shall expeditiously initiate an Indian child custody proceeding, transfer the Indian child to the jurisdiction of the appropriate Indian tribe, or restore the Indian child to his or her parent or Indian custodian, as may be appropriate. ✓

(b) *Transfer of proceedings to tribe.* In any Indian child custody proceeding under this chapter involving an out-of-home placement of, or termination of parental rights to, an Indian child who is not residing or domiciled within the reservation of the Indian child's tribe, the court assigned to exercise jurisdiction under this chapter shall, upon the petition of the Indian child's parent, Indian custodian, or tribe, transfer the proceeding to the jurisdiction of the tribe unless any of the following applies: ✓

1. A parent of the Indian child objects to the transfer. ✓
2. The tribal court of the Indian child's tribe declines jurisdiction. ✓
3. The court determines that good cause exists to deny the transfer. ✓

(c) *Declination of jurisdiction.* If the court determines that the petitioner in an Indian child custody proceeding has improperly removed the Indian child from the custody of his or her parent or Indian custodian or has improperly retained custody of the Indian child after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over the petition and immediately return the Indian

child to the custody of the parent or Indian custodian, unless the court determines that returning the Indian child to his or her parent or Indian custodian would subject the Indian child to substantial and immediate danger or the threat of that danger. ✓

(d) *Intervention.* An Indian child’s Indian custodian or tribe may intervene at any point in an Indian child custody proceeding under this chapter involving an out-of-home care placement of, or termination of parental rights to, the Indian child. ✓

(e) *Full faith and credit.* The court shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe that are applicable to an Indian child custody proceeding to the same extent that the state gives full faith and credit to the public acts, records, and judicial proceedings of any other governmental entity. ✓

48,028

NOTE: This subsection incorporates 25 USC 1911, 1920 and 1922 relating to jurisdiction. In reviewing this subsection, please note all of the following: ✓

1. Because 25 USC 1922 governs emergency removal of a child domiciled on a reservation, this draft incorporates that provision into s. 48.203 (3) (b), which relates to jurisdiction over such a child. ✓

2. 25 USC 1911 (b) and (c), relating to transfer of proceedings and intervention, only apply to out-of-home care placements and termination of parental rights (TPR) proceedings, not to adoptive placements. Accordingly, the reference in the DHFS draft to any Indian child custody proceeding is too broad. ✓

3. Also, with respect to transfer of jurisdiction, the language of the U.S. Department of Interior Guidelines is clearer than 25 USC 1911 (b), so this draft uses the Guidelines language. ✓

4. 25 USC 1920 relates to declination of jurisdiction. Therefore that section is incorporated into the subsection on jurisdiction. ✓

(4) INVOLUNTARY COURT PROCEEDINGS. (a) *Notice.* In any involuntary proceeding involving the out-of-home care placement of, termination of parental rights to, or return of custody under sub. (8) (a) of a child whom the court knows or has reason to know is an Indian child, the court or party seeking the out-of-home care placement, termination of parental rights, or return of custody shall notify the Indian child’s parent, former parent, Indian custodian, former Indian custodian, and

tribe, by registered mail, return receipt requested, of the pending proceeding and of their right to intervene in the proceeding. If the identity or location of the Indian child's parent, former parent, Indian custodian, former Indian custodian, or tribe cannot be determined, that notice shall be given to the U.S. secretary of the interior in like manner. The next hearing in the proceeding may not be held until at least 10 days after receipt of the notice by the parent, former parent, Indian custodian, former Indian custodian, and tribe. On request of the parent, former parent, Indian custodian, former Indian custodian, or tribe, the court shall grant a continuance of up to 20 additional days to enable the requester to prepare for that hearing.

(b) *Appointment of counsel.* Whenever an Indian child is the subject of a proceeding involving the removal of the Indian child from his or her home, placement of the Indian child in an out-of-home care placement, termination of parental rights to the Indian child, or return of custody of the Indian child under sub. (8) (a), the Indian child's parent, former parent, Indian custodian, or former Indian custodian, upon a determination of indigency as provided in s. 48.23 (4), shall have the right to be represented by court-appointed counsel. The court may also, in its discretion, appoint counsel for the Indian child under s. 48.23 (3) if the court finds that the appointment is in the best interests of the Indian child.

NOTE: 25 USC 1912 (b) requires the U.S. secretary of the interior to pay reasonable fees and expenses when state law makes no provision for the appointment of counsel. By incorporating 25 USC 1912 (b) into state law, however, state law is making provision for the appointment of counsel. Accordingly, this draft does not require the court to certify reasonable expenses to the U.S. secretary of the interior for the purpose of repayment of those expenses.

(c) *Examination of reports and other documents.* Each party to a proceeding involving the out-of-home care placement of, termination of parental rights to, or return of custody under sub. (8) (a) of an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with

respect to the out-of-home care placement, termination of parental rights, or return of custody may be based. ✓

(d) *Out-of-home care placement; serious damage and active efforts.* The court may not order an Indian child to be placed in an out-of-home care placement unless all of the following occur: ✓

1. The court finds by clear and convincing evidence, including the testimony of one or more qualified expert witnesses, that continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. ✓

2. The court finds by clear and convincing evidence that active efforts have been made to provide remedial services and rehabilitation programs designed to prevent the breakup of the Indian family and that those efforts have proved unsuccessful. ✓

(e) *Termination of parental rights; serious damage and active efforts.* The court may not order termination of parental rights to an Indian child unless all of the following occur: ✓

1. The court finds beyond a reasonable doubt, including the testimony of one or more qualified expert witnesses, that the continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. ✓

2. The court finds beyond a reasonable doubt that active efforts have been made to provide remedial services and rehabilitation programs designed ^{to} prevent the breakup of the Indian family and that those efforts have proved unsuccessful. ✓

NOTE: This subsection incorporates 25 USC 1912 into ch. 48. ✓

(5) VOLUNTARY PROCEEDINGS. (a) *Out-of-home care placement.* A voluntary consent by a parent or Indian custodian to an out-of-home care placement of an

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NOTE
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34 of draft

Indian child under s. 48.63 (1) or (5) (b) is not valid unless the consent is executed in writing, recorded before a judge, and accompanied by a written certification by the judge that the terms and consequences of the consent were fully explained in detail to and were fully understood by the parent. The judge shall also certify that the parent or Indian custodian fully understood the explanation in English or that the explanation was interpreted into a language that the parent or Indian custodian understood. Any consent given under this paragraph prior to or within 10 days after the birth of the Indian child is not valid. A parent or Indian custodian who has executed a consent under this paragraph may withdraw the consent for any reason at any time, and the Indian child shall be returned to the parent or Indian custodian. A parent or Indian custodian who has executed a consent under this paragraph may also move to invalidate the out-of-home care placement under sub. (6).

(b) *Termination of parental rights.* A voluntary consent by a parent to a termination of parental rights under s. 48.41 (2) (e) is not valid unless the consent is executed in writing, recorded before a judge, and accompanied by a written certification by the judge that the terms and consequences of the consent were fully explained in detail to and were fully understood by the parent. The judge shall also certify that the parent fully understood the explanation in English or that the explanation was interpreted into a language that the parent understood. Any consent given under this paragraph prior to or within 10 days after the birth of the Indian child is not valid. A parent who has executed a consent under this paragraph may withdraw the consent for any reason at any time prior to the entry of a final order terminating parental rights, and the Indian child shall be returned to his or her parent. After the entry of a final order terminating parental rights, a parent who has executed a consent under this paragraph may withdraw that consent as provided

in par. (c), move to invalidate the termination of parental rights under sub. (6), or move for relief from the judgment under s. 48.46 (2).

(c) *Withdrawal of consent after termination of parental rights.* After the entry of a final judgment terminating parental rights to an Indian child, a parent who has consented to that termination under s. 48.41 (2) (e) or who did not contest the petition initiating the proceeding in which his or her parental rights were terminated may withdraw that consent and move the court for relief from the judgment on the grounds that the consent was obtained through fraud, misrepresentation, or duress. Any such motion shall be filed within 2 years after the entry of an order granting adoption of the Indian child. A motion under this subsection does not affect the finality or suspend the operation of the judgment or order terminating parental rights or granting adoption. If the court finds that the consent was obtained through fraud, misrepresentation, or duress, the court shall vacate the judgement or order terminating parental rights and, if applicable, the order granting adoption and return the Indian child to the custody of the parent.

NOTE: This subsection incorporates 25 USC 1913 into ch. 48.

(6) **INVALIDATION OF ACTION.** Any Indian child who is the subject of an out-of-home care placement or of a termination of parental rights proceeding, any parent or Indian custodian from whose custody that Indian child was removed, or the Indian child's tribe may move the court to invalidate that out-of-home care placement or termination of parental rights on the grounds that the out-of-home care placement was made or the termination of parental rights was ordered in violation of sub. (3), (4), or (5) or 25 USC 1911, 1912, or 1913. If the court finds that those grounds exist and if the Indian child has not been adopted, the court shall invalidate the out-of-home care placement or termination of parental rights and

order the Indian child to be returned to his or her parent or Indian custodian. If the Indian child has been adopted, the parent or Indian custodian may petition the court under sub. (8) (a) for return of custody of the Indian child.

NOTE: This subsection incorporates 25 USC 1914 into ch. 48.

(7) PLACEMENT OF INDIAN CHILD. (a) *Adoptive placement; preferences.* Subject to pars. (c) to (e), in placing an Indian child for adoption, preference shall be given to a placement with one of the following, in the order of preference listed:

1. An extended family member of the Indian child.
2. Another member of the Indian child's tribe.
3. Another Indian family.

(b) *Out-of-home care or preadoptive placement; preferences.* Any Indian child who is accepted for an out-of-home care placement or a preadoptive placement shall be placed in ~~a placement that is~~ the least restrictive setting that most approximates a family, that meets the Indian child's special needs, if any, and that is within reasonable proximity to the Indian child's home, taking into account those special needs. Subject to pars. (c) to (e), in placing an Indian child in an out-of-home care placement or a preadoptive placement, preference shall be given to a placement in one of the following, in the order of preference listed:

1. The home of an extended family member of the Indian child.
2. A foster home or treatment foster home licensed, approved, or specified by the Indian child's tribe.
3. An Indian foster home or treatment foster home licensed or approved by the department, a county department, or a child welfare agency.

4. A group home or residential care center for children and youth approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the needs of the Indian child. ✓

(c) *Tribal or personal preferences.* If the Indian child's tribe has established, by resolution, an order of preference that is different from the order specified in par. (a) or (b), the order of preference established by that tribe shall be followed so long as the placement under par. (a) is appropriate for the Indian child's special needs, if any, and the placement under par. (b) is the least restrictive setting appropriate for the Indian child's needs as specified in par. (b). When appropriate, the preference of the Indian child or parent shall be considered, and, when a parent who has consented to the placement evidences a desire for anonymity, that desire shall shall be given weight, in determining the placement. ✓

(d) *Departure for good cause shown.* The court or an agency may depart from the order of preference specified in par. (a), (b), or (c) for good cause shown. ✓

(e) *Social and cultural standards.* The standards to be applied in meeting the placement preference requirements of this subsection shall be the prevailing social and cultural standards of the Indian community in which the Indian child's parents or extended family members reside or with which the Indian child's parents or extended family members maintain social and cultural ties. ✓

(f) *Report of placement.* The department shall maintain a record of each adoptive placement, out-of-home care placement, and preadoptive placement made of an Indian child, evidencing the efforts made to comply with the placement preference requirements specified in this subsection, and shall make that record available at any time on the request of the U.S. secretary of the interior or the Indian child's tribe. ✓

NOTE: This subsection incorporates 25 USC 1915 into ch. 48. ✓

(8) RETURN OF CUSTODY. (a) *Adoption vacated, set aside, or terminated.* 1. If a final order granting adoption of an Indian child is vacated or set aside or if the parental rights to an Indian child of all adoptive parents of the Indian child are voluntarily terminated, the court that vacated or set aside the final decree of adoption or that ordered the termination of parental rights of the adoptive parents shall notify the Indian child's former parent and former Indian custodian and the former parent or former Indian custodian may petition for the return of custody of the Indian child. ✓

2. On receipt of a petition under subd. 1., the court shall set a date for a hearing on the petition that allows reasonable time for the parties to prepare. ✓ The court shall provide notice of the hearing to the guardian and legal custodian of the Indian child, to all other interested parties as provided in s. 48.27 (6), and to the Indian child's former parent, former Indian custodian, and tribe in the manner specified in sub. (4) ✓ (a). The hearing on the petition may not be held until at least 10 days after receipt of the notice of the hearing by the Indian child's former parent, former Indian custodian, and tribe. On request of the Indian child's former parent, former Indian custodian, or tribe the court shall grant a continuance of up to 20 additional days to enable the requester to prepare for the hearing. ✓

3. At the conclusion of the hearing, the court shall grant a petition for the return of custody of the Indian child to the Indian child's former parent or former Indian custodian unless there is a showing that return of custody is not in the best interest of the Indian child. ✓

(b) *Removal from out-of-home care placement.* If an Indian child is removed from an out-of-home care placement for the purpose of placing the Indian child in

another out-of-home care placement, a preadoptive placement, or an adoptive placement, the placement shall be made in accordance with this section. Removal of an Indian child from an out-of-home care placement for the purpose of returning the Indian child to the home of the parent or Indian custodian from whose custody the Indian child was originally removed is not subject to this section.

NOTE: This subsection incorporates 25 USC 1916 into ch. 48.

(9) ADOPTEE INFORMATION. (a) *Provision of information to U.S. secretary of the interior.* At the time a court enters an order granting adoption of an Indian child, the court shall provide the U.S. secretary of the interior with a copy of the order, together with such other records and papers pertaining to the adoption proceeding as may be necessary to provide that secretary with all of the following information:

1. The name and tribal affiliation of the Indian child.
2. The names and addresses of the Indian child's birth parents.
3. The names and addresses of the Indian child's adoptive parents.
4. The identity of any agency that has in its possession any files or information relating to the adoptive placement of the Indian child.

(b) *Confidentiality of parent's identity.* The court shall give the birth parent of an Indian child the opportunity to file an affidavit indicating that the birth parent wishes the U.S. secretary of the interior to maintain the confidentiality of the birth parent's identity. If the birth parent files that affidavit, the court shall include the affidavit with the information provided to the U.S. secretary of the interior under par. (a), and that secretary shall maintain the confidentiality of the birth parent's identity as required under 25 USC 1951 (a) and (b).

(c) *Provision of tribal affiliation to adoptee.* At the request of an Indian adoptee who is 18 years of age or older, the court that entered the order granting adoption of

the adoptee shall provide the adoptee with the tribal affiliation, if any, of the adoptee's birth parents and with such other information as may be necessary to protect any rights accruing to the adoptee as a result of that affiliation. ✓

NOTE: Section 48.028 (9) (a) and (b) codifies 25 USC 1951 (a) and s. 48.028 (9) (c) codifies 25 USC 1917. ✓

(10) HIGHER STATE OR FEDERAL STANDARD APPLICABLE. The federal Indian Child Welfare Act, 25 USC 1911 to 1963, supersedes this chapter in any Indian child custody proceeding governed by that act, except that in any case in which this chapter provides a higher standard of protection for the rights of an Indian child's parent or Indian custodian than the rights provided under that act, the court shall apply the standard under this chapter. ✓

****NOTE: This subsection incorporates 25 USC 1921 into ch. 48. ✓

(END OF INSERT)

(INSERT 25-5)

NOTE: In *Joni B. v. State*, 202 Wis. 2d 1 (1996), the Supreme Court held that the legislature's prohibition against appointing counsel for any party other than the child in a child in need of protection or services (CHIPS) proceeding is unconstitutional. Accordingly, this draft amends s. 48.23 (3) and other related provisions to conform the Children's Code to *Joni B.* ✓

(END OF INSERT)

(INSERT 91-13)

SECTION 2. 938.028 of the statutes is repealed and recreated to read: ✓

938.028 Indian juvenile welfare. (1) DECLARATION OF POLICY. In Indian juvenile custody proceedings, the best interests of the Indian juvenile shall be determined consistent with the federal Indian Child Welfare Act, 25 USC 1901 to 1963. It is the policy of this state to do all of the following: ✓

(a) Cooperate fully with Indian tribes in order to ensure that the federal Indian Child Welfare Act is enforced in this state. ✓

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(b) Protect the best interests of Indian juveniles and to promote the stability and security of Indian tribes and families by the establishment of minimum standards for the removal of Indian juveniles from their families and the placement of those juveniles in out-of-home care placements that will reflect the unique value of Indian culture.

(2) DEFINITIONS. In this section:

⊙ P (c) Out-of-home care placements

(a) "Extended family member" means a person who is defined as a member of an Indian juvenile's extended family by the law or custom of the Indian juvenile's tribe or, in the absence of such a law or custom, a person who has attained the age of 18 years and who is the Indian juvenile's grandparent, aunt, uncle, brother, sister, brother-in-law, sister-in-law, niece, nephew, first cousin, 2nd cousin, or stepparent. ✓

(b) "Indian juvenile custody proceeding" means a proceeding under s. 938.13 (4), (6), (6m), or (7) that is governed by the federal Indian Child Welfare Act, 25 USC 1901 to 1963, in which an out-of-home care placement may occur, which means the removal of an Indian juvenile from his or her parent or Indian custodian for temporary placement in a foster home, treatment foster home, group home, or residential care center for children and youth or in the home of a guardian, from which placement the parent or Indian custodian cannot have the juvenile returned upon demand.

(3) JURISDICTION OVER INDIAN JUVENILE CUSTODY PROCEEDINGS. (a) *Exclusive tribal jurisdiction.* 1. An Indian tribe shall have exclusive jurisdiction over any Indian juvenile custody proceeding involving an Indian juvenile who resides or is domiciled within the reservation of the tribe, except when that jurisdiction is otherwise vested in the state by federal law and except as provided in subd. 2. If an

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Indian juvenile is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction regardless of the residence or domicile of the juvenile. ✓

2. Subdivision 1. does not prevent an Indian juvenile who resides or is domiciled within a reservation, but who is temporarily located off the reservation, from being taken into and held in custody under ss. 938.19 to 938.21 in order to prevent imminent physical harm or damage to the Indian juvenile. ✓ The person taking the Indian juvenile into custody or the intake worker shall immediately release the Indian juvenile from custody upon determining that ~~continuing~~ the Indian juvenile in custody is no longer necessary to prevent imminent physical damage or harm to the Indian juvenile and shall expeditiously initiate an Indian juvenile custody proceeding, transfer the Indian juvenile to the jurisdiction of the appropriate Indian tribe, or restore the Indian juvenile to his or her parent or Indian custodian, as may be appropriate. ✓

(b) *Transfer of proceedings to tribe.* In any Indian juvenile custody proceeding under this chapter involving an out-of-home placement of an Indian juvenile who is not residing or domiciled within the reservation of the Indian juvenile's tribe, the court assigned to exercise jurisdiction under this chapter shall, upon the petition of the Indian juvenile's parent, Indian custodian, or tribe, transfer the proceeding to the jurisdiction of the tribe unless any of the following applies: ✓

1. A parent of the Indian juvenile objects to the transfer. ✓
2. The tribal court of the Indian juvenile's tribe declines jurisdiction. ✓
3. The court determines that good cause exists to deny the transfer. ✓

(c) *Declination of jurisdiction.* If the court determines that the petitioner in an Indian juvenile custody proceeding has improperly removed the Indian juvenile from the custody of his or her parent or Indian custodian or has improperly retained

custody of the Indian juvenile after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over the petition and immediately return the Indian juvenile to the custody of the parent or Indian custodian, unless the court determines that returning the Indian juvenile to his or her parent or Indian custodian would subject the Indian juvenile to substantial and immediate danger or the threat of that danger. ✓

(d) *Intervention.* An Indian juvenile's Indian custodian or tribe may intervene at any point in an Indian juvenile custody proceeding under this chapter. ✓

(e) *Full faith and credit.* The court shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe that are applicable to an Indian juvenile custody proceeding to the same extent that the state gives full faith and credit to the public acts, records, and judicial proceedings of any other governmental entity. ✓

(4) INVOLUNTARY COURT PROCEEDINGS. (a) *Notice.* In any involuntary proceeding under s. 938.13 (4), (6), (6m), or (7) involving the out-of-home care placement of a juvenile whom the court knows or has reason to know is an Indian juvenile, the court or party seeking the out-of-home care placement shall notify the Indian juvenile's parent, Indian custodian, and tribe, by registered mail, return receipt requested, of the pending proceeding and of their right to intervene in the proceeding. ✓ If the identity or location of the Indian juvenile's parent, Indian custodian, or tribe cannot be determined, that notice shall be given to the U.S. secretary of the interior in like manner. ✓ The next hearing in the proceeding may not be held until at least 10 days after receipt of the notice by the parent, Indian custodian, and tribe. ✓ On request of the parent, Indian custodian, or tribe, the court shall grant a continuance of up to 20 additional days to enable the requester to prepare for that hearing.

(b) *Appointment of counsel.* Whenever an Indian juvenile is the subject of a proceeding under s. 938.13 (4), (6), (6m), or (7) involving the removal of the Indian juvenile from his or her home or the placement of the Indian juvenile in an out-of-home care placement, the Indian juvenile's parent, or Indian custodian, upon a determination of indigency as provided in s. 938.23 (4), shall have the right to be represented by court-appointed counsel. The court may also, in its discretion, appoint counsel for the Indian juvenile under s. 938.23 (3) if the court finds that the appointment is in the best interests of the Indian juvenile.

(c) *Examination of reports and other documents.* Each party to a proceeding under s. 938.13 (4), (6), (6m), or (7) involving the out-of-home care placement of an Indian juvenile shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to the out-of-home care placement may be based.

(d) *Out-of-home care placement; serious damage and active efforts.* The court may not order an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7) to be placed in an out-of-home care placement unless all of the following occur:

1. The court finds by clear and convincing evidence, including the testimony of one or more qualified expert witnesses, that continued custody of the Indian juvenile by the parent or Indian custodian is likely to result in serious emotional or physical damage to the juvenile.

2. The court finds by clear and convincing evidence that active efforts have been made to provide remedial services and rehabilitation programs designed to prevent the breakup of the Indian family and that those efforts have proved unsuccessful.

(5) INVALIDATION OF ACTION. Any Indian juvenile in need of protection or services under s. 938.13 (4), (6), (6m), or (7) who is the subject of an out-of-home care placement, any parent or Indian custodian from whose custody that Indian juvenile was removed, or the Indian juvenile's tribe may move the court to invalidate that out-of-home care placement on the grounds that the out-of-home care placement was made in violation of sub. (3) or (4) or 25 USC 1911 or 1912. If the court finds that those grounds exist, the court shall invalidate the out-of-home care placement and order the Indian juvenile to be returned to his or her parent or Indian custodian.

(6) PLACEMENT OF INDIAN ~~CHILD~~ ^{JUVENILE (S)} (a) *Out-of-home care placement; preferences.* Any Indian juvenile in need of protection or services under s. 938.13 (4), (6), (6m), or (7) who is placed in an out-of-home care placement shall be placed in a placement

that is the least restrictive setting that most approximates a family, that meets the Indian juvenile's special needs, if any, and that is within reasonable proximity to the Indian juvenile's home, taking into account those special needs. Subject to pars. (b) to (d), in placing such an Indian juvenile in an out-of-home care placement, preference shall be given to a placement in one of the following, in the order of preference listed:

1. The home of an extended family member of the Indian juvenile.
2. A foster home or treatment foster home licensed, approved, or specified by the Indian juvenile's tribe.
3. An Indian foster home or treatment foster home licensed or approved by the department, a county department, or a child welfare agency.
4. A group home or residential care center for children and youth approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the needs of the Indian juvenile.

(b) *Tribal or personal preferences.* If the Indian juvenile's tribe has established, by resolution, an order of preference that is different from the order specified in par. (a), the order of preference established by that tribe shall be followed so long as the placement is the least restrictive setting appropriate for the Indian juvenile's needs as specified in par. (a). When appropriate, the preference of the Indian juvenile or parent shall be considered, and, when a parent who has consented to the placement evidences a desire for anonymity, that desire shall be given weight, in determining the placement.

(c) ~~(d)~~ *Departure for good cause shown.* The court or an agency may depart from the order of preference specified in par. (a) or (b) for good cause shown.

(d) ~~(e)~~ *Social and cultural standards.* The standards to be applied in meeting the placement preference requirements of this subsection shall be the prevailing social and cultural standards of the Indian community in which the Indian juvenile's parents or extended family members reside or with which the Indian juvenile's parents or extended family members maintain social and cultural ties.

(e) ~~(f)~~ *Report of placement.* The department of health and family services shall maintain a record of each out-of-home care placement made of an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7), evidencing the efforts made to comply with the placement preference requirements specified in this subsection, and shall make that record available at any time on the request of the U.S. secretary of the interior or the Indian juvenile's tribe.

(7) **RETURN OF CUSTODY; REMOVAL FROM OUT-OF-HOME CARE PLACEMENT.** If an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7) is removed from an out-of-home care placement for the purpose of placing the Indian juvenile in another out-of-home care placement, a preadoptive placement,

(a) as defined in s. 48.028 (2) (d) 3, or an adoptive placement, as defined in s. 48.028 (2) (d) 1, the placement shall be made in accordance with this section and s. 48.028. Removal of such an Indian juvenile from an out-of-home care placement for the purpose of returning the Indian juvenile to the home of the parent or Indian custodian from whose custody the Indian juvenile was originally removed is not subject to this section.

(8) HIGHER STATE OR FEDERAL STANDARD APPLICABLE. The federal Indian Child Welfare Act, 25 USC 1911 to 1963, supersedes this chapter in any Indian juvenile custody proceeding governed by that act, except that in any case in which this chapter provides a higher standard of protection for the rights of an Indian juvenile's parent or Indian custodian than the rights provided under that act, the court shall apply the standard under this chapter.

****NOTE: There are no provisions in s. 938.028 that are parallel to s. 48.028 (5) relating to voluntary placements and s. 48.928 (9) relating to adoptee information because there is no authority in ch. 938 for voluntary placements or adoption. That authority is found solely in ch. 48.

(END OF INSERT)

(END)

Insert 77-5

In placing an Indian child for adoption under this section, the department, county department, or child welfare agency shall comply with the order of placement preference under s. 48.328 (7)(c).

Section #. 48.833 of the statutes is amended to read:

48.833 Placement of children for adoption by the department, county departments, and child welfare agencies.

The department, a county department under s. 48.57 (1) (e) or (hm), or a child welfare agency licensed under s. 48.60 may place a child for adoption in a licensed foster home or a licensed treatment foster home without a court order if the department, county department, or child welfare agency is the guardian of the child or makes the placement at the request of another agency that is the guardian of the child and if the proposed adoptive parents have completed the preadoption preparation required under s. 48.84 (1) or the department, county department, or child welfare agency determines that the proposed adoptive parents are not required to complete that preparation. [.,] When a child is placed under this section in a licensed foster home or a licensed treatment foster home for adoption, the department, county department, or child welfare agency making the placement shall enter into a written agreement with the proposed adoptive parent, which shall state the date on which the child is placed in the licensed foster home or licensed treatment foster home for adoption by the proposed adoptive parent.

NOTE: This section is shown as affected eff. 4-1-07 by two acts of the 2005 Legislature and as merged by the revisor under s. 13.93 (2) (c). The bracketed commas were inserted by 2005 Wis. Act 293 but rendered surplusage by 2005 Wis. Act 448. Corrective legislation is pending. Prior to 4-1-07 s. 48.833 reads:

48.833 Placement of children for adoption by the department, county departments and child welfare agencies. The department, a county department under s. 48.57 (1) (e) or (hm), or a child welfare agency licensed under s. 48.60 may place a child for adoption in a licensed foster home or a licensed treatment foster home without a court order if the department, county department, or child welfare agency is the guardian of the child or makes the placement at the request of another agency that is the guardian of the child. When a child is placed under this section in a licensed foster home or a licensed treatment foster home for adoption, the department, county department, or child welfare agency making the placement shall enter into a written agreement with the proposed adoptive parent, which shall state the date on which the child is placed in the licensed foster home or licensed treatment foster home for adoption by the proposed adoptive parent.

History: 1981 c. 81, 384; 1985 a. 176; 1989 a. 336; 1993 a. 446; 1995 a. 275; 2005 a. 293, 448; s. 13.93 (2) (c).

(edit insert)

Malaise, Gordon

From: Porter, Loa [PorteLL@dhfs.state.wi.us]
Sent: Friday, November 03, 2006 8:36 AM
To: Malaise, Gordon
Cc: Mitchell, Mark
Subject: ICWA Codification Notes

Attachments: Codification Active Efforts10-30-06.doc; Codification QEW 10-30-06.doc; chapter 48 ICWA 10-30-06.rtf



Codification Active Efforts10-...
Codification QEW 10-30-06.doc ...
chapter 48 ICWA 10-30-06.rtf (...)

Good Morning Gordon:

Attached are the modifications to the ICWA draft proposed by the workgroup on Monday and Tuesday. Mark has highlighted changes, and questions in yellow. Also attached are two definitions , qualified expert witness and active efforts. We would like to met with you sometime soon to discuss the language needed. Our next codification meeting is scheduled for November 29 in Wausau Wisconsin. If you have any questions, please contact Mark Mitchell.

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declaration to the department, and the written response shall be filed with the declaration. Failure to send a written response shall not constitute an admission of the statements contained in the declaration.

(c) A court in a proceeding under s. 48.13, 48.133, 48.14, or 938.13 or under a substantially similar law of another state or a person authorized to file a petition under s. 48.25, 48.42, 48.837, or 938.25 or under a substantially similar law of another state may request the department to search its files to determine whether a person who may be the father of the child who is the subject of the proceeding has filed a declaration under this section. If the department has on file a declaration of paternal interest in matters affecting the child, the department shall issue to the requester a copy of the declaration. If the department does not have on file a declaration of paternal interest in matters affecting the child, the department shall issue to the requester a statement that no declaration could be located. The department may require a person who requests a search under this paragraph to pay a reasonable fee that is sufficient to defray the costs to the department of maintaining its file of declarations and publicizing information relating to declarations of paternal interest under this section.

(d) Any person who obtains any information under this subsection may use or disclose that information only for the purposes of a proceeding under s. 48.13, 48.133, 48.14, or 938.13 or under a substantially similar law of another state and may not use or disclose that information for any other purpose except by order of the court for good cause shown.

(4) Filing a declaration under this section shall not extend parental rights to the person filing such declaration.

(5) (a) The department shall publicize, in a manner calculated to provide maximum notice to all persons who might claim to be the father of a nonmarital child, all of the following information:

1. That a person claiming to be the father of a nonmarital child may affirmatively protect his parental rights by filing a declaration of interest under this section.
2. The procedures for filing a declaration of interest.
3. The consequences of filing a declaration of interest.
4. The consequences of not filing a declaration of interest.

(b) The department may publicize the information under par. (a) by posting the information on the Internet, by creating a pamphlet for use by schools and health care providers, and by requiring agencies that provide services under contract with the department to provide the information to clients.

(6) (a) Any person who makes a false statement in a declaration, revocation of a declaration, or response to a declaration filed under this section that the person does not

believe is true is subject to prosecution for false swearing under s. 946.32 (2).

(b) Except as permitted under sub. (3), any person who intentionally obtains, uses, or discloses information that is confidential under this section may be fined not more than \$1,000 or imprisoned for not more than 90 days or both.

History: 1973 c. 263; 1979 c. 330; 1981 c. 359; 1983 a. 447; 2005 a. 293; 2005 a. 443 s. 265.

The constitutional rights of a putative father to establish his parentage and assert parental rights. 58 MLR 175.

48.027 Child custody jurisdiction. All proceedings relating to the custody of children shall comply with the requirements of ch. 822.

History: 1975 c. 283.

Congressional findings and statement of best interest of Indian child

48.028 Indian child welfare. (1) DECLARATION OF POLICY. In Indian child custody proceedings, the best interests of the Indian child shall be determined consistent with the federal Indian Child Welfare Act, 25 USC 1901 to 1963. It is the policy of this state to do all of the following:

(a) Cooperate fully with Indian tribes in order to ensure that the federal Indian Child Welfare Act is enforced in this state.

(b) Protect the best interests of Indian children and promote the stability and security of Indian tribes and families by establishing minimum standards for the removal of Indian children from their families and placing those children in out-of-home care placements, preadoptive placements, or adoptive placements that will reflect the unique value of Indian culture.

(2) DEFINITIONS. In this section:

Definition of active effort ~ 42.028(4)(e)

(a) "Adoptive placement" means the permanent placement of an Indian child for adoption.

(am) "Extended family member" means a person who is defined as a member of an Indian child's extended family by the law or custom of the Indian child's tribe or, in the absence of such a law or custom, a person who has attained the age of 18 years and who is the Indian child's grandparent, aunt, uncle, brother, sister, brother-in-law, sister-in-law, niece, nephew, first cousin, 2nd cousin, or stepparent.

(b) "Former Indian custodian" means a person who was the Indian custodian of an Indian child before termination of parental rights to and adoption of the Indian child.

(c) "Former parent" means a person who was the parent of an Indian child before termination of parental rights to and adoption of the Indian child.

Deleted: 48.028 Custody of Indian children. The Indian child welfare act, 25 USC 1911 to 1963, supersedes the provisions of this chapter in any child custody proceeding governed by that act.¶

History: 1981 c. 81.¶
When the children's code provides safeguards in addition to those in the Indian child welfare act, those safeguards should be followed. In Re Interest of D.S.P. 166 Wis. 2d 464, 480 N.W.2d 234 (1992).

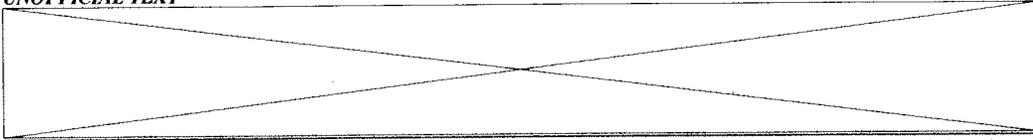
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(d) "Indian child custody proceeding" means a proceeding governed by the federal Indian Child Welfare Act, 25 USC 1901 to 1963, in which any of the following may occur:

- 1. An adoptive placement.
- 2. An out-of-home care placement.
- 3. A preadoptive placement.
- 4. A termination of parental rights, as defined in [s.] 48.40(2) to an Indian child.

*** Add shelter care to OOHIC

(e) "Out-of-home care placement" means the removal of an Indian child from his or her parent or Indian custodian for temporary placement in a foster home, treatment foster home, group home, or residential care center for children and youth[,] or in the home of a guardian, from which placement the parent or Indian custodian cannot have the child returned upon demand.

(f) "Preadoptive placement" means the temporary placement of an Indian child in a foster home, treatment foster home, group home, or residential care center for children and youth[,] or in the home of a guardian after a termination of parental rights but prior to or in lieu of an adoptive placement.

See Iowa 232B.5(2) re: Existing Indian family doctrine.

(3) JURISDICTION OVER INDIAN CHILD CUSTODY PROCEEDINGS. (a) Exclusive tribal jurisdiction. 1. An Indian tribe shall have exclusive jurisdiction over any Indian child custody proceeding involving an Indian child who resides or is domiciled within the reservation of the tribe, except when that jurisdiction is otherwise vested in the state by federal law.

What does this mean? This language is in ICWA. Would this be a significant departure from ICWA? What would it mean? ICWA came after P.L. 280: does it then override it?

and except as provided in subd. 2. If an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction regardless of the residence or domicile of the child.

Clarify what "ward" is (i.e., under an order of the tribal court).

2. Subdivision 1. does not prevent an Indian child who resides or is domiciled within a reservation, but who is temporarily located off the reservation, from being taken into and held in custody under ss. 48.19 to 48.21 in order to prevent imminent physical harm or damage to the Indian child. The person taking the Indian child into custody or the intake worker shall immediately release the Indian child from custody upon

determining that holding the Indian child in custody is no longer necessary to prevent imminent physical damage or harm to the Indian child and shall expeditiously initiate an Indian child custody proceeding, subject to the federal Indian Child Welfare Act. (proceedings to provide for the immediate safety of the child) transfer the Indian child to the jurisdiction (release the child to the custody) of the appropriate Indian tribe, or restore the Indian child to his or her parent or Indian custodian, as may be appropriate. (Reorder so that transfer comes first in terms of the options.)

(b) Transfer of proceedings to tribe. In any Indian child custody proceeding under this chapter involving an out-of-home placement of, or termination of parental rights to, an Indian child who is not residing or domiciled within the reservation of the Indian child's tribe, the court assigned to exercise jurisdiction under this chapter shall, upon the petition of the Indian child's parent, Indian custodian, or tribe, transfer the proceeding to the jurisdiction of the tribe unless any of the following applies:

- 1. A parent of the Indian child objects to the transfer.
- 2. The tribal court of the Indian child's tribe declines jurisdiction.
- 3. The court determines that good cause exists to deny the transfer. Burden of proof is on the party opposing the transfer. Iowa, s. 232(b)(5)1), except don't include if tribe doesn't have subject matter jurisdiction under tribal or federal law.

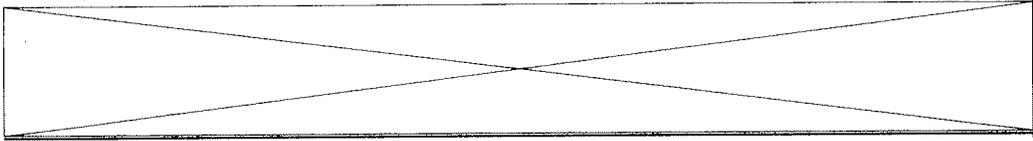
(c) Declination of jurisdiction. If the state court determines that the petitioner in an Indian child custody proceeding has improperly removed the Indian child from the custody of his or her parent or Indian custodian or has improperly retained custody of the Indian child after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over the petition and immediately return the Indian child to the custody of the parent or Indian custodian, unless the court determines that returning the Indian child to his or her parent or Indian custodian would subject the Indian child to substantial and immediate danger or the threat of that danger.

State court - Gordon, do we need definition specific to this section?

(d) Intervention. An Indian child's Indian custodian or tribe may intervene at any point in an Indian child custody proceeding under this chapter involving an out-of-home care placement of, or termination of parental rights to, the Indian child.

(e) Full faith and credit. The state (rather than court? And including counties) court shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe that are applicable to an Indian child custody proceeding to the

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same extent that the state gives full faith and credit to the public acts, records, and judicial proceedings of any other governmental entity.

(4) INVOLUNTARY COURT PROCEEDINGS. (a) Notice. In any involuntary proceeding involving the out-of-home care placement, termination of parental rights, or return of custody under sub. (8)(a) of a child whom the court knows or has reason to know is an Indian child, the court or party seeking the out-of-home care placement, termination of parental rights, or return of custody shall notify the Indian child's parent, former parent, Indian custodian, former Indian custodian, and tribe, by registered mail, return receipt requested, of the pending proceeding and of their right to intervene in the proceeding. If the identity or location of the Indian child's parent, former parent, Indian custodian, former Indian custodian, or tribe cannot be determined, that notice shall be given to the U.S. secretary of the interior in like manner. The next hearing in the proceeding may not be held until at least 10 days after receipt of the notice by the parent, former parent, Indian custodian, former Indian custodian, and tribe. On request of the parent, former parent, Indian custodian, former Indian custodian, or tribe, the court shall grant a continuance of up to 20 additional days to enable the requester to prepare for that hearing.

(b) Appointment of counsel. Whenever an Indian child is the subject of a proceeding involving the removal of the Indian child from his or her home, placement of the Indian child in an out-of-home care placement, termination of parental rights to the Indian child, or return of custody of the Indian child under sub. (8)(a), the Indian child's parent, former parent, Indian custodian, or former Indian custodian, upon a determination of indigency as provided in s. 48.23(4), shall have the right to be represented by court-appointed counsel. The court may also, in its discretion, appoint counsel for the Indian child under s. 48.23(3) if the court finds that the appointment is in the best interests of the Indian child.

Notification of Secretary of the Interior for funding (s. 1912(b)) Perhaps deal with this in a note.

(c) Examination of reports and other documents. Each party to a proceeding involving the out-of-home care placement of, termination of parental rights to, or return of custody under sub. (8)(a) of an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to the out-of-home care placement, termination of parental rights, or return of custody may be based.

(d) Out-of-home care placement; serious damage and active efforts. The court may not order an Indian child to be placed in

an out-of-home care placement unless all of the following occur:

1. The court finds by clear and convincing evidence, including the testimony of one or more qualified expert witnesses, that continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

2. The court finds by clear and convincing evidence that active efforts have been made to provide remedial services and rehabilitation programs designed to prevent the breakup of the Indian family and that those efforts have proved unsuccessful.

(e) Termination of parental rights; serious damage and active efforts. The court may not order termination of parental rights to an Indian child unless all of the following occur:

Definition of qualified expert witness - see separate page re: Iowa

1. The court finds beyond a reasonable doubt, including the testimony of one or more qualified expert witnesses, that the continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

2. The court finds beyond a reasonable doubt that active efforts have been made to provide remedial services and rehabilitation programs designed to prevent the breakup of the Indian family and that those efforts have proved unsuccessful.

Are parents entitled to counsel even in voluntary proceedings? Should we have a split between involuntary and voluntary?

(5) VOLUNTARY PROCEEDINGS. (a) Out-of-home care placement. A voluntary consent by a parent or Indian custodian to an out-of-home care placement of an Indian child under s. 48.63(1) or (5)(b) is not valid unless the consent is executed in writing, recorded before a judge, and accompanied by a written certification by the judge that the terms and consequences of the consent were fully explained in detail to and were fully understood by the parent [or Indian custodian]. The judge shall also certify that the parent or Indian custodian fully understood the explanation in English or that the explanation was interpreted into a language that the parent or Indian custodian understood. Any consent given under this paragraph prior to or within 10 days after the birth of the Indian child is not valid. A parent or Indian custodian who has executed a consent under this paragraph may withdraw the consent for any reason at any time, and the Indian child shall be returned to the parent or Indian custodian. A parent or Indian custodian who has executed a consent under this paragraph may also move to invalidate the out-of-home care placement under sub. (6).

Unofficial text from 03-04 Wis. Stats. database. See printed 03-04 Statutes and 2005 Wis. Acts for official text under s. 35.18 (2) stats. Report errors to the Revisor of Statutes at (608) 266-2011, FAX 264-6978, http://www.legis.state.wi.us/rsb/

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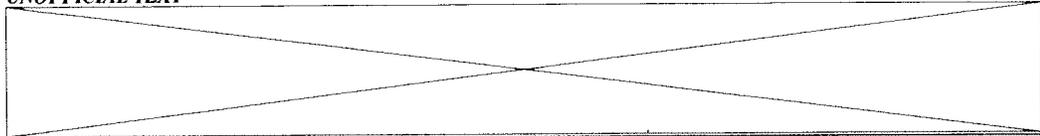
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Yes



[What about voluntary relinquishment under s. 48.195?]
Draft some language to deal with this; see New Mexico.

(b) *Termination of parental rights.* A voluntary consent by a parent to a termination of parental rights under s. 48.41(2)(e) is not valid unless the consent is executed in writing, recorded before a judge, and accompanied by a written certification by the judge that the terms and consequences of the consent were fully explained in detail to and were fully understood by the parent. The judge shall also certify that the parent fully understood the explanation in English or that the explanation was interpreted into a language that the parent understood. Any consent given under this paragraph prior to or within 10 days after the birth of the Indian child is not valid. A parent who has executed a consent under this paragraph may withdraw the consent for any reason at any time prior to the entry of a final order terminating parental rights, and the Indian child shall be returned to his or her parent. After the entry of a final order terminating parental rights, a parent who has executed a consent under this paragraph may withdraw that consent as provided in par. (c), move to invalidate the termination of parental rights under sub. (6), or move for relief from the judgment under s. 48.46(2).

In the following paragraph, this limits the reasons for which an Indian parent can withdraw consent. (CWA says consent can be withdrawn at any point up to adoption.)

(c) *Withdrawal of consent after termination of parental rights.* After the entry of a final judgment terminating parental rights to an Indian child, a parent who has consented to that termination under s. 48.41(2)(e) or who did not contest the petition initiating the proceeding in which his or her parental rights were terminated may withdraw that consent and move the court for relief from the judgment on the grounds that the consent was obtained through fraud, misrepresentation, or duress. Any such motion shall be filed within 2 years after the entry of an order granting adoption of the Indian child. A motion under this subsection does not affect the finality or suspend the operation of the judgment or order terminating parental rights or granting adoption. If the court finds that the consent was obtained through fraud, misrepresentation, or duress, the court shall vacate the judgment or order terminating parental rights and, if applicable, the order granting adoption and return the Indian child to the custody of the parent.

(6) *INVALIDATION OF ACTION.* Any Indian child who is the subject of an out-of-home care placement or of a termination of parental rights proceeding, any parent or Indian custodian from whose custody that Indian child was removed,

or the Indian child's tribe may move the court to invalidate that out-of-home care placement or termination of parental rights on the grounds that the out-of-home care placement was made or the termination of parental rights was ordered in violation of sub. (3), (4), or (5) or 25 USC 1911, 1912, or 1913. If the court finds that those grounds exist and if the Indian child has not been adopted, the court shall invalidate the out-of-home care placement or termination of parental rights and order the Indian child to be returned to his or her parent or Indian custodian. If the Indian child has been adopted, the parent or Indian custodian may petition the court under sub. (8)(a) for return of custody of the Indian child.

(7) *PLACEMENT OF INDIAN CHILD.* (a) *Adoptive placement; preferences.* Subject to pars. (c) to (e), in placing an Indian child for adoption, preference shall be given to a placement with one of the following, in the order of preference listed:

1. An extended family member of the Indian child.
2. Another member of the Indian child's tribe.
3. Another Indian family.

(b) *Out-of-home care or preadoptive placement; preferences.* Any Indian child who is accepted for an out-of-home care placement or a preadoptive placement shall be placed in the least restrictive setting that most approximates a family, that meets the Indian child's special needs, if any, and that is within reasonable proximity to the Indian child's home, taking into account those special needs. Subject to pars. (c) to (e), in placing an Indian child in an out-of-home care placement or a preadoptive placement, preference shall be given to a placement in one of the following, in the order of preference listed:

1. The home of an extended family member of the Indian child.
2. A foster home or treatment foster home licensed, approved, or specified by the Indian child's tribe.
3. An Indian foster home or treatment foster home licensed [or approved] by the department, a county department, or a child welfare agency.
4. A group home or residential care center for children and youth approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the needs of the Indian child.

(c) *Tribal or personal preferences.* If the Indian child's tribe has established, by resolution, an order of preference that is different from the order specified in par. (a) or (b), the order of preference established by that tribe shall be followed so long as the placement under par. (a) is appropriate for the Indian child's special needs, if any, and the placement under par. (b) is the least restrictive setting appropriate for the Indian child's needs as specified in par. (b). When appropriate, the preference of the Indian child or parent shall be considered, and, when a

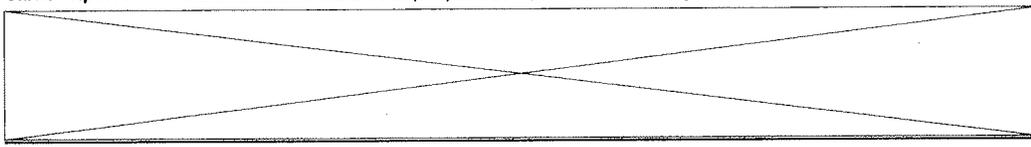
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parent who has consented to the placement evidences a desire for anonymity, that desire shall be given weight, in determining the placement.

Above, need to include right to counsel, etc.

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Can we "bury" par. (d) into the intro. to (a) and (b)? And maybe in a rule we can describe what good cause shown is

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(d) *Departure for good cause shown.* The court or an agency may depart from the order of preference specified in par. (a), (b), or (c) for good cause shown.

(e) *Social and cultural standards.* The standards to be applied in meeting the placement preference requirements of this subsection shall be the prevailing social and cultural standards of the Indian community in which the Indian child's parents or extended family members reside or with which the Indian child's parents or extended family members maintain social and cultural ties.

(f) *Report of placement.* The department [, county department, or child placing agency] shall maintain a record of each adoptive placement, out-of-home care placement, and preadoptive placement made of an Indian child, evidencing the efforts made to comply with the placement preference requirements specified in this subsection, and shall make that record available at any time on the request of the U.S. secretary of the interior or the Indian child's tribe.

(8) RETURN OF CUSTODY. (a) *Adoption vacated, set aside, or terminated.* 1. If a final order granting adoption of an Indian child is vacated or set aside or if the parental rights to an Indian child of all adoptive parents of the Indian child are voluntarily terminated, the court that vacated or set aside the final decree of adoption or that ordered the termination of parental rights of the adoptive parents shall notify the Indian child's former parent or former Indian custodian may petition for the return of custody of the Indian child.

The preceding paragraph doesn't make sense.

2. On receipt of a petition under subd. 1., the court shall set a date for a hearing on the petition that allows reasonable time for the parties to prepare. The court shall provide notice of the hearing to the guardian and legal custodian of the Indian child, to all other interested parties as provided in s. 48.27(6), and to the Indian child's former parent, former Indian custodian, and tribe in the manner specified in sub. (4)(a). The hearing on the petition may not be held until at least 10 days after receipt of the notice of the hearing by the Indian child's former parent, former Indian custodian, and tribe. On request of the Indian child's former parent, former Indian custodian, or tribe[,] the court shall grant a continuance of up to 20 additional days to enable the requester to prepare for the hearing.

3. At the conclusion of the hearing, the court shall grant a petition for the return of custody of the Indian child to the Indian child's former parent or former Indian custodian unless there is a showing that return of custody is not in the best interests of the Indian child.

(b) *Removal from out-of-home care placement.* If an Indian child is removed from an out-of-home care placement for the purpose of placing the Indian child in another out-of-home care placement, a preadoptive placement, or an adoptive placement, the placement shall be made in accordance with this section. Removal of an Indian child from an out-of-home care placement for the purpose of returning the Indian child to the home of the parent or Indian custodian from whose custody the Indian child was originally removed is not subject to this section.

(9) ADOPTEE INFORMATION. (a) *Provision of information to U.S. secretary of the interior.* At the time a court enters an order granting adoption of an Indian child, the court shall provide the U.S. secretary of the interior with a copy of the order, together with such other records and papers pertaining to the adoption proceeding as may be necessary to provide that secretary with all of the following information:

1. The name and tribal affiliation of the Indian child.
2. The names and addresses of the Indian child's birth parents.
3. The names and addresses of the Indian child's adoptive parents.
4. The identity of any agency that has in its possession any files or information relating to the adoptive placement of the Indian child.

(b) *Confidentiality of parent's identity.* The court shall give the birth parent of an Indian child the opportunity to file an affidavit indicating that the birth parent wishes the U.S. secretary of the interior to maintain the confidentiality of the birth parent's identity. If the birth parent files that affidavit, the court shall include the affidavit with the information provided to the U.S. secretary of the interior under par. (a), and that secretary shall maintain the confidentiality of the birth parent's identity as required under 25 USC 1951(a) and (b).

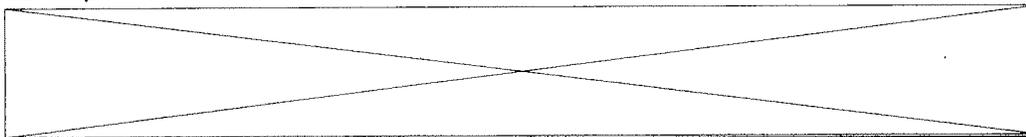
(c) *Provision of tribal affiliation to adoptee.* At the request of an Indian adoptee who is 18 years of age or older, the court that entered the order granting adoption of the adoptee shall provide the adoptee with the tribal affiliation, if any, of the adoptee's birth parents and with such other information as may be necessary to protect any rights accruing to the adoptee as a result of that affiliation.

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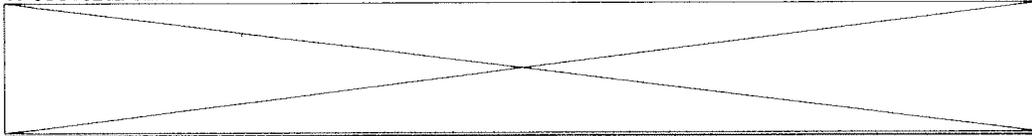
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In the above, should we say court provides or allows or arranges for, etc.?

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(10) HIGHER STATE OR FEDERAL STANDARD APPLICABLE. The federal Indian Child Welfare Act, 25 USC 1911 to 1963, supersedes this chapter in any Indian child custody proceeding governed by that act, except that in any case in which this chapter provides a higher standard of protection for the rights of an Indian child's parent, and Indian custodian, or tribe than the rights provided under that act, the court shall apply the standard under this chapter.

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48.029 Pregnancy testing prohibited. No law enforcement agency, district attorney, corporation counsel, county department, licensed child welfare agency or other person involved in the investigation or prosecution of an allegation that an unborn child has been the victim of or is at substantial risk of abuse may, without a court order, require a person to take a pregnancy test in connection with that investigation or prosecution.

History: 1997 a. 292.

of Menominee County may appropriate, levy and collect a sum each year sufficient to pay its share of the expenses. If the 2 county boards are unable to agree on the prorating of expenditure involved, then the circuit judges for the circuit court for Menominee and Shawano counties shall, upon appropriate notice and hearing, determine the prorating of the expenditures on the basis of a fair allocation to each county under such procedure as they prescribe. If the circuit judges are unable to agree, the chief judge of the judicial administrative district shall make the determination.

History: 1977 c. 449; 1995 a. 77.

48.04 Employees of court. If the county contains one or more cities of the 2nd or 3rd class, the circuit judges for the county, subject to the approval of the chief judge of the judicial administrative district, may appoint, by an instrument in writing, filed with the county clerk, a clerk of court for juvenile matters and such deputies as may be needed, who shall perform the duties of clerk and reporter of the court as directed by the judges. The clerk and deputies shall take and file the official oath and shall receive such salary as the county board of supervisors determines.

History: 1977 c. 354, 449; 1985 a. 176; 1999 a. 83.

SUBCHAPTER II

ORGANIZATION OF COURT

48.03 Time and place of court; absence or disability of judge; court of record. (1) The judge shall set apart a time and place to hold court on juvenile matters.

(2) In the case of the absence or disability of the judge of a court assigned to exercise jurisdiction under this chapter and ch. 938, another judge shall be assigned under s. 751.03 to act temporarily in the judge's place. If the judge assigned temporarily is from a circuit other than the one for which elected, the judge shall receive expenses as provided under s. 753.073.

History: 1971 c. 46; 1977 c. 187 s. 135; 1977 c. 273, 449; 1989 a. 56; 1995 a. 77.

48.035 Court; Menominee and Shawano counties. Menominee County is attached to Shawano County for judicial purposes to the extent of the jurisdiction and functions of the court assigned to exercise jurisdiction under this chapter and ch. 938 and the office and functions of the judge of the court, and the duly designated judge of the court assigned to exercise jurisdiction under this chapter and ch. 938 of the circuit court for Menominee and Shawano counties shall serve in both counties. The county boards of Menominee County and Shawano County shall enter into an agreement on administration of this section and the prorating of expenditures involved, and for such purposes the county board of supervisors

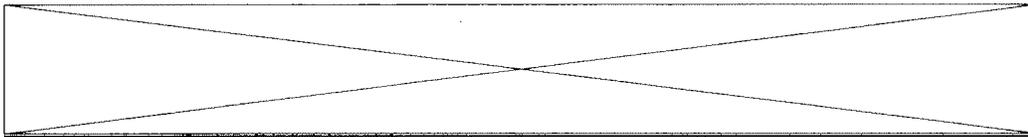
48.06 Services for court. (1) COUNTIES WITH A POPULATION OF 500,000 OR MORE. (a) 1. In counties with a population of 500,000 or more, the department shall provide the court with the services necessary for investigating and supervising child welfare and unborn child welfare cases under this chapter. The department is charged with providing child welfare and unborn child welfare intake and dispositional services and with administration of the personnel and services of the child welfare and unborn child welfare intake and dispositional sections of the department. The department shall include investigative services for all children and unborn children alleged to be in need of protection or services to be provided by the department.

2. The chief judge of the judicial administrative district shall formulate written judicial policy governing intake and court services for child welfare matters under this chapter and the department shall be charged with executing the judicial policy. The chief judge shall direct and supervise the work of all personnel of the court, except the work of the district attorney or corporation counsel assigned to the court.

3. The county board of supervisors does not have authority and may not assert jurisdiction over the disposition of any case, child, unborn child or expectant mother of an unborn child after a written order is made under s. 48.21 or 48.213 or if a petition is filed under s. 48.25.

(am) 1. All intake workers providing services under this chapter who begin employment after May 15, 1980, shall have

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(g) If the child is or may be an Indian child, reliable and credible information showing that continued custody of the child by the child's parent or Indian custodian is likely to result in serious emotional or physical damage to the child under s. 48.028(4)(d)1. and reliable and credible information showing that the person who took the child into custody and the intake worker have made active efforts under s. 48.028(4)(d)2. to prevent the breakup of the Indian family and that those efforts have proved unsuccessful.

In an emergency removal situation, the standard is reasonable effort for all children.

(1m) A petition initiating proceedings under s. 48.133 shall be entitled "In the interest of (J. Doe), an unborn child, and (expectant mother's name), the unborn child's expectant mother" and shall set forth with specificity:

- (a) The estimated gestational age of the unborn child.
(b) The name, birth date and address of the expectant mother.

(bm) The names and addresses of the parent, guardian, legal custodian or spouse, if any, of the expectant mother, if the expectant mother is a child, the name and address of the spouse, if any, of the expectant mother, if the expectant mother is an adult, or, if no such person can be identified, the name and address of the nearest relative of the expectant mother.

(c) Whether the expectant mother is in custody and, if so, the place where the expectant mother is being held and the time when the expectant mother was taken into custody unless there is reasonable cause to believe that disclosure of that information would result in imminent danger to the unborn child, expectant mother or physical custodian.

(d) Whether the unborn child, when born, may be subject to the federal Indian Child Welfare Act, 25 USC 1911 to 1963, and, if the unborn child may be subject to that act, the name and address of the Indian tribe in which the unborn child may be eligible for membership when born, if known.

(e) Reliable and credible information which forms the basis of the allegations necessary to invoke the jurisdiction of the court under s. 48.133 and to provide reasonable notice of the conduct or circumstances to be considered by the court, together with a statement that the unborn child is in need of protection or care and that the expectant mother is in need of supervision, services, care or rehabilitation.

(f) If the expectant mother is a child and the child expectant mother is being held in custody outside of her home, reliable and credible information showing that continued placement of the child expectant mother in her home would be contrary to the welfare of the child expectant mother and, unless any of the

circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies, reliable and credible information showing that the person who took the child expectant mother into custody and the intake worker have made reasonable efforts to prevent the removal of the child expectant mother from the home, while assuring that the child expectant mother's health and safety are the paramount concerns, and to make it possible for the child expectant mother to return safely home.

(g) If the expectant mother is or may be an Indian child, reliable and credible information showing that continued custody of the child expectant mother by her parent or Indian custodian is likely to result in serious emotional or physical damage to the child expectant mother under s. 48.028(4)(d)1. and reliable and credible information showing that the person who took the child expectant mother into custody and the intake worker have made active efforts under s. 48.028(4)(d)2. to prevent the breakup of the Indian family and that those efforts have proved unsuccessful.

Reasonable rather than active above.

(2) If any of the facts required under sub. (1) (a) to (cm), (f), and (g) or (1m) (a) to (d), (f), and (g) are not known or cannot be ascertained by the petitioner, the petition shall so state.

(3) If the information required under sub. (1) (e) or (1m) (e) is not stated, the petition shall be dismissed or amended under s. 48.263 (2).

(4) A copy of a petition under sub. (1) shall be given to the child if the child is 12 years of age or over and to the parents, guardian, legal custodian and physical custodian. A copy of a petition under sub. (1m) shall be given to the child expectant mother, if 12 years of age or over, her parents, guardian, legal custodian and physical custodian and the unborn child by the unborn child's guardian ad litem or to the adult expectant mother, the unborn child through the unborn child's guardian ad litem and the physical custodian of the expectant mother, if any. If the child is an Indian child or the unborn child may be an Indian child when born, a copy of a petition under sub. (1) or (1m) shall also be given to the Indian child's Indian custodian and tribe or the Indian tribe with which the unborn child may be eligible for membership when born.

(5) Subsections (1) to (4) do not apply to petitions to initiate a proceeding under s. 48.375 (7).

History: 1977 c. 354; 1991 a. 263; 1995 a. 27, 77, 352; 1997 a. 292; 2001 a. 109.

A CHIPS petition that alleged that a child was the victim of sexual abuse, but contained no information giving rise to an inference that there was something the court could do for the child that was not already being provided, was insufficient. Interest of Courtney E. 184 Wis. 2d 592, 516 N.W.2d 422 (1994).

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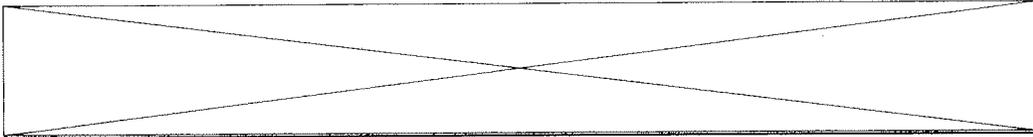
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and child, of the parent and child expectant mother or of the adult expectant mother.

(9) If a circuit court commissioner conducts the plea hearing and accepts an admission of the alleged facts in a petition brought under s. 48.13 or 48.133, the judge shall review the admission at the beginning of the dispositional hearing by addressing the parties and making the inquiries set forth in sub. (8).

(10) The court may permit any party to participate in hearings under this section by telephone or live audiovisual means.

History: 1977 c. 354, 355, 447; 1979 c. 300, 331, 355, 359; 1985 a. 321, 332; 1987 a. 151; 1987 a. 403 s. 256; Sup. Ct. Order, 158 Wis. 2d xvii (1990); 1993 a. 163, 474, 481; 1995 a. 77, 225, 404, 417; 1997 a. 3, 252, 292; 1999 a. 103; 2001 a. 61.

The time limits under sub. (1) are mandatory; failure to comply results in the court's loss of competency and is properly remedied by dismissal without prejudice. In Interest of Jason B. 176 Wis. 2d 400, 500 N.W.2d 384 (Ct. App. 1993).

A court's failure to inform a juvenile of the right to judicial substitution does not affect its competence and warrants reversal only if the juvenile suffers actual prejudice. State v. Kywanda F. 200 Wis. 2d 26, 546 N.W.2d 440 (1996), 94-1866.

48.305 Hearing upon the involuntary removal of a child or expectant mother. Notwithstanding other time periods for hearings under this chapter, if a child is removed from the physical custody of the child's parent or guardian under s. 48.19 (1) (c) or (cm) or (d) 5. or 8. without the consent of the parent or guardian or if an adult expectant mother is taken into custody under s. 48.193 (1) (c) or (d) 2. without the consent of the expectant mother, the court, subject to s. 48.299(9), shall schedule a plea hearing and fact-finding hearing within 30 days after a request from the parent or guardian from whom custody was removed or from the adult expectant mother who was taken into custody. The plea hearing and fact-finding hearing may be combined. This time period may be extended only with the consent of the requesting parent, guardian or expectant mother.

History: 1977 c. 354; 1979 c. 300; 1997 a. 292.

Gordon in following paragraph, why do we include TPR for either Indian or non-Indian? Is qualified expert witness testimony required at fact-finding hearing or dispositional hearing?

48.31 Fact-finding hearing. (1) In this section, "fact-finding hearing" means a hearing to determine if the allegations in a petition under s. 48.13 or 48.133 or a petition to terminate parental rights are proved by clear and convincing evidence and, in the case of a petition to terminate parental rights to an Indian child, to determine if the allegations under s. 48.42(1)(e) are proved beyond a reasonable doubt as provided in s. 48.028(4)(e).

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(2) The hearing shall be to the court unless the child, the child's parent, guardian, or legal custodian, the unborn child by the unborn child's guardian ad litem, or the expectant mother of the unborn child exercises the right to a jury trial by demanding a jury trial at any time before or during the plea hearing. If a jury trial is demanded in a proceeding under s. 48.13 or 48.133, the jury shall consist of 6 persons. If a jury trial is demanded in a proceeding under s. 48.42, the jury shall consist of 12 persons unless the parties agree to a lesser number. Chapters 756 and 805 shall govern the selection of jurors. If the hearing involves a child victim or witness, as defined in s. 950.02, the court may order that a deposition be taken by audiovisual means and allow the use of a recorded deposition under s. 967.04 (7) to (10) and, with the district attorney, shall comply with s. 971.105. At the conclusion of the hearing, the court or jury shall make a determination of the facts, except that in a case alleging a child or an unborn child to be in need of protection or services under s. 48.13 or 48.133, the court shall make the determination under s. 48.13 (intro.) or 48.133 relating to whether the child or unborn child is in need of protection or services that can be ordered by the court. If the court finds that the child or unborn child is not within the jurisdiction of the court or, in a case alleging a child or an unborn child to be in need of protection or services under s. 48.13 or 48.133, that the child or unborn child is not in need of protection or services that can be ordered by the court or if the court or jury finds that the facts alleged in the petition have not been proved, the court shall dismiss the petition with prejudice.

(4) The court or jury shall make findings of fact and the court shall make conclusions of law relating to the allegations of a petition filed under s. 48.13, 48.133 or 48.42, except that the court shall make findings of fact relating to whether the child or unborn child is in need of protection or services which can be ordered by the court. In cases alleging a child to be in need of protection or services under s. 48.13 (11), the court may not find that the child is suffering emotional damage unless a licensed physician specializing in psychiatry or a licensed psychologist appointed by the court to examine the child has testified at the hearing that in his or her opinion the condition exists, and adequate opportunity for the cross-examination of the physician or psychologist has been afforded. The judge may use the written reports if the right to have testimony presented is voluntarily, knowingly and intelligently waived by the guardian ad litem or legal counsel for the child and the parent or guardian. In cases alleging a child to be in need of protection or services under s. 48.13 (11m) or an unborn child to be in need of protection or services under s. 48.133, the court may not find that the child or the expectant mother of the unborn child is in need of treatment and education for needs and problems related to the use or abuse of alcohol beverages, controlled substances

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consideration of reasonable efforts shall include, but not be limited to, whether:

1. A comprehensive assessment of the family's situation was completed, including a determination of the likelihood of protecting the child's health, safety and welfare effectively in the home.
2. Financial assistance, if applicable, was provided to the family.
3. Services were offered or provided to the family, if applicable, and whether any assistance was provided to the family to enable the family to utilize the services. Examples of the types of services that may have been offered include:
 - a. In-home support services, such as homemakers and parent aides.
 - b. In-home intensive treatment services.
 - c. Community support services, such as day care, parent skills training, housing assistance, employment training and emergency mental health services.
 - d. Specialized services for family members with special needs.
4. Monitoring of client progress and client participation in services was provided.
5. A consideration of alternative ways of addressing the family's needs was provided, if services did not exist or existing services were not available to the family.

(b) When a court makes a finding under sub. (2) (b) 6. as to whether the county department, department, in a county having a population of 500,000 or more, or agency primarily responsible for providing services to the child under a court order has made reasonable efforts to achieve the goal of the permanency plan, the court's consideration of reasonable efforts shall include the considerations listed under par. (a) 1. to 5. and whether visitation schedules between the child and his or her parents were implemented, unless visitation was denied or limited by the court.

(c) When a court makes a finding under sub. (2)(b)6v. as to whether the county department, department in a county having a population of 500,000 or more, or agency primarily responsible for providing services to an Indian child under a court order has made active efforts under s. 48.028(4)(d)2. to prevent the breakup of the Indian family, the court's consideration of active efforts shall include the considerations listed under par. (a)1. to 5., whether visitation schedules between the Indian child and his or her parents or Indian custodian were implemented, unless visitation was denied or limited by the court, whether the order of preference for placement of the Indian child under s. 48.028(7)(b) was followed, and whether the services provided to the Indian child and his or her family were culturally responsive to their needs.

Revise based on definition of active efforts

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(2d) REASONABLE EFFORTS NOT REQUIRED. (a) In this subsection:

1. "Aggravated circumstances" include abandonment in violation of s. 948.20 or in violation of the law of any other state or federal law if that violation would be a violation of s. 948.20 if committed in this state, torture, chronic abuse and sexual abuse.

2. "Sexual abuse" means a violation of s. 940.225, 944.30, 948.02, 948.025, 948.05, 948.055, 948.06, 948.085, 948.09 or 948.10 or a violation of the law of any other state or federal law if that violation would be a violation of s. 940.225, 944.30, 948.02, 948.025, 948.05, 948.055, 948.06, 948.085, 948.09 or 948.10 if committed in this state.

(b) Notwithstanding sub. (2) (b) 6., the court is not required to include in a dispositional order a finding as to whether the county department, the department, in a county having a population of 500,000 or more, or the agency primarily responsible for providing services under a court order has made reasonable efforts with respect to a parent of a child to prevent the removal of the child from the home, while assuring that the child's health and safety are the paramount concerns, or a finding as to whether the county department, department, or agency has made reasonable efforts with respect to a parent of a child to achieve the permanency plan goal of returning the child safely to his or her home, if the court finds any of the following:

1. That the parent has subjected the child to aggravated circumstances, as evidenced by a final judgment of conviction.

2. That the parent has committed, has aided or abetted the commission of, or has solicited, conspired, or attempted to commit, a violation of s. 940.01, 940.02, 940.03, or 940.05 or a violation of the law of any other state or federal law, if that violation would be a violation of s. 940.01, 940.02, 940.03, or 940.05 if committed in this state, as evidenced by a final judgment of conviction, and that the victim of that violation is a child of the parent.

3. That the parent has committed a violation of s. 940.19 (3), 1999 stats., a violation of s. 940.19 (2), (4), or (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (3) (a), or 948.085 or a violation of the law of any other state or federal law, if that violation would be a violation of s. 940.19 (2), (4), or (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (3) (a), or 948.085 if committed in this state, as evidenced by a final judgment of conviction, and that the violation resulted in great bodily harm, as defined in s. 939.22 (14), or in substantial bodily harm, as defined in s. 939.22 (38), to the child or another child of the parent.

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specifies a shorter period of time or the judge terminates the order sooner. An order under this section or s. 48.357 or 48.365 relating to an unborn child in need of protection or services that is made before the unborn child is born shall terminate at the end of one year after its entry unless the judge specifies a shorter period of time or the judge terminates the order sooner.

(5) **EFFECT OF COURT ORDER.** Any party, person or agency who provides services for the child or the expectant mother under this section shall be bound by the court order.

(7) **ORDERS APPLICABLE TO PARENTS, GUARDIANS, LEGAL CUSTODIANS, EXPECTANT MOTHERS AND OTHER ADULTS.** In addition to any dispositional order entered under s. 48.345 or 48.347, the court may enter an order applicable to the parent, guardian or legal custodian of a child, to a family member of an adult expectant mother or to another adult as provided under s. 48.45.

History: 1977 c. 354; 1979 c. 295, 300, 359; 1983 a. 27, 102, 399, 538; 1985 a. 29; 1987 a. 27, 339, 383; 1989 a. 31, 41, 86, 107, 121, 359; 1991 a. 39; 1993 a. 98, 334, 377, 385, 395, 446, 481, 491; 1995 a. 27, 77, 201, 225, 275; 1997 a. 27, 205, 237, 292; 1999 a. 9, 103, 149, 186; 2001 a. 2, 16, 109; 2005 a. 277.

Mandatory time limits affect a trial court's competency to act, but an objection must be raised before the trial court to avoid waiver. In Interest of L.M.C. 146 Wis. 2d 377, 430 N.W.2d 352 (Ct. App. 1988).

A circuit court may order parents to pay toward a child's support when a CHIPS child is placed in residential treatment, but the court may not assess any of the facility's education-related costs against the parents. Calumet County Department of Human Services v. Randall H. 2002 WI 126, 257 Wis. 2d 57, 653 N.W.2d 503, 01-1272.

48.356 Duty of court to warn. (1) Whenever the court orders a child to be placed outside his or her home, orders an expectant mother of an unborn child to be placed outside of her home or denies a parent visitation because the child or unborn child has been adjudged to be in need of protection or services under s. 48.345, 48.347, 48.357, 48.363 or 48.365, the court shall orally inform the parent or parents who appear in court or the expectant mother who appears in court of any grounds for termination of parental rights under s. 48.415 which may be applicable and of the conditions necessary for the child or expectant mother to be returned to the home or for the parent to be granted visitation.

(2) In addition to the notice required under sub. (1), any written order which places a child or an expectant mother outside the home or denies visitation under sub. (1) shall notify the parent or parents or expectant mother of the information specified under sub. (1).

History: 1979 c. 330; 1983 a. 399; 1989 a. 86; 1991 a. 39; 1995 a. 275; 1997 a. 292; 2003 a. 321.

Substantial compliance is not adequate to meet the sub. (2) notice provision; oral, rather than written, notice is insufficient. In re D.F. 147 Wis. 2d 486, 433 N.W.2d 609 (Ct. App. 1988).

Dismissal of termination proceedings because only 2 of 6 dispositional orders contained statutory warnings was inappropriate. The warning is only required on one order. In Interest of K.K. 162 Wis. 2d 431, 469 N.W.2d 881 (Ct. App. 1991).

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To comply with sub. (2), the written order must contain the same information as the oral notice under sub. (1), that the notice contained more does not mean sub. (2) was violated. In Interest of Jamie L. 172 Wis. 2d 218, 493 N.W.2d 56 (1992).

When termination is under s. 48.415 (8) for murdering the other parent, no notice under sub. (1) of the conditions necessary for the return of the child is necessary as the grounds for termination, the murder, cannot be remedied. Winnebago County DSS v. Darrell A. 194 Wis. 2d 628, 534 N.W.2d 907 (Ct. App. 1995).

It was a denial of due process to terminate parental rights on grounds substantially different from those that the parent was warned of under s. 48.356. State v. Patricia A.P. 195 Wis. 2d 855, 537 N.W.2d 47 (Ct. App. 1995), 95-1164.

The written warning under sub. (2) applies only to orders removing children from placement with their parents or denying parental visitation. Temporary physical custody orders or extensions of those orders may not lead to a loss of parental rights and do not require the written warning. Marinette County v. Tammy C. 219 Wis. 2d 206, 579 N.W.2d 635 (1998), 97-2946.

The last order placing the child outside the home issued before the filing of the petition to terminate parental rights, rather than each order, must contain the written notice prescribed by s. 48.356 (2). Waukesha County v. Steven H. 2000 WI 28, 233 Wis. 2d 344, 607 N.W.2d 607, 98-3033. But see also *Waushara County v. Lisa K.* 2000 WI App 145, 237 Wis. 2d 830, 615 N.W.2d 204, 00-0590, in which it was held that there was adequate notice when an extension order, which was the final order issued before a TPR petition was filed, did not contain the written notice, but the earlier orders that were extended had.

48.357 Change in placement. (1) (a) The person or agency primarily responsible for implementing the dispositional order, the district attorney, or the corporation counsel may request a change in the placement of the child or expectant mother, whether or not the change requested is authorized in the dispositional order, as provided in par. (am) or (c), whichever is applicable.

(am) 1. If the proposed change in placement involves any change in placement other than a change in placement specified in par. (c), the person or agency primarily responsible for implementing the dispositional order, the district attorney, or the corporation counsel shall cause written notice of the proposed change in placement to be sent to the child, the parent, guardian, and legal custodian of the child, any foster parent, treatment foster parent, or other physical custodian described in s. 48.62 (2) of the child, the child's court-appointed special advocate, and, if the child is the expectant mother of an unborn child under s. 48.133, the unborn child by the unborn child's guardian ad litem. If the expectant mother is an adult, written notice shall be sent to the adult expectant mother and the unborn child by the unborn child's guardian ad litem. 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.

1g. If the child is an Indian child, a notice under subd. 1 shall also contain specific information showing that continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child under s. 48.028(4)(d)1. specific information showing that

the agency primarily responsible for implementing the dispositional order has made active efforts under s. 48.028(4)(d)2. to prevent the breakup of the Indian family and that those efforts have proved unsuccessful, a statement as to whether the new placement is in compliance with the order of placement preference under s. 48.028(7)(b) and, if the new placement is not in compliance with that order, specific information showing good cause for departing from that order.

1m. If the child is an Indian child, notice under subd. 1. to the Indian child's parent shall be provided in the manner specified in s. 48.028(4)(a). In like manner, the court shall also provide notice of the hearing, together with a copy of the request for the change in placement, to the Indian child's Indian custodian and tribe. No hearing on the request may be held until at least 10 days after receipt of the notice by the Indian child's parent, Indian custodian, and tribe. On request of the Indian child's parent, Indian custodian, or tribe, the court shall grant a continuance of up to 20 additional days to enable the requester to prepare for the hearing.

Should subd. 2. refer to subd. 1. 1g, and 1m. so tribe can object to the change in placement? Should tribe also be able to sign the waiver so placement can occur before 10 days?

yes
yes

2. Any person receiving the notice under subd. 1. or notice of a specific placement under s. 48.355 (2) (b) 2., other than a court-appointed special advocate, may obtain a hearing on the matter by filing an objection with the court within 10 days after receipt of the notice. Placements may not be changed until 10 days after that notice is sent to the court unless the parent, guardian, legal custodian, or Indian custodian[,] and the child, if 12 years of age or over, or the child expectant mother, if 12 years of age or over, her parent, guardian, legal custodian, or Indian custodian[,] and the unborn child by the unborn child's guardian ad litem, or the adult expectant mother and the unborn child by the unborn child's guardian ad litem, sign written waivers of objection, except that changes in placement that were authorized in the dispositional order may be made immediately if notice is given as required under subd. 1. In addition, a hearing is not required for placement changes authorized in the dispositional order except when an objection filed by a person who received notice alleges that new information is available that affects the advisability of the court's dispositional order.

3. If the court changes the child's placement from a placement outside the home to another placement outside the home, the change in placement order shall contain one of the statements under sub. (2v) (a) 2. If the court changes the placement of an Indian child from a placement outside the home

to another placement outside the home, the change in placement order shall, in addition, comply with the order of placement preference under s. 48.028(7)(b) and contain the findings under sub. (2v)(a)4.

(c) 1. If the 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 district attorney, or the corporation counsel shall submit a request for the change in placement to the court. The request 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. The request shall also contain specific information showing that continued placement of the child in his or her home would be contrary to the welfare of the child and, unless any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies, 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.

1m. If the child is an Indian child, a request under subd. 1. shall also contain specific information showing that continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child under s. 48.028(4)(d)1., specific information showing that the agency primarily responsible for implementing the dispositional order has made active efforts under s. 48.028(4)(d)2. to prevent the breakup of the Indian family and that those efforts have proved unsuccessful, a statement as to whether the new placement is in compliance with the order of placement preference under s. 48.028(7)(b) and, if the new placement is not in compliance with that order, specific information showing good cause for departing from that order.

2. The court shall hold a hearing prior to ordering any change in placement requested under subd. 1. Not less than 3 days prior to the hearing, the court shall provide notice of the hearing, together with a copy of the request for the change in placement, to the child, the parent, guardian, and legal custodian of the child, the child's court-appointed special advocate, and all parties that are bound by the dispositional order. If all parties consent, the court may proceed immediately with the hearing.

2m. If the child is an Indian child, notice under subd. 2. to the Indian child's parent shall be provided in the manner specified in s. 48.028(4)(a). In like manner, the court shall also provide notice of the hearing, together with a copy of the request for the change in placement, to the Indian child's Indian

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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.

(dr) Medical information relating to the child, including all of the following:

1. The names and addresses of the child's physician, dentist, and any other health care provider that is or was previously providing health care services to the child.

2. The child's immunization record, including the name and date of each immunization administered to the child.

3. 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.

4. The name, purpose, and dosage of any medication that is being administered to the child and the name of any medication that causes the child to suffer an allergic or other negative reaction.

(e) A plan for ensuring the safety and appropriateness of the placement and a description of the services provided to meet the needs of the child and family, including a discussion of services that have been investigated and considered and are not available or likely to become available within a reasonable time to meet the needs of the child or, if available, why such services are not safe or appropriate.

(f) A description of the services that will be provided to the child, the child's family, and the child's foster parent, the child's treatment foster parent, the operator of the facility where the child is living, or the relative with whom the child is living to carry out the dispositional order, including services planned to accomplish all of the following:

1. Ensure proper care and treatment of the child and promote safety and stability in the placement.

2. Meet the child's physical, emotional, social, educational and vocational needs.

3. Improve the conditions of the parents' home to facilitate the safe return of the child to his or her home, or, if appropriate, obtain an alternative permanent placement for the child.

(fg) The goal of the permanency plan or, if the agency is making concurrent reasonable efforts under s. 48.355 (2b), the goals of the permanency plan. If a goal of the permanency plan is any goal other than return of the child to his or her home, the permanency plan shall include the rationale for deciding on that goal. If a goal of the permanency plan is an alternative permanent placement under subd. 5., the permanency plan shall document a compelling reason why it would not be in the best interest of the child to pursue a goal specified in subds. 1. to 4.

The agency shall determine one or more of the following goals to be the goal or goals of a child's permanency plan:

1. Return of the child to the child's home.
2. Placement of the child for adoption.
3. Placement of the child with a guardian.
4. Permanent placement of the child with a fit and willing relative.

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

(fm) 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.

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

(h) If the child is 15 years of age or over, a description of 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. The description shall include all of the following:

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

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

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

4. 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.

5. 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.

(i) If the child is an Indian child, all of the following:

1. The name, address, and telephone number of the Indian child's Indian custodian and tribe.

2. A description of the remedial services and rehabilitation programs offered under s. 48.028(4)(d)2. in an effort to prevent the breakup of the Indian family.

3. A statement as to whether the Indian child's placement is in compliance with the order of placement preference specified

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~~in s. 48.028(7)(b) and, if the placement is not in compliance with that order, an explanation for the departure from that order.~~

~~ICWA requires the court to find good cause for not following placement preferences.~~

~~Can the court make a finding that active efforts are not required?~~

~~(4m) PERMANENCY PLAN DETERMINATION HEARING. (a) If in a proceeding under s. 48.21, 48.32, 48.355, 48.357, or 48.365 the court finds that any of the circumstances under s. 48.355(2)(b) 1 to 5, applies with respect to a parent, the court shall 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 under this paragraph, the agency responsible for preparing the permanency plan shall file the permanency plan with the court not less than 5 days before the date of the hearing.~~

~~(b) At least 10 days before the date of the hearing the court shall notify the child, any parent, guardian, and legal custodian of the child, and any foster parent, treatment foster parent, or other physical custodian described in s. 48.62(2) of the child of the time, place, and purpose of the hearing.~~

~~(c) If the court knows or has reason to know that the child is an Indian child, notice under par. (b) to the Indian child's parent shall be provided in the manner specified in s. 48.028(4)(a). In like manner, the court shall also notify the Indian child's Indian custodian and tribe. No hearing may be held under par. (a) until at least 10 days after receipt of the notice by the Indian child's parent, Indian custodian, and tribe. On request of the Indian child's parent, Indian custodian, or tribe, the court shall grant a continuance of up to 20 additional days to enable the requester to prepare for the hearing.~~

~~(d) The court shall give a foster parent, treatment foster parent, or other physical custodian described in s. 48.62(2) who is notified of a hearing under par. (b) an opportunity to be heard at the hearing by permitting the foster parent, treatment foster parent, or other physical custodian to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issues to be determined at the hearing. The foster parent, treatment foster parent, or other physical custodian does not become a party to the proceeding on which the hearing is held solely on the basis of receiving that notice and having the opportunity to be heard.~~

~~(5) PLAN REVIEW. (a) Except as provided in s. 48.63 (5) (d), the court or a panel appointed under par. (ag) shall review the permanency plan in the manner provided in this subsection not later than 6 months after the date on which the child was~~

first removed from his or her home and every 6 months after a previous review under this subsection for as long as the child is placed outside the home, except that 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 and the reviews that are required to be conducted every 12 months after that review the court shall hold a hearing under sub. (5m) to review the permanency plan, which hearing may be instead of or in addition to the review under this subsection.

(ag) 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 persons who are not employed by the agency that prepared the permanency plan and who are not responsible for providing services to the child or the parents of the child whose permanency plan is the subject of the review.

(am) The court may appoint an independent agency to designate a panel to conduct a permanency plan review under par. (a). If the court in a county having a population of less than 500,000 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. If the court in a county having a population of 500,000 or more appoints an independent agency under this paragraph, the department shall authorize and contract for the purchase of services from the independent agency.

(b) The court or the agency shall notify the child, if he or she is 12 years of age or older, the child's parent, guardian, and legal custodian, the child's foster parent, the child's treatment foster parent, the operator of the facility in which the child is living, or the relative with whom the child is living, and, if the child is an Indian child, the Indian child's Indian custodian and tribe of the date, time, and place of the review, of the issues to be determined as part of the review, and of the fact that they may have an opportunity to be heard at the review by submitting written comments not less than 10 working days before the review or by participating at the review. The court or agency shall notify the person representing the interests of the public, the child's counsel, the child's guardian ad litem, and the child's court-appointed special advocate 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 notices under this paragraph shall be provided in writing not less than 30 days before the review and copies of the notices shall be filed in the child's case record.

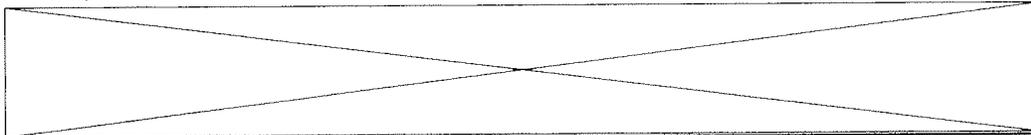
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~~(bm) If the child is an Indian child, notice under par. (b) to the Indian child's parent, Indian custodian, and tribe shall be provided in the manner specified in s. 48.028(4)(a). No review may be held until at least 10 days after receipt of the notice by the Indian child's parent, Indian custodian, and tribe. On request of the Indian child's parent, Indian custodian, or tribe, the court shall grant a continuance of up to 20 additional days to enable the requester to prepare for the review.~~

(c) The court or the panel shall 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 a 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.
6. If the child has been placed outside of his or her home, as described in s. 48.365 (1), for 15 of the most recent 22 months, not including any period during which the child was a runaway from the out-of-home placement or the first 6 months of any period during which the child was returned to his or her home for a trial home visit, 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. Having a petition for the involuntary termination of parental rights filed on behalf of the child.
 - c. Being placed for adoption.
 - cg. Being placed with a guardian.
 - cm. Being placed in the home of a fit and willing relative of the child.
 - d. Being placed in some other alternative permanent placement, including sustaining care, independent living, or long-term foster care.
7. Whether reasonable efforts were made by the agency to achieve the goal of the permanency plan, unless return of the child to the home is the goal of the permanency plan and any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies.
8. ~~If the child is an Indian child, whether active efforts under s. 48.028(4)(d)2. were made by the agency to prevent the~~

~~breakup of the Indian family and whether those efforts have proved unsuccessful.~~

(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 child's parent, guardian, and legal custodian, the person representing the interests of the public, the child's counsel, the child's guardian ad litem, the child's court-appointed special advocate, and, if the child is an Indian child, the Indian child's custodian and tribe~~ 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, the person representing the interests of the public, the child's counsel, the child's guardian ad litem, ~~the child's court-appointed special advocate, and, if the child is an Indian child, the Indian child's Indian custodian and tribe~~ may have access to 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.

(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, guardian, or legal custodian, the child's court-appointed special advocate, the child's foster parent, the child's treatment foster parent, or the operator of the facility where the child is living, and, if the child is an Indian child, the Indian child's Indian custodian and tribe.~~

(f) If the summary prepared under par. (e) indicates that the review panel made recommendations that conflict with the court order or that provide for additional services not specified in the court order, the agency primarily responsible for providing services to the child shall request a revision of the court order.

(5m) PERMANENCY PLAN HEARING. (a) The court shall hold a hearing to review the permanency plan and to make the determinations specified in sub. (5) (c) no later than 12 months after the date on which the child was first removed from the home and every 12 months after a previous hearing under this subsection for as long as the child is placed outside the home.

(b) Not less than 30 days before the date of the hearing, the court shall notify the child; the child's parent, guardian, and legal custodian; the child's foster parent or treatment foster parent, the operator of the facility in which the child is living, or the relative with whom the child is living; the child's counsel, the child's guardian ad litem, and the child's court-appointed special advocate; the agency that prepared the permanency plan; ~~the person representing the interests of the public, and, if the~~

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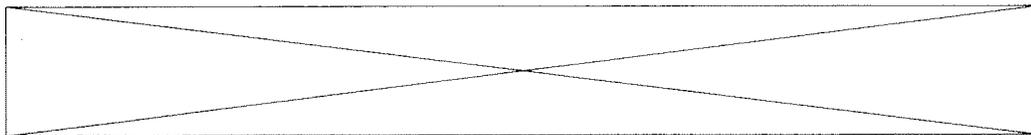
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child is an Indian child, the Indian child's Indian custodian and tribe of the date, time, and place of the hearing.

(bm) If the child is an Indian child, notice under par. (b) to the Indian child's parent, Indian custodian, and tribe shall be provided in the manner specified in s. 48.028(4)(a). No hearing under par. (a) may be held until at least 10 days after receipt of the notice by the Indian child's parent, Indian custodian, and tribe. On request of the Indian child's parent, Indian custodian, or tribe, the court shall grant a continuance of up to 20 additional days to enable the requester to prepare for the hearing.

(c) Any person who is provided notice of the hearing may have an opportunity to be heard at the hearing by submitting written comments relevant to the determinations specified in sub. (5) (c) not less than 10 working days before the date of the hearing or by participating at the hearing. A foster parent, treatment foster parent, operator of a facility in which a child is living, or relative with whom a child is living who receives notice of a hearing under par. (b) and an opportunity to be heard under this paragraph does not become a party to the proceeding on which the hearing is held solely on the basis of receiving that notice and opportunity to be heard.

(d) At least 5 days before the date of the hearing the agency that prepared the permanency plan shall provide a copy of the permanency plan and any written comments submitted under par. (c) to the court, to the child's parent, guardian, and legal custodian, to the person representing the interests of the public, to the child's counsel or guardian ad litem, to the child's court-appointed special advocate, and, if the child is an Indian child, to the Indian child's Indian custodian and tribe. Notwithstanding s. 48.78 (2) (a), the person representing the interests of the public, the child's counsel or guardian ad litem, the child's court-appointed special advocate, and, if the child is an Indian child, the Indian child's Indian custodian and tribe may have access to 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.

(e) After the hearing, the court shall make written findings of fact and conclusions of law relating to the determinations under sub. (5) (c) and shall provide a copy of those findings of fact and conclusions of law to the child; the child's parent, guardian, and legal custodian; the child's foster parent or treatment foster parent, the operator of the facility in which 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; the person representing the interests of the public; and, if the child is an Indian child, the Indian child's Indian custodian and tribe. The court shall make the findings specified in sub. (5) (c) 7. on a case-by-case basis

based on circumstances specific to the child and shall document or reference the specific information on which those findings are based in the findings of fact and conclusions of law prepared under this paragraph. Findings of fact and conclusions of law that merely reference sub. (5) (c) 7. without documenting or referencing that specific information in the findings of fact and conclusions of law or amended findings of fact and conclusions of law that retroactively correct earlier findings of fact and conclusions of law that do not comply with this paragraph are not sufficient to comply with this paragraph.

(f) If the findings of fact and conclusions of law under par. (e) conflict with the child's dispositional order or provide for any additional services not specified in the dispositional order, the court shall revise the dispositional order under s. 48.363 or order a change in placement under s. 48.357, as appropriate.

(6) RULES. The department shall promulgate rules establishing the following:

- (a) Procedures for conducting permanency plan reviews.
- (b) Requirements for training review panels.
- (c) Standards for reasonable efforts to prevent placement of children outside of their homes, while assuring that their health and safety are the paramount concerns, and to make it possible for children to return safely to their homes if they have been placed outside of their homes.
- (cm) Standards for active efforts under s. 48.028(4)(d)2. to prevent the breakup of an Indian child's family.

~~We need broader rule-making authority.~~

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(d) The format for permanency plans and review panel reports.

(e) Standards and guidelines for decisions regarding the placement of children.

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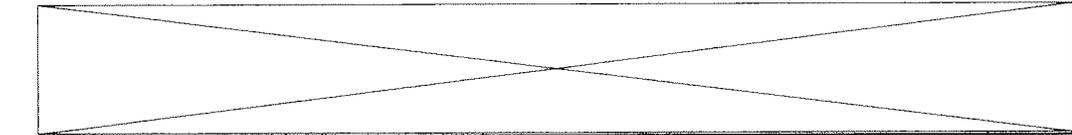
History: 1983 a. 399; 1985 a. 70 ss. 1, 10; 1985 a. 176; 1985 a. 292 s. 3; 1985 a. 332; 1987 a. 383; 1989 a. 31, 86, 107; 1993 a. 377, 385, 395, 446, 491; 1995 a. 27 ss. 2474 to 2478, 9126 (19); 1995 a. 77, 143, 275; 1997 a. 27, 35, 104, 237; 1999 a. 149; 2001 a. 2, 59, 69, 109; 2005 a. 344, 448.

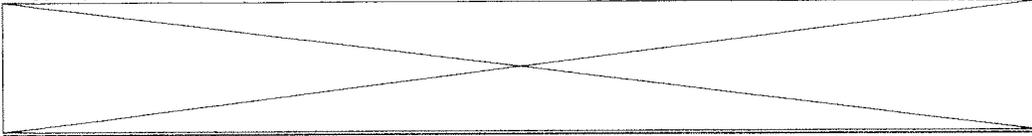
NOTE: 1993 Wis. Act 395, which affects subs. (5) and (5m), contains extensive explanatory notes. The time limits in sub. (3) are not a prerequisite to trial court jurisdiction. Interest of Scott Y. 175 Wis. 2d 222, 499 N.W.2d 219 (Ct. App. 1993).

48.396 Records. (1) Law enforcement officers' records of children shall be kept separate from records of adults. Law enforcement officers' records of the adult expectant mothers of unborn children shall be kept separate from records of other adults. Law enforcement officers' records of children and the adult expectant mothers of unborn children shall not be open to inspection or their contents disclosed except under sub. (1b), (1d), (5), or (6) or s. 48.293 or by order of the court. This subsection does not apply to the representatives of newspapers

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2. That the parent had good cause for having failed to communicate with the child throughout the time period specified in par. (a) 2. or 3., whichever is applicable.

3. If the parent proves good cause under subd. 2., including good cause based on evidence that the child's age or condition would have rendered any communication with the child meaningless, that one of the following occurred:

a. The parent communicated about the child with the person or persons who had physical custody of the child during the time period specified in par. (a) 2. or 3., whichever is applicable, or, if par. (a) 2. is applicable, with the agency responsible for the care of the child during the time period specified in par. (a) 2.

b. The parent had good cause for having failed to communicate about the child with the person or persons who had physical custody of the child or the agency responsible for the care of the child throughout the time period specified in par. (a) 2. or 3., whichever is applicable.

(1m) RELINQUISHMENT. Relinquishment, which shall be established by proving that a court of competent jurisdiction has found under s. 48.13 (2m) that the parent has relinquished custody of the child under s. 48.195 (1) when the child was 72 hours old or younger.

(2) CONTINUING NEED OF PROTECTION OR SERVICES. Continuing need of protection or services, which shall be established by proving any of the following:

(a) 1. That the child has been adjudged to be a child or an unborn child in need of protection or services and placed, or continued in a placement, outside his or her home pursuant to one or more court orders under s. 48.345, 48.347, 48.357, 48.363, 48.365, 938.345, 938.357, 938.363 or 938.365 containing the notice required by s. 48.356 (2) or 938.356 (2).

2. a. That the agency responsible for the care of the child and the family or of the unborn child and expectant mother has made a reasonable effort to provide the services ordered by the court. In this subdivision, "reasonable effort" means an earnest and conscientious effort to take good faith steps to provide the services ordered by the court that takes into consideration the characteristics of the parent or child or of the expectant mother or child, the level of cooperation of the parent or expectant mother, and other relevant circumstances of the case.

Move to s. 48.028

Iowa language. Especially showing that active effort goes beyond reasonable effort. S. 232 b.5(19). But tribe shouldn't be made the agency responsible for providing the services.

b. In the case of an Indian child, that the agency responsible for the care of the child and the family or of the

unborn child and expectant mother has made an active effort to provide the services ordered by the court. In this subdivision, "active effort" means reasonable effort, as defined in subd. 2.a. that also takes into consideration the prevailing social and cultural characteristics and way of life of the Indian child's tribe and that involves and uses the available resources of that tribe, Indian social services agencies, and individual Indian caregivers.

3. That the child has been outside the home for a cumulative total period of 6 months or longer pursuant to such orders not including time spent outside the home as an unborn child; and that the parent has failed to meet the conditions established for the safe return of the child to the home and there is a substantial likelihood that the parent will not meet these conditions within the 9-month period following the fact-finding hearing under s. 48.424.

(am) 1. That on 3 or more occasions the child has been adjudicated to be in need of protection or services under s. 48.13 (3), (3m), (10) or (10m) and, in connection with each of those adjudications, has been placed outside his or her home pursuant to a court order under s. 48.345 containing the notice required by s. 48.356 (2).

2. That the conditions that led to the child's placement outside his or her home under each order specified in subd. 1. were caused by the parent.

(3) CONTINUING PARENTAL DISABILITY. Continuing parental disability, which shall be established by proving that:

(a) The parent is presently, and for a cumulative total period of at least 2 years within the 5 years immediately prior to the filing of the petition has been, an inpatient at one or more hospitals as defined in s. 50.33 (2) (a), (b) or (c), licensed treatment facilities as defined in s. 51.01 (2) or state treatment facilities as defined in s. 51.01 (15) on account of mental illness as defined in s. 51.01 (13) (a) or (b) or developmental disability as defined in s. 55.01 (2) or (5);

(b) The condition of the parent is likely to continue indefinitely; and

(c) The child is not being provided with adequate care by a relative who has legal custody of the child, or by a parent or a guardian.

(4) CONTINUING DENIAL OF PERIODS OF PHYSICAL PLACEMENT OR VISITATION. Continuing denial of periods of physical placement or visitation, which shall be established by proving all of the following:

(a) That the parent has been denied periods of physical placement by court order in an action affecting the family or has been denied visitation under an order under s. 48.345, 48.363, 48.365, 938.345, 938.363 or 938.365 containing the notice required by s. 48.356 (2) or 938.356 (2).

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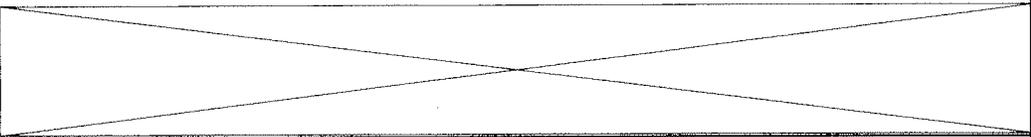
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violation of s. 940.19 (2), (4), or (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (3) (a), or 948.085 or a violation of the law of any other state or federal law, if that violation would be a violation of s. 940.19 (2), (4), or (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (3) (a), or 948.085 if committed in this state, and that the violation resulted in great bodily harm, as defined in s. 939.22 (14), or in substantial bodily harm, as defined in s. 939.22 (38), to the child or another child of the parent. If the circumstances specified in this paragraph apply, the petition shall be filed or joined in within 60 days after the date on which the court assigned to exercise jurisdiction under this chapter determines, based on a finding that a circumstance specified in this paragraph applies, that reasonable efforts to make it possible for the child to return safely to his or her home are not required.

(2) FILING OR JOINING IN PETITION; WHEN NOT REQUIRED. Notwithstanding that any of the circumstances specified in sub. (1) (a), (b), (c), or (d) may apply, an agency or the district attorney, corporation counsel or other appropriate official designated under s. 48.09 need not file a petition under s. 48.42 (1) to terminate the parental rights of a parent or the parents of a child, or, if a petition under s. 48.42 (1) to terminate those parental rights has already been filed, the agency, district attorney, corporation counsel or other appropriate official need not join in the petition, if any of the following circumstances apply:

Does this apply to Indian children? See NICWA material.

- (a) The child is being cared for by a fit and willing relative of the child.
- (b) The child's permanency plan indicates and provides documentation that termination of parental rights to the child is not in the best interests of the child.

Distinction for best interest of an Indian child? See Iowa material.

(c) The agency primarily responsible for providing services to the child and the family under a court order, if required under s. 48.355 (2) (b) 6. to make reasonable efforts to make it possible for the child to return safely to his or her home, has not provided to the family of the child, consistent with the time period in the child's permanency plan, the services necessary for the safe return of the child to his or her home.

(cm) In the case of an Indian child, the agency primarily responsible for providing services to the Indian child and the family under a court order, if required under s. 48.355(2)(b)6v. to make active efforts under s. 48.028(4)(d)2. to prevent the

breakup of the Indian family, has not provided to the Indian child's family, consistent with the time period in the child's permanency plan, the services necessary to prevent the breakup of the Indian family.

(d) Grounds for an involuntary termination of parental rights under s. 48.415 do not exist.

(3) CONCURRENT ADOPTION EFFORTS REQUIRED. If a petition is filed or joined in as required under sub. (1), the agency primarily responsible for providing services to the child under a court order shall, during the pendency of the proceeding on the petition, work with the agency identified in the report under s. 48.425 (1) (f) that would be responsible for accomplishing the adoption of the child in processing and approving a qualified family for the adoption of the child.

(4) NOTICE TO DEPARTMENT. If a petition is filed or joined in as required under sub. (1), the person who filed or joined in the petition shall notify the department of that filing or joinder.

History: 1997 a. 237; 2001 a. 109; 2005 a. 277.

48.42 Procedure. (1) PETITION. A proceeding for the termination of parental rights shall be initiated by petition which may be filed by the child's parent, an agency or a person authorized to file a petition under s. 48.25 or 48.835. The petition shall be entitled "In the interest of (child's name), a person under the age of 18" and shall set forth with specificity:

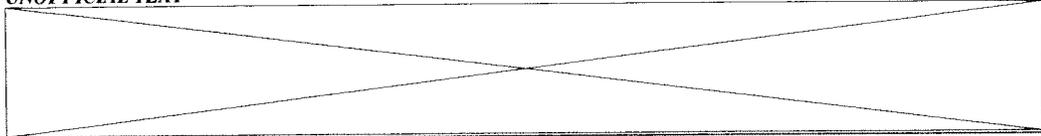
- (a) The name, birth date or anticipated birth date, and address of the child.
- (b) The names and addresses of the child's parent or parents, guardian and legal custodian.
- (c) One of the following:
 1. A statement that consent will be given to termination of parental rights as provided in s. 48.41.
 2. A statement of the grounds for involuntary termination of parental rights under s. 48.415 and a statement of the facts and circumstances which the petitioner alleges establish these grounds.
- (d) A statement of whether the child may be subject to the federal Indian Child Welfare Act, 25 USC 1911 to 1963, and if the child may be subject to that act, the names of the child's Indian custodian, if any, and tribe, if known.

(e) If the child is an Indian child, reliable and credible information showing that continued custody of the child by the child's parent or Indian custodian is likely to result in serious emotional or physical damage to the child under s. 48.028(4)(e)1 and reliable and credible information showing that the agency has made active efforts under s. 48.028(4)(e)2. to prevent the breakup of the Indian family and that those efforts have proved unsuccessful.

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Indian custodian, and tribe under s. 48.42(2g)(ag) and the hearing may not be held until at least 10 days after receipt of notice under s. 48.42(2g)(ag) by the Indian child's parent, Indian custodian, and tribe. On request of the Indian child's parent, Indian custodian, or tribe, the court shall grant a continuance of up to 20 additional days to enable the requester to prepare for the hearing. If all parties agree, the court may immediately commence hearing testimony concerning the issue of paternity. The court shall inform the person claiming to be the father of the child of any right to counsel under s. 48.23. The person claiming to be the father of the child must prove paternity by clear and convincing evidence. A person who establishes his paternity of the child under this section may further participate in the termination of parental rights proceeding only if the person meets the conditions specified in sub. (2) or meets a condition specified in s. 48.42 (2) [or] (b) or (bm).

NOTE: The bracketed language was inadvertently inserted by 2005 Wis. Act 293. Corrective legislation is pending.

(2) RIGHTS OF OUT-OF-STATE FATHERS. A person who may be the father of a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.60 [s. 767.803] and whose paternity has not been established may contest the petition, present evidence relevant to the issue of disposition, and make alternative dispositional recommendations if the person appears at the hearing, establishes paternity under sub. (1), and proves all of the following by a preponderance of the evidence:

NOTE: The correct cross-reference is shown in brackets. Corrective legislation is pending.

(a) That the person resides and has resided in another state where the mother of the child resided or was located at the time of or after the conception of the child.

(b) That the mother left that state without notifying or informing that person that she could be located in this state.

(c) That the person attempted to locate the mother through every reasonable means, but did not know or have reason to know that the mother was residing or located in this state.

(d) That the person has complied with the requirements of the state where the mother previously resided or was located to protect and preserve his paternal interests in matters affecting the child.

History: 1979 c. 330; 2005 a. 293.
Putative father's right to custody of his child. 1971 WLR 1262.

48.424 Fact-finding hearing. (1) The purpose of the fact-finding hearing is to determine in cases in which the petition was contested at the hearing on the petition under s. 48.422 whether grounds exist for termination of parental rights and, in contested cases in which the child is an Indian child, to determine whether grounds exist for termination of parental

rights and whether the allegations specified in s. 48.42(1)(e) are proved.

(2) The fact-finding hearing shall be conducted according to the procedure specified in s. 48.31 except as follows:

(a) The court may exclude the child from the hearing.

(b) The hearing shall be closed to the public.

(3) If the facts are determined by a jury, the jury may only decide whether any grounds for the termination of parental rights have been proved and, in the case of an Indian child, whether the allegations specified in s. 48.42(1)(e) have been proved. The court shall decide what disposition is in the best interest of the child.

(4) If grounds for the termination of parental rights are found by the court or jury, the court shall find the parent unfit. A finding of unfitness shall not preclude a dismissal of a petition under s. 48.427 (2). The court shall then proceed immediately to hear evidence and motions related to the dispositions enumerated in s. 48.427. Except as provided in s. 48.42(2g)(ag), the court may delay making the disposition and set a date for a dispositional hearing no later than 45 days after the fact-finding hearing if any of the following apply:

(a) All parties to the proceeding agree.

(b) The court has not yet received a report to the court on the history of the child as provided in s. 48.425 from an agency enumerated in s. 48.069 (1) or (2) and the court now directs the agency to prepare this report to be considered before the court makes the disposition on the petition.

(5) If the court delays making a permanent disposition under sub. (4), it may transfer temporary custody of the child to an agency for placement of the child until the dispositional hearing. Placement of an Indian child under this subsection shall comply with the order of placement preference under s. 48.028(7)(b) and (c).

History: 1979 c. 330; 1997 a. 383.

Although the best interests of the child standard does not apply to the fact-finding hearing, the guardian ad litem can represent the interests of the child to develop the facts as they relate to whether the grounds for termination exist. When a jury is the fact-finder, the guardian ad litem should be permitted to exercise peremptory challenges in jury selection. Interest of C.E.W. 124 Wis. 2d 47, 368 N.W.2d 47 (1985).

Despite jury findings that grounds for termination exist, the court may dismiss a termination petition if evidence does not support the jury's finding or if the evidence of unfitness is not so egregious as to warrant termination, whether the evidence supports termination is a matter of discretion. In Interest of K.D.J. 163 Wis. 2d 90, 470 N.W.2d 914 (1991).

The general time requirements of s. 48.315 (2) control extensions of the time limit under sub. (4). There are no provisions for waiver of time limits, and the only provisions for delays, continuances and extensions are under s. 48.315. State v. April O. 2000 WI App 70, 233 Wis. 2d 663, 607 N.W.2d 927, 99-2487.

48.425 Court report by an agency. (1) If the petition for the termination of parental rights is filed by an agency, or if

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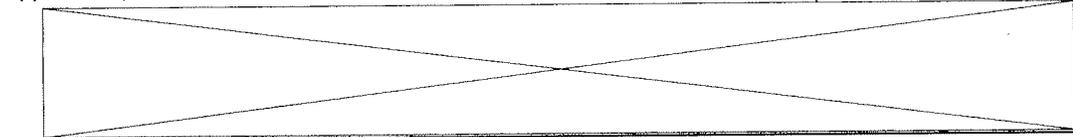
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the court orders a report under s. 48.424 (4) (b), the agency shall file a report with the court which shall include:

- (a) The social history of the child.
- (am) A medical record of the child on a form provided by the department which shall include:
 1. The medical and genetic history of the birth parents and any medical and genetic information furnished by the birth parents about the child's grandparents, aunts, uncles, brothers and sisters.
 2. A report of any medical examination which either birth parent had within one year before the date of the petition.
 3. A report describing the child's prenatal care and medical condition at birth.
 4. The medical and genetic history of the child and any other relevant medical and genetic information.
- (b) A statement of the facts supporting the need for termination.

(c) If the child has been previously adjudicated to be in need of protection and services, a statement of the steps the agency or person responsible for provision of services has taken to remedy the conditions responsible for court intervention and the parent's response to and cooperation with these services. If the child has been removed from the home, the report should also include a statement of the reasons why the child cannot be returned safely to the family, and the steps the person or agency has taken to effect this return.

(cm) If the child is an Indian child, specific information showing that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child under s. 48.028(4)(e)1. and, if the Indian child has previously been adjudged to be in need of protection or services, specific information showing that the agency or person responsible for providing services to the Indian child and his or her family has made active efforts under s. 48.028(4)(e)2. to prevent the breakup of the Indian family and that those efforts have proved unsuccessful.

- (d) A statement of other appropriate services, if any, which might allow the child to return safely to the home of the parent.
- (e) A statement applying the standards and factors enumerated in s. 48.426 (2) and (3) to the case before the court.
- (f) If the report recommends that the parental rights of both of the child's parents or the child's only living or known parent are to be terminated, the report shall contain a statement of the likelihood that the child will be adopted. This statement shall be prepared by an agency designated in s. 48.427 (3m) (a) 1. to 4. or (am) and include a presentation of the factors that might prevent adoption, those that would facilitate adoption, and the agency that would be responsible for accomplishing the adoption.

(g) If an agency designated under s. 48.427 (3m) (a) 1. to 4. or (am) determines that it is unlikely that the child will be adopted, or if adoption would not be in the best interests of the child, the report shall include a plan for placing the child in a permanent family setting. The plan shall include a recommendation as to the agency to be named guardian of the child, a recommendation that the person appointed as the guardian of the child under s. 48.977 (2) continue to be the guardian of the child, or a recommendation that a guardian be appointed for the child under s. 48.977 (2).

(1m) The agency required under sub. (1) to file the report shall prepare the medical record within 60 days after the date of the petition for the termination of parental rights.

(2) The court may waive the report required under this section if consent is given under s. 48.41, but shall order the birth parent or parents to provide the department with the information specified under sub. (1) (am).

(3) The court may order a report as specified under this section to be prepared by an agency in those cases where the petition is filed by someone other than an agency.

(4) The court may accept a report as specified under this section from a Indian child's tribe's child welfare department.

History: 1979 c. 330; 1981 c. 81 s. 33; 1981 c. 359; 1983 a. 471; 1985 a. 176; 1995 a. 275; 1997 a. 237; 2005 a. 25, 232.

48.426 Standard and factors. (1) COURT CONSIDERATIONS. In making a decision about the appropriate disposition under s. 48.427, the court shall consider the standard and factors enumerated in this section and any report submitted by an agency under s. 48.425.

(2) STANDARD. The best interests of the child shall be the prevailing factor considered by the court in determining the disposition of all proceedings under this subchapter.

Above: Best interests of an Indian child per ICWA.

(3) FACTORS. In considering the best interests of the child under this section the court shall consider but not be limited to the following:

- (a) The likelihood of the child's adoption after termination.
- (b) The age and health of the child, both at the time of the disposition and, if applicable, at the time the child was removed from the home.
- (c) Whether the child has substantial relationships with the parent or other family members, and whether it would be harmful to the child to sever these relationships.
- (d) The wishes of the child.

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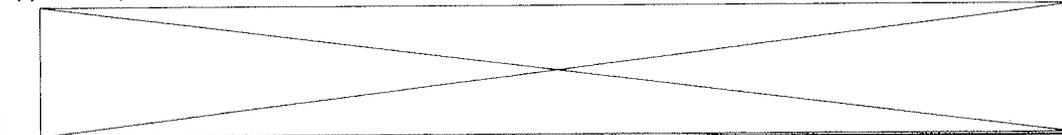
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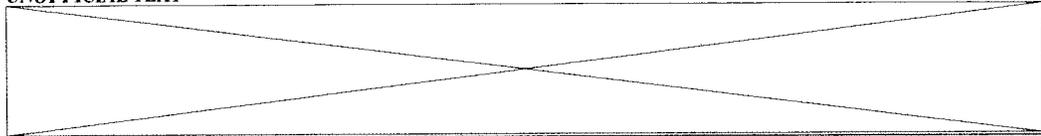
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(e) The duration of the separation of the parent from the child.

(f) Whether the child will be able to enter into a more stable and permanent family relationship as a result of the termination, taking into account the conditions of the child's current placement, the likelihood of future placements and the results of prior placements.

History: 1979 c. 330.

When grandparents opposing termination had a substantial relationship with the child and wished to participate in the proceedings, it was of interest to exclude their testimony in determining the child's best interest. In Interest of Brandon S.S. 179 Wis. 2d 114, 507 N.W.2d 94 (1993).

A termination of parental rights works a legal severance of the relationship between the child and the child's birth family. Sub. (3) (c) requires an examination of the harmful effect of the legal severance on the child's relationships with the birth family. The court may consider an adoptive parent's promise to continue the relationship, but it is not bound to hinge its determination on that legally unenforceable promise. State v. Margaret H. 2000 WI 42, 234 Wis. 2d 606, 610 N.W.2d 475, 99-1441.

48.427 Dispositions. (1) Any party may present evidence relevant to the issue of disposition, including expert testimony, and may make alternative dispositional recommendations to the court. After receiving any evidence related to the disposition, the court shall enter one of the dispositions specified under subs. (2) to (4) within 10 days.

(1m) In addition to any evidence presented under sub. (1), the court shall give the foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) of the child an opportunity to be heard at the dispositional hearing by permitting the foster parent, treatment foster parent or other physical custodian to make a written or oral statement during the dispositional hearing, or to submit a written statement prior to disposition, relevant to the issue of disposition. A foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) who receives notice of a hearing under s. 48.42 (2g) (a) and an opportunity to be heard under this subsection does not become a party to the proceeding on which the hearing is held solely on the basis of receiving that notice and opportunity to be heard.

(2) The court may dismiss the petition if it finds that the evidence does not warrant the termination of parental rights.

(3) The court may enter an order terminating the parental rights of one or both parents.

(3m) If the rights of both parents or of the only living parent are terminated under sub. (3) and if a guardian has not been appointed under s. 48.977, the court shall do one of the following:

(a) Transfer guardianship and custody of the child pending adoptive placement to:

1. A county department authorized to accept guardianship under s. 48.57 (1) (e).

3. A child welfare agency licensed under s. 48.61 (5) to accept guardianship.

4. The department.

5. A relative with whom the child resides, if the relative has filed a petition to adopt the child or if the relative is a kinship care relative.

6. An individual who has been appointed guardian of the child by a court of a foreign jurisdiction.

(am) Transfer guardianship and custody of the child to a county department authorized to accept guardianship under s. 48.57 (1) (hm) for placement of the child for adoption by the child's foster parent or treatment foster parent, if the county department has agreed to accept guardianship and custody of the child and the foster parent or treatment foster parent has agreed to adopt the child.

(b) Transfer guardianship of the child to one of the agencies specified under par. (a) 1. to 4. and custody of the child to an individual in whose home the child has resided for at least 12 consecutive months immediately prior to the termination of parental rights or to a relative.

(c) Appoint a guardian under s. 48.977 and transfer guardianship and custody of the child to the guardian.

(3p) If the rights of both parents or of the only living parent are terminated under sub. (3) and if a guardian has been appointed under s. 48.977, the court may enter one of the orders specified in sub. (3m) (a) or (b). If the court enters an order under this subsection, the court shall terminate the guardianship under s. 48.977.

(4) If the rights of one or both parents are terminated under sub. (3), the court may enter an order placing the child in sustaining care under s. 48.428.

~~(5)(cm) In placing an Indian child in a preadoptive placement following a transfer of guardianship and custody under sub. (3m) or (3p) or in placing an Indian child in sustaining care under sub. (4), the court or an agency specified in sub. (3m)(a) 1. to 4. or (am) shall comply with the order of placement preference under s. 48.028(7)(b) and (c).~~

Above: Do we want to cite any other sections of s. 48.028 relative to ICWA requirements re: guardianship?

(6) If an order is entered under sub. (3), the court shall:

(a) Inform each birth parent, as defined under s. 48.432 (1) (am), whose rights have been terminated of the provisions of ss. 48.432, 48.433 and 48.434.

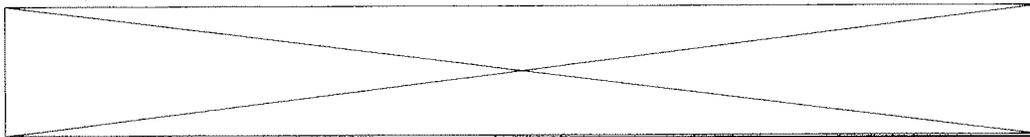
(b) Forward to the department:

1. The name and date of birth of the child whose birth parent's rights have been terminated.

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History: 1981 c. 81, 384; 1985 a. 176; 1989 a. 336; 1993 a. 446; 1995 a. 275; 2005 a. 293, 448; s. 13.93 (2) (c).

48.834 Placement of children with relatives or siblings for adoption by the department, county departments, and child welfare agencies. (1)

PLACEMENT WITH RELATIVES. Before placing a child for adoption under s. 48.833, the department, county department under s. 48.57 (1) (e) or (hm), or child welfare agency making the placement shall consider the availability of a placement for adoption with a relative of the child who is identified in the child's permanency plan under s. 48.38 or 938.38 or who is otherwise known by the department, county department, or child welfare agency.

(2) PLACEMENT WITH SIBLINGS. Before placing for adoption under s. 48.833 a child who has a sibling who has been adopted or has been placed for adoption, the department, county department under s. 48.57 (1) (e) or (hm), or child welfare agency making the placement shall consider the availability of a placement for adoption with an adoptive parent or proposed adoptive parent of a sibling, as defined in s. 48.38 (4) (br), of the child who is identified in the child's permanency plan under s. 48.38 or 938.38 or who is otherwise known by the department, county department, or child welfare agency.

History: 2005 a. 448.

48.835 Placement of children with relatives for adoption. (1) DEFINITION. In this section and s. 48.837, "custody" means physical custody of a child by the child's parent not in violation of a custody order issued by a court. "Custody" does not include physical custody of a child during a period of physical placement with a parent who does not have legal custody of the child.

(2) ADOPTIVE PLACEMENT. A parent having custody of a child may place the child for adoption in the home of a relative of the child without a court order.

(3) PETITION FOR TERMINATION OF PARENTAL RIGHTS REQUIRED; EXCEPTION. (a) If the child's parent has not filed a petition for the termination of parental rights under s. 48.42, the relative with whom the child is placed shall file a petition for the termination of the parents' rights at the same time the petition for adoption is filed, except as provided under par. (b).

(b) If the person filing the adoption petition is a stepparent with whom the child and the child's parent reside, the stepparent shall file only a petition to terminate the parental rights of the parent who does not have custody of the child.

(4) HEARINGS. Notwithstanding s. 48.90 (1) (a), the court may hold the hearing on the adoption petition immediately after entering the order to terminate parental rights under s. 48.427 (3).

History: 1981 c. 81; 1987 a. 355; 1997 a. 104.

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Concurrent TPR/adoption proceedings under s. 48.835 are subject to the requirement under s. 48.422 that the initial hearing be held within 30 days of filing the petition. In re J.L.F. 168 Wis. 2d 634, 484 N.W.2d 359 (Ct. App. 1992).

Grandparents excluded from petitioning under s. 48.90 (1) (a) had no standing under this section to object to the adoption of their grandchildren. Adoption of J.C.G. 177 Wis. 2d 424, 501 N.W.2d 908 (Ct. App. 1993).

Need to take a closer look at s. 48.837 re compliance with ICWA.

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48.837 Placement of children with nonrelatives for adoption. (1) IN-STATE ADOPTIVE PLACEMENT. When the proposed adoptive parent or parents of a child reside in this state and are not relatives of the child, a parent having custody of a child and the proposed adoptive parent or parents of a child may petition the court for placement of the child for adoption in the home of a person who is not a relative of the child if the home is licensed as a foster home or treatment foster home under s. 48.62.

(1m) OUT-OF-STATE ADOPTIVE PLACEMENT. Notwithstanding s. 48.988, when the proposed adoptive parent or parents of a child reside outside this state and are not relatives of the child, a parent having custody of a child and the proposed adoptive parent or parents of the child may petition the court for placement of the child for adoption in the home of the proposed adoptive parent or parents, if the home meets the criteria established by the laws of the other state for a redemptive placement of a child in the home of a nonrelative.

(2) PETITION FOR PLACEMENT. The petition for adoptive placement shall be verified and shall allege all of the following:

(a) The name, address and age of the child or the expected birth date of the child.

(b) The name, address and age of the birth parents and the proposed adoptive parents.

(c) The identity of any person or agency which solicited, negotiated or arranged the placement of the child with the proposed adoptive parents.

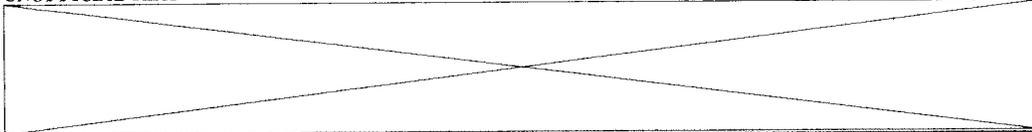
(d) That the proposed adoptive parents have completed the preadoption preparation required under s. 48.84 (1) or are not required to complete that preparation.

(e) If the child is an Indian child, the names and addresses of the Indian child's Indian custodian, if any, and tribe, if known.

NOTE: Par. (d) is created eff. 4-1-07 by 2005 Wis. Act 293.

(3) PETITION FOR TERMINATION OF PARENTAL RIGHTS REQUIRED. The petition under sub. (2) shall be filed with a petition under s. 48.42 for the voluntary consent to the termination of any existing rights of the petitioning parent or parents.

(4) RESPONSIBILITIES OF COURT. On the filing of the petitions under this section the court:



recommendation a report of an investigation as required under this paragraph.

2. If no agency has guardianship of the child and a relative other than a stepparent has filed the petition for adoption, the department, a county department under s. 48.57 (1) (e) or (hm) or a licensed child welfare agency.

4. If the child is a citizen of a foreign jurisdiction and is under the guardianship of an individual, the agency which conducted the home study required under federal law prior to the child's entry into the United States.

~~(am) In lieu of the court ordering an agency to complete an investigation under par. (a), the court may (shall?) accept the results of an investigation conducted by an Indian child's tribe.~~

(b) The agency making the investigation shall file its report with the court at least 10 days before the hearing unless the time is reduced for good cause shown by the petitioner. In reporting on an investigation of the proposed adoptive home of an Indian child, the agency shall comply with the order of placement preference under s. 48.028(7)(a). The report shall be part of the record of the proceedings.

(c) If a stepparent has filed a petition for adoption and no agency has guardianship of the child, the court shall order the department, in a county having a population of 500,000 or more, or a county department or, with the consent of the department in a county having a population of less than 500,000 or a licensed child welfare agency, order the department or the child welfare agency to conduct a screening, consisting of no more than one interview with the petitioner and a check of the petitioner's background through public records, including records maintained by the department or any county department under s. 48.981. The department, county department or child welfare agency that conducts the screening shall file a report of the screening with the court within 30 days. After reviewing the report, the court may proceed to act on the petition, may order the department in a county having a population of 500,000 or more or the county department to conduct an investigation as described under par. (a) (intro.) or may order the department in a county having a population of less than 500,000 or a licensed child welfare agency to make the investigation if the department or child welfare agency consents.

(3) If the report of the investigation is unfavorable or if it discloses a situation which, in the opinion of the court, raises a serious question as to the suitability of the proposed adoption, the court may appoint a guardian ad litem for the minor whose adoption is proposed. The guardian ad litem may have witnesses subpoenaed and present proof at the hearing.

History: 1975 c. 39, 199, 307, 1977 c. 271; 1981 c. 81, 384; 1983 a. 190; 1985 a. 176; 1997 a. 27.

48.89 Recommendation of the department. (1) The recommendation of the department is required for the adoption of a child if the child is not under the guardianship of a county department under s. 48.57 (1) (e) or (hm) or a child welfare agency under s. 48.61 (5). In making a recommendation under this subsection with respect to an Indian child, the department shall comply with the order of placement preference under s. 48.028(7)(a).

(2) The department shall make its recommendation to the court at least 10 days before the hearing unless the time is extended by the court. The recommendation shall be part of the record of the proceedings.

(3) The recommendation of the department shall not be required if the recommendation of the department, a licensed child welfare agency or a county department under s. 48.57 (1) (e) or (hm) is required by s. 48.841, if a report of an investigation by the department, a county department under s. 48.57 (1) (e) or (hm) or a licensed child welfare agency is required by s. 48.88 (2) (a) 2. or if one of the petitioners is a relative of the child.

History: 1973 c. 263; 1977 c. 271; 1981 c. 81; 1983 a. 447; 1985 a. 176; 1995 a. 443.

48.90 Filing of adoption petition; preadoption residence. (1) A petition for adoption may be filed at any time if:

(a) One of the petitioners is a relative of the child by blood or by adoption, excluding parents whose parental rights have been terminated and persons whose relationship to the child is derived through such parents.

(b) The petitioner is the child's stepparent.

(c) The petition is accompanied by a written approval of the guardian.

(d) The petitioner is the proposed adoptive parent with whom the child has been placed under s. 48.839.

(2) Except as provided under sub. (1), no petition for adoption may be filed unless the child has been in the home of the petitioners for 6 months or more.

(3) No petition for adoption may be filed unless the petitioners have complied with all applicable provisions of this chapter relating to adoptive placements.

History: 1973 c. 263; 1977 c. 354; 1977 c. 418 s. 929 (18); 1981 c. 81; 1997 a. 104.

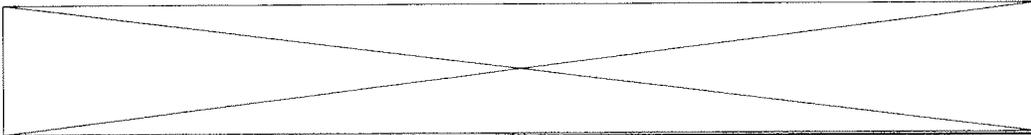
Once administrative proceedings have commenced under s. 48.64 and the person with whom the child had been placed is seeking a review of the removal order, a children's court has no jurisdiction of an attempted adoption. Adoption of Shawn, 65 Wis. 2d 190, 222 N.W.2d 139 (1974).

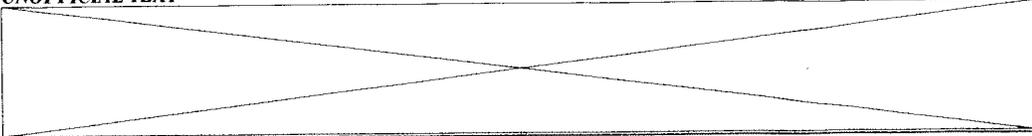
Standing to object to adoption proceedings turns on the right to petition for adoption; grandparents excluded from petitioning under sub. (1) (a) had no standing to object to the adoption of their grandchildren. Adoption of J.C.G. 177 Wis. 2d 424, 501 N.W.2d 908 (Ct. App. 1993).

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(b) At the request of an Indian adoptee who is 18 years of age or older, the court that entered the order granting adoption of the adoptee shall provide or allow the adoptee with the information specified in s. 48.028(9)(c).

(2) All correspondence and papers, relating to the investigation, which are not a part of the court record, except those in the custody of agencies authorized to place children for adoption shall be transferred to the department and placed in its closed files.

History: 1979 c. 34; 1981 c. 359; 1983 a. 471; 1989 a. 31; 1997 a. 27, 104, 252.

Adoption records reform: Impact on adoptees. 67 MLR 110 (1983).

48.94 New birth certificate. After entry of the order granting the adoption the clerk of the court shall promptly mail a copy thereof to the state bureau of vital statistics and furnish any additional data needed for the new birth certificate. Whenever the parents by adoption, or the adopting parent and a birth parent who is the spouse of the adopting parent, request, that the birth certificate for the person adopted be not changed, then the court shall so order. In such event no new birth certificate shall be filed by the state registrar of vital statistics, notwithstanding the provisions of s. 69.15 (2) or any other law of this state.

History: 1981 c. 359 s. 16; 1985 a. 315 s. 22; 1991 a. 316.
Fundamental Rights Debate: Should Wisconsin Allow Adult Adoptees Unconditional Access to Adoption Records and Original Birth Certificates? Racine. 2002 WLR 1437.

48.95 Withdrawal or denial of petition. Except as provided under s. 48.839 (3) (b), if the petition is withdrawn or denied, the circuit court shall order the case transferred to the court assigned to exercise jurisdiction under this chapter and ch. 938 for appropriate action, except that if parental rights have been terminated and the guardian of the minor is the department, a licensed child welfare agency or a county department under s. 48.57 (1) (e) or (hm), the minor shall remain in the legal custody of the guardian.

History: 1977 c. 271, 449; 1981 c. 81; 1985 a. 176; 1995 a. 77.

48.96 Subsequent adoption. The adoption of an adopted person is authorized and, in that case, the references to parent and birth parent are to adoptive parent.

History: 1981 c. 359 s. 16.

48.97 Adoption orders of other jurisdictions. When the relationship of parent and child has been created by an order of adoption of a court of any other state or nation, the rights and obligations of the parties as to matters within the jurisdiction of this state shall be determined by s. 48.92. If the adoptive parents were residents of this state at the time of the foreign adoption, the preceding sentence applies only if the department has approved the placement. A child whose adoption would

otherwise be valid under this section may be readopted in accordance with this chapter.

History: 1971 c. 187; 1981 c. 81; 1995 a. 443.

48.975 Adoption assistance. (1) **DEFINITION.** In this section, "adoption assistance" means payments by the department to the adoptive or proposed adoptive parents of a child which are designed to assist in the cost of care of that child after an agreement under sub. (4) has been signed and the child has been placed for adoption with the adoptive or proposed adoptive parents.

(2) **APPLICABILITY.** The department may provide adoption assistance only for a child with special needs and only when the department has determined that such assistance is necessary to assure the child's adoption.

(3) **TYPES.** The department may provide adoption assistance for maintenance, medical care or nonrecurring adoption expenses, or for any combination of those types of adoption assistance, according to the following criteria:

(a) **Maintenance.** 1. Except as provided in subd. 3., for support of a child who was in foster care, treatment foster care, or subsidized guardianship care immediately prior to placement for adoption, the initial amount of adoption assistance for maintenance shall be equivalent to the amount of that child's foster care, treatment foster care, or subsidized guardianship care payment at the time that the agreement under sub. (4) (a) is signed or a lesser amount if agreed to by the proposed adoptive parents and specified in that agreement.

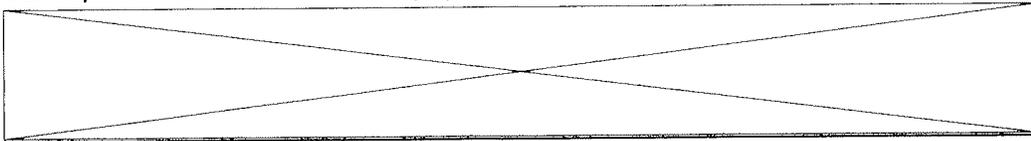
2. Except as provided in subd. 3., for support of a child not in foster care, treatment foster care, or subsidized guardianship care immediately prior to placement for adoption, the initial amount of adoption assistance for maintenance shall be equivalent to the uniform foster care rate in effect at the time that the agreement under sub. (4) (a) is signed or a lesser amount if agreed to by the proposed adoptive parents and specified in that agreement.

3. For support of a child who is defined under rules promulgated by the department under sub. (5) (b) as a child with special needs based solely on being at high risk of developing moderate or intensive difficulty-of-care problems, the initial amount of adoption assistance for maintenance shall be \$0.

4. The amount of adoption assistance for maintenance may be changed under an amended agreement under sub. (4) (b) or (c). If an agreement is amended under sub. (4) (b) or (c), the amount of adoption assistance for maintenance shall be the amount specified in the amended agreement but may not exceed the uniform foster care rate that would be applicable to the child if the child were in foster care during the time for which the adoption assistance for maintenance is paid.

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Malaise, Gordon

From: Mitchell, Mark
Sent: Sunday, November 19, 2006 7:51 PM
To: Malaise, Gordon
Cc: LCohan@ho-chunk.com; tcaldwell@mitw.org; VBlackdeer@ho-chunk.com; Sappenfield, Anne; [badriver.com].arnolder; [badriver.com].rdeperry; [bestlaw.com].esheu; [centurytel.net].joannfjones; [cheqnet.net].kgood; Campbell, Mark; Connolly, Cathleen; Jones, Jennifer; Mitchell, Mark; Porter, Loa; Durkin, Therese; Hermes, Ron; Weber, James; [fcpotawatomi.com].sonyam; [ho-chunk.com].mcleveland; [legis.state.wi.us].Joyce.Kiel; [legis.wisconsin.gov].Joyce.Kiel; [mitw.org].mhusby; [mohican.com].icw; [nnex.net].lkuehn; [oneidanation.org].APYATSKO; [oneidanation.org].NWAHLSTR; [oneidanation.org].rtousey; [redcliff-nsn.gov].dujke; [stcroixtribalcenter.com].andrewa; [stcroixtribalcenter.com].caroyll; [stcroixtribalcenter.com].gloriam; [stcroixtribalcenter.com].margaretk; [verizon.net].jwilhelmi; [wicourts.gov].Michelle.Jensen-Goodwin; [yahoo.com].lcoicw; [yahoo.com].petca_98
Subject: Comments on ICWA Draft
Importance: High
Attachments: Gordon re Comments on Draft P1.doc



Gordon re
mments on Draft P1

Hi, Gordon. See attached memo. I'll give you a call tomorrow (Monday).

--Mark