Malaise, Gordon

From: Schmidt, Melissa
Sent: Thursday, March 14, 2013 2:51 PM
To: Malaise, Gordon
Cc: Kelley, Margit
Subject: RE: Draft review: LRB -1630/P2 Topic: Various changes relating to children in need of protection or services and termination of parental rights

Since you accepted Margit's changes to the note on p. 6., after line 8, please include this change in what I sent earlier. I highlighted the new phrase in the /P3 based on what she wrote:

This Section creates a new ground on which the juvenile court has jurisdiction over a child in need of protection or services. The ground grants the juvenile court jurisdiction over a child who is under three years of age whose parent has had his or her parental rights to another child involuntarily terminated within the last three years prior to the child's birth, if ~~at~~ the juvenile court first held a TPC hearing~~, a judge or circuit court commissioner has~~ and found the child to be in need of continued custody and if the parent has the right to counsel and had that right during the TPC hearing, unless that right has been knowingly and voluntarily waived. ~~In order for the juvenile court to have jurisdiction over a child under this new CHIPS ground, the juvenile court must first hold a TPC hearing regarding the child and find that the child should be continued in custody, and the parent must have had the right to counsel at this proceeding, unless it was knowingly and voluntarily waived.~~

Melissa Schmidt
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From: Malaise, Gordon
Sent: Thursday, March 14, 2013 2:46 PM
To: Schmidt, Melissa
Subject: RE: Draft review: LRB -1630/P2 Topic: Various changes relating to children in need of protection or services and termination of parental rights

Yes. The /P3 incorporate Margit's changes. I'll redraft it as a /1 with your changes.

From: Schmidt, Melissa
Sent: Thursday, March 14, 2013 2:43 PM
To: Malaise, Gordon
Subject: RE: Draft review: LRB -1630/P2 Topic: Various changes relating to children in need of protection or services and termination of parental rights

Gordon,

One more thought – if you did agree to replace the word "perpetrator" with other words, the pref note would need to be updated on p. 4, the first full paragraph.

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From: Schmidt, Melissa
Sent: Thursday, March 14, 2013 2:34 PM
To: Kelley, Margit; Malaise, Gordon
Subject: RE: Draft review: LRB -1630/P2 Topic: Various changes relating to children in need of protection or services and termination of parental rights

Gordon,

I just now received the /P3 for this draft. I'm sorry that I just now had time to respond. Did you accept all of Margit's changes when drafting the /P3?

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From: Schmidt, Melissa
Sent: Thursday, March 14, 2013 2:31 PM
To: Kelley, Margit; Malaise, Gordon
Subject: RE: Draft review: LRB -1630/P2 Topic: Various changes relating to children in need of protection or services and termination of parental rights

Gordon,

Yes, thank you for all of your hard work! I really appreciate your help. I only have a couple of suggested changes. I think this completes the comments Margit and I have before this can be converted into LRB--1630/1.

- I just realized that in the note on **p. 6, after line 8**, the second sentence is repetitive. I am wondering if the whole note could be rewritten as follows:

> This Section creates a new ground on which the juvenile court has jurisdiction over a child in need of protection or services. The ground grants the juvenile court jurisdiction over a child who is under three years of age whose parent has had his or her parental rights to another child involuntarily terminated within the last three years, if ~~at~~ the juvenile court first held a TPC hearing~~, a judge or circuit court commissioner has~~ and found the child to be in need of continued custody and if the parent has the right to counsel and had that right during the TPC hearing, unless that right has been knowingly and voluntarily waived. ~~In order for the juvenile court to have jurisdiction over a child under this new CHIPS ground, the juvenile court must first hold a TPC hearing regarding the child and find that the child should be continued in custody, and the parent must have had the right to counsel at this proceeding, unless it was knowingly and voluntarily waived.~~

- **On p. 7, line 10**, something is needed after the word, "and". I think it needs to be rewritten to read, "renumbered 48.23 (2) (a) and (b) and is amended ...."

- The **last line of the note on p. 8, after line 16**, reads, "in which the parent defaulted." I think this is technically inaccurate and should be rewritten to say, "in which the ~~parent defaulted~~ a default judgment was entered for failure to appear."

- On **p. 17, the note after line 3**, I think the last phrase needs to be rewritten to read, "even if the alleged father ~~had~~ has not lived with the child."

- I realize this is probably my own personal bias, but I am wondering about rewording the notes on **p. 9, 15 after line 20, p. 16 after line 6, and p. 18 before line 1,** to not use the term "perpetrator." For example:

  - On p. 9, rephrase the last line of the note to read, "~~perpetrator~~ father and the victim is four years or less." (This note is similar to the note on p. 18.)
  - On p. 15, the note after line 20, rephrase the end of the first sentence to read, "rather than referring only to the father as the ~~perpetrator~~ person who committed a sexual assault."
  - On p. 16, rewrite the note after line 6, to read:

    "This Section specifies that the TPR ground of conception as a result of sexual assault is inapplicable to a ~~perpetrator~~ person who committed a nonviolent sexual assault of a minor, if the ~~perpetrator~~ the person was also a minor at the time of the assault and the age difference between ~~the perpetrator~~ the person and the victim is four years or less.

  - On p. 18, rephrase the last phrase in the first note to read, "if the age difference between the ~~perpetrator~~ father and the victim is four years or less." (This note is similar to the note on p. 9)

Thank you!!!!

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From: Kelley, Margit
Sent: Tuesday, March 12, 2013 9:41 AM
To: Malaise, Gordon
Cc: Schmidt, Melissa
Subject: FW: Draft review: LRB -1630/P2 Topic: Various changes relating to children in need of protection or services and termination of parental rights

Hi Gordon,

I have some questions and suggestions for the editing of LRB—1630/P2, but I first want to say that your corrections and revisions immensely improved the draft! You caught some things that we hadn't, and you made other great improvements!

Melissa is also reviewing the draft, so she may have additional comments or questions.

- On page 1, line 13, should "within the last 3 years" be changed to "within 3 years prior to the child's birth"?

- On page 4, in the second full paragraph I'm wondering if it would be better to remove the last phrase beginning with "or if the father has been convicted...", because the CHIPS notice exception only allows a physician's statement, and not proof by conviction. Then, the next paragraph could be revised to say that "This bill eliminates the requirements for a physician's statement from those notice exceptions and instead.... Under the bill, the notice exceptions do not apply...." These changes seem a little more accurate to me.

- On page 6, in the note after line 8, should "within the last three years" be changed to "within three years prior to the child's birth? Also, the last sentence seems repetitious of the description already given in the note, and could be deleted.

- On page 8, line 2, could "par. (b) or (d)" be changed to "this section" or "this subsection"? Otherwise, if the provisions for counsel under draft LRB 1629/1 are enacted "(bm)" would need to be inserted on that line.

- On page 10, line 13, it looks like "is" should have a strikethrough.

- On pages 10 and 11, the notes for Sections 7, 8, and 10 are almost identical in their reference to a "CHIPS dispositional order". I remember in the previous draft that we struggled with how to distinguish this, and I think in the part that is now Section 7 we referred to the "written contents of a CHIPS dispositional order", in an attempt to distinguish those sections. I'm not sure that this is even worth spending any time on trying to distinguish between the sections, or if it's even really possible to do in a way that would be meaningful! Do you have any thoughts on this? This same question would apply to the "JIPS dispositional order" notes on pages 23 and 24, Sections 34, 35, and 37.

- On page 14, line 1, should "as defined in s. 51.01 (2)" have a strikethrough, as approved treatment facilities are defined in s. 48.02 (1s), Stats.? If it's kept, it does hold the parallel sentence structure.

- On page 15, line 1, should "the laws of this state," be inserted after "under"? Otherwise it seems that the standard for proof by a final judgment of conviction or other evidence only applies to federal law or the laws of any other state.

- On page 15, it looks like the note after line 20 is meant to apply to both Sections 18 and 19. Seems like it might be easiest just to move the first sentence into a separate note for Section 18, after line 14. Then the word "also" could be removed from the second sentence that stays with Section 19.

- On page 26, line 7, the reference to "(10) (a)" might be confusing and could probably just be removed. The new TPR ground based on a prior TPR within 3 years before birth and subsequent CHIPS finding isn't available until the parent has been warned in the first TPR, which is specified in sub. (2) at the top of that page. This has different requirements for its initial applicability than the treatment of the other TPR grounds that are in sub. (3).

Hope these questions and comments make sense!

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From: LRB.Legal
Sent: Thursday, March 07, 2013 2:38 PM
To: Kelley, Margit
Subject: Draft review: LRB -1630/P2 Topic: Various changes relating to children in need of protection or services and termination of parental rights

Draft Requester: Legislative Council - JLC

Following is the PDF version of draft LRB -1630/P2.

State of Wisconsin
2013 – 2014 LEGISLATURE

IN 3/14
Fri 3/15

LRB–1630/1
GMM:sac:jf

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

gm ext

AN ACT ***to renumber and amend*** 48.23 (2), 48.355 (2d) (c) and 938.355 (2d) (c); ***to amend*** 48.21 (5) (b) 3., 48.27 (3) (b) 2., 48.32 (1) (b) 2., 48.355 (2) (b) 6r., 48.355 (2d) (b) (intro.), 48.357 (2v) (a) 3., 48.365 (2m) (a) 2., 48.415 (2) (a) 2. b., 48.415 (2) (a) 3., 48.415 (3) (a), 48.415 (5) (a), 48.415 (8), 48.415 (9) (a), 48.415 (9) (b), 48.415 (9m) (a), 48.415 (10) (a), 48.42 (2) (b) 3., 48.42 (2m) (a), 48.423 (1), 48.427 (7), 48.46 (1), (1m) and (2), 48.977 (2) (a), 48.977 (4) (b) 3., 938.21 (5) (b) 3., 938.32 (1) (c) 2., 938.355 (2) (b) 6r., 938.355 (2d) (b) (intro.), 938.357 (2v) (a) 3. and 938.365 (2m) (a) 2.; and ***to create*** 48.13 (14), 48.23 (2) (c) and (d), 48.355 (2d) (c) 1., 48.415 (9) (c), 809.10 (1) (b) 7., 809.107 (2) (bm) 6. and 938.355 (2d) (c) 1. of the statutes; **relating to:** children in need of protection or services jurisdiction over, and grounds for involuntary termination of parental rights to, a child under 3 years of age whose parent had an involuntary termination of parental rights within 3 years prior to the child's birth; reasonable efforts by an agency to return a child safely home when the child has been adjudged to be in need of protection or services; requirements for further participation in an

action to terminate parental rights by a man alleged to be the child's father; revising certain grounds for an involuntary termination of parental rights and certain notice exceptions for an involuntary termination of parental rights proceeding; waiver of counsel for a parent in an involuntary termination of parental rights or a contested adoption proceeding; and requiring a parent's signature on a petition for postdispositional relief or a notice of appeal of a termination of parental rights order or a child in need of protection or services or paternity adjudication.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Special Committee on Permanency for Young Children in the Child Welfare System.

Child in Need of Protection or Services (CHIPS) Petition and Subsequent Involuntary Termination of Parental Rights (TPR) Based Upon an Involuntary TPR Within the Prior Three Years

Under current law, a court assigned to exercise jurisdiction under the Children's Code (juvenile court) has jurisdiction over a child who is alleged to be in need of protection or services. A juvenile court may issue an order to remove the child from the home and may order that services be provided if the child meets one of several specified conditions, including abuse or neglect of the child.

Also under current law, a petition for an involuntary TPR to a child may be filed against a person, if within three years prior to the date of birth of the child a juvenile court has ordered an involuntary TPR with respect to another child of the person.

This bill creates a new ground to file a CHIPS petition. The bill grants the juvenile court jurisdiction over a child who is under three years of age and whose parent had his or her parental rights involuntarily terminated with respect to another child within three years prior to the child's date of birth, if ~~a judge or circuit court commissioner at the~~ temporary physical custody (TPC) hearing ~~has found~~ that the child should be continued in custody and if the parent has the right to counsel under s. 48.23, stats., and had that right during the proceeding under s. 48.21, stats., unless that right has been knowingly

the juvenile court found at a

and voluntarily waived. The bill also allows a TPR petition to be filed with respect to a child found to be in need of protection or services based upon the new CHIPS ground created under this bill. The juvenile court must provide oral and written notification of this fact when entering an order terminating the parental rights of one or both parents with respect to a previous child. The bill also allows a juvenile court to appoint a guardian for a child adjudged to be in need of protection or services based upon the new CHIPS ground.

TPR –– Continuing Need of Protection or Services

Under current law, in order to terminate a person's parental rights, a court or a jury must find that one or more statutory grounds exist. One of the grounds under which an involuntary TPR may be filed is if a child is in continuing need of protection or services (continuing CHIPS). This ground may be established by proving all of the following elements:

- The child has been adjudicated in need of protection or services and continues to be placed outside the home under the CHIPS order.

- The responsible social services agency has made reasonable efforts to provide the services ordered by the court.

- The child has been placed outside the home for a cumulative total period of six months or longer pursuant to the CHIPS order.

- The parent has failed to meet the conditions established for the safe return of the child to the home.

- There is a substantial likelihood that the parent will not meet the conditions established for the safe return of the child to the home within the next nine months after the TPR fact–finding hearing.

This bill deletes from the TPR ground of continuing CHIPS the showing that there is a substantial likelihood that the parent will continue to fail for the next nine months to meet the conditions for the safe return of the child to the home. However, the bill provides that if the child has been placed outside the home for less than 15 of the last 22 months, the petitioner must show that there is a substantial likelihood that the parent will not meet the conditions at the time the child will reach the 15th of the last 22 months of placement outside the home.

TPR –– Continuing Parental Disability

Under current law, a parent's continuing disability is a ground for involuntary TPR. This ground requires all of the following findings: 1) the parent is currently receiving inpatient treatment in a hospital or treatment facility for mental illness, developmental disability, or other like incapacity; 2) the parent has received inpatient treatment in one or more hospitals or treatment facilities for a cumulative total period of at least two of the last five years immediately prior to the filing of the TPR petition; 3) the parent's condition is likely to continue indefinitely; and 4) the child is not being provided with adequate care by a relative, parent, or guardian.

This bill revises the TPR ground of a continuing parental disability to require a parent to have had an inpatient treatment history for at least 15 of the last 22 months prior to the filing of the TPR petition, rather than an inpatient treatment history for at least two of the last five years.

TPR –– Parenthood as a Result of Sexual Assault

Under current law, a parent's commission of sexual assault that results in conception of a child is a ground for TPR. Conception as a result of sexual assault may

be proven by a final judgment of conviction or other evidence produced at a fact–finding hearing showing that the person who may be the father committed sexual assault against the mother during a possible time of conception. The mother of the child must be afforded an opportunity to be heard ~~on her desire~~ for the termination of the father's parental rights.

This bill revises the TPR ground of conception as a result of sexual assault to apply that ground equally to a mother, as well as a father, who commits a sexual assault leading to the conception of a child. The bill, however, specifies that the ground is inapplicable to a ~~perpetrator of~~ a nonviolent sexual assault of a minor, if the ~~perpetrator~~ was also a minor at the time of the assault and the age difference between the ~~perpetrator~~ and the victim is four years or less.

In addition, under current law, a juvenile court is not required to provide notice of a CHIPS or TPR action to a person who may be the father of a child conceived as a result of a sexual assault, if a physician attests to a belief that there was a sexual assault of the child's mother that may have resulted in the child's conception.

This bill eliminates that physician attestation requirement from those notice exceptions and instead requires proof of a sexual assault by a final judgment of conviction or other evidence. Under the bill, that notice exception does not apply to a father who was under age 18 at the time of a nonviolent sexual assault of a minor, if the age difference between the ~~perpetrator~~ and the victim is four years or less.

TPR –– Pattern of Child Abuse; Homicide of Parent; and Felony Against a Child

Under current law, a parent's commission of certain egregious crimes is a ground for TPR. These crimes include: 1) exhibiting a pattern of physically or sexually abusive behavior that is a substantial threat to the health of the child (child abuse); 2) committing homicide or soliciting the homicide of the other parent (homicide of a parent); or 3) committing a serious felony against the person's own child or committing child trafficking against any child (felony against a child).

Each of these grounds requires evidence of a final judgment of conviction for the crime. In order for a judgment of conviction to be considered as final under the law, the time for appeal must have expired, or, if appealed, all appeals directly challenging the parent's guilt must be exhausted.

This bill revises the TPR grounds of child abuse, homicide of a parent, and felony against a child to allow evidence of the criminal conduct itself to be proven, as an alternative to allowing proof by a final judgment of conviction.

Reasonable Efforts to Return a Child Safely Home

The federal Adoption and Safe Families Act of 1997 (ASFA) requires that reasonable efforts be made to preserve and reunify a family prior to a child's removal from the home, and, if a child is removed from the home, that reasonable efforts be made to make it possible for the child's safe return to the home or to achieve any other goal of the child's permanency plan (reasonable efforts).

ASFA specifies that reasonable efforts "shall not be required" under certain egregious circumstances. These circumstances have been codified in Wisconsin law to specify that a juvenile court is not required to include a finding as to whether an agency has made reasonable efforts if a parent:

- Has subjected the child to aggravated circumstances, including torture, chronic abuse, sexual abuse, or felony abandonment of the child.

- Committed or attempted murder of the child's other parent.

• Committed an assault crime that resulted in great or substantial bodily harm to the child or another child of the parent.

• Had parental rights to another child involuntarily terminated.

• Has relinquished custody of the child within 72 hours of the child's birth.

Wisconsin law does not expressly prohibit a juvenile court from requiring a social service agency to make reasonable efforts in these circumstances, nor does the law specify a standard to evaluate when reasonable efforts may be required under these circumstances.

In addition, under Wisconsin law, when considering a TPR petition on the ground of continuing CHIPS, a number of elements must be found, including that a social services agency has made reasonable efforts to provide the services ordered by the juvenile court. No exception is made for the egregious circumstances under which reasonable efforts are not required under ASFA, as codified in Wisconsin law.

This bill revises the requirements relating to reasonable efforts as follows:

• The bill specifies that a juvenile court must determine that an agency is not required to make reasonable efforts if there are egregious circumstances under which reasonable efforts are not required, unless the court determines that such efforts would be in the best interests of the child.

• The bill specifies in the TPR ground based on continuing CHIPS that the requirement for an agency to have made reasonable efforts to reunify the family is inapplicable for any period when reasonable efforts were not required due to the egregious circumstances specified in statute.

Because the Juvenile Justice Code contains parallel provisions to the Children's Code for holding a child or juvenile in custody, the bill revises the parallel provisions relating to reasonable efforts in both the Children's Code and the Juvenile Justice Code to make both codes consistent.

Waiver of Counsel; Parent's Signature

Under current law, in a proceeding involving TPR, or a contested adoption, a parent who appears before the juvenile court must be represented by counsel. A parent 18 years of age or over may waive counsel if the juvenile court is satisfied that the waiver is knowingly and voluntarily made. However, a parent under age 18 may not waive counsel.

Current law also provides that if an attorney represented a parent during a TPR proceeding, and has not been discharged, the representation continues during a TPR appeal.

The Wisconsin Supreme Court has strictly construed the statute requiring representation during an involuntary TPR proceeding in holding that an attorney may not be discharged from representing a parent who fails to cooperate with the court and the attorney. [*State v. Shirley E.*, 2006 WI 129; *State v. Darrell K.*, 2010 AP 1910 (Wis. Ct. App., Oct. 19, 2010, unpublished).]

This bill specifies that a parent 18 years of age or over who was ordered to appear in person at hearings for an involuntary TPR or contested adoption proceeding, but who has failed to appear, is considered to have waived the right to counsel. A failure to appear by an adult parent must be egregious and without clear and justifiable excuse, which may be presumed from a parent's failure to appear at consecutive hearings.

This bill also requires a parent's signature, in addition to counsel's signature, on a notice of intent to appeal or notice of appeal from a TPR judgment, petition for rehearing from a CHIPS adjudication or TPR judgment, or motion for postdisposition relief from a CHIPS adjudication or TPR judgment.

TPR Participation by Alleged Father

Under current law, an alleged father must be served with a TPR summons and petition. If paternity is then established during the TPR proceedings, the father may further participate in the proceedings.

In order for an alleged father to participate in the TPR proceedings after paternity has been established, at least one of the following must have occurred:

• The alleged father has filed a declaration of paternal interest upon the child's birth or upon receipt of the TPR petition, and the declaration has not been revoked.

• The mother (or other source) alleges the man to be the father.

• The man has lived in a familial relationship with the child and may be the father of the child.

This bill removes the right of an alleged father who is determined in the TPR proceedings to be the father, but who has not otherwise declared or established a relationship with the child, to further participate in the proceedings. Specifically, under the bill, a man determined to be the father may further participate in a TPR proceeding only if the man: 1) filed a declaration of paternal interest upon the child's birth or upon receipt of the TPR petition and the declaration has not been revoked; 2) established and maintained a familial relationship with the child; or 3) establishes that he has been deprived of the opportunity to assume parental responsibility for the child.

The bill retains the requirement that an alleged father be served with a TPR summons and petition, regardless of whether the alleged father has declared or established and maintained a familial relationship with the child.

SECTION 1. 48.13 (14) of the statutes is created to read:

48.13 **(14)** Who is less than 3 years of age and whose parent, within 3 years prior to the date of birth of the child, had his or her parental rights to another child involuntarily terminated by a court, if a judge or circuit court commissioner has found that the child should be continued in custody under s. 48.21 (4) and if that parent has the right to counsel under s. 48.23 and had that right during the proceeding under s. 48.21, unless this right has been knowingly and voluntarily waived.

juvenile court found at a (in) (and) should be that

NOTE: This SECTION creates a new ground on which the juvenile court has jurisdiction over a child in need of protection or services. The ground grants the juvenile court jurisdiction over a child who is under three years of age whose parent has had his or her parental rights to another child involuntarily terminated within three years prior to the child's birth, if at the TPC hearing ~~a judge or circuit court commissioner has found~~ the child ~~to be in need of~~ continued custody and if the parent has the right to counsel and had that right during the TPC hearing, unless that right has been knowingly and voluntarily waived.

SECTION 2. 48.21 (5) (b) 3. of the statutes is amended to read:

48.21 **(5)** (b) 3. If the judge or circuit court commissioner finds that any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, a determination that the county department, department, in a county having a population of 500,000 or more, or agency primarily responsible for providing services under the custody order is not required to make reasonable efforts with respect to the parent to make it possible for the child to return safely to his or her home, unless the judge or circuit court commissioner determines or has determined under a prior order that such efforts would be in the best interests of the child.

NOTE: This SECTION specifies that at a TPC hearing for a child alleged to be in need of protection or services, the juvenile court must determine that an agency is not required to make reasonable efforts to return a child safely home when the statutorily defined egregious circumstances are found to exist, unless the court determines that such efforts would be in the best interests of the child.

SECTION 3. 48.23 (2) of the statutes is renumbered 48.23 (2) (a) and amended to read:

48.23 **(2)** RIGHT OF ~~PARENTS~~ PARENT TO COUNSEL. (a) Whenever a child is the subject of a proceeding involving a contested adoption or ~~the~~ an involuntary termination of parental rights, any parent under 18 years of age who appears before the court shall be represented by counsel~~; but~~ and no such parent may waive counsel. Except as provided in sub. (2g), a minor parent petitioning for the voluntary termination of parental rights shall be represented by a guardian ad litem. ~~If~~

(b) In a proceeding ~~involves~~ involving a contested adoption or ~~the~~ an involuntary termination of parental rights, any parent 18 years ~~old~~ of age or older who appears before the court shall be represented by counsel~~; but the parent may waive counsel provided the court is satisfied such waiver is knowingly and voluntarily made~~, except as provided in par. (c).

NOTE: This SECTION separates the current language governing the right to counsel between a minor parent and a parent 18 years of age or over, and makes the right to

counsel for an adult parent subject to a waiver by an egregious and unjustifiable failure to appear.

SECTION 4. 48.23 (2) (c) and (d) of the statutes are created to read:

48.23 **(2)** (c) Counsel under this subsection may be waived as follows:

1. A parent 18 years of age or over may waive counsel if the court is satisfied that the waiver is knowingly and voluntarily made.

2. A parent 18 years of age or over is presumed to have waived his or her right to counsel and to appear by counsel if the court has ordered the parent to appear in person at any or all subsequent hearings in the proceeding, the parent fails to appear in person as ordered, and the court finds that the parent's conduct in failing to appear was egregious and without clear and justifiable excuse. Failure by a parent 18 years of age or over to appear in person at consecutive hearings as ordered by the court is presumed to be egregious and without clear and justifiable excuse.

3. If a parent 18 years of age or over waives counsel under subd. 1. or 2., the court may discharge counsel.

(d) In a proceeding to vacate a default judgment or for reconsideration of a default judgment terminating parental rights, a parent who had waived counsel shall be represented by counsel, except as provided in par. (c) 1. or 2.

NOTE: This SECTION provides that a parent 18 years of age or over who was ordered to appear in person at hearings for an involuntary TPR or contested adoption proceeding, but who has failed to appear, is considered to have waived the right to counsel, if the juvenile court finds that the parent's conduct in failing to appear was egregious and without clear and justifiable excuse. The bill provides that consecutive failures by an adult parent to appear are presumed to be egregious and without clear and justifiable excuse. The bill also provides that a right to counsel is reinstated for a motion to vacate or reconsider a default TPR judgment, if counsel was waived during the TPR proceeding in which the ~~parent defaulted~~ default judgment was entered.

SECTION 5. 48.27 (3) (b) 2. of the statutes is amended to read:

48.27 **(3)** (b) 2. A court is not required to provide notice, under subd. 1., to any person who may be the father of a child ~~conceived as a result of a sexual assault if~~

~~a physician attests to his or her belief that there was~~ if a sexual assault of the child's mother that may have resulted in the child's conception is proved by a final judgment of conviction or other evidence. A person who is not given notice under this subdivision does not have standing to appear and contest a petition under s. 48.13 or 48.133, present evidence relevant to the issue of disposition, or make alternative dispositional recommendations. This subdivision does not apply to a person who may be the father of a child conceived as a result of a sexual assault under s. 948.02 (1) (b) or (e) or (2) or 948.09, if that person was under 18 years of age at the time of the sexual assault and was not more than 4 years older or not more than 4 years younger than the victim and if the assault did not involve the use or threat of force or violence.

NOTE: This SECTION removes the requirement that a physician attest to a belief that there was a sexual assault from the exception from providing notice of a CHIPS proceeding to a person who may be the father of the child, and instead requires proof of a sexual assault by a final judgment of conviction or other evidence. This SECTION, however, requires notice of a CHIPS proceeding to be given to a father who was under age 18 at the time of a nonviolent sexual assault of a minor, if the age difference between the ~~perpetrator~~ and the victim is four years or less.

Father

SECTION 6. 48.32 (1) (b) 2. of the statutes is amended to read:

48.32 **(1)** (b) 2. If the judge or circuit court commissioner finds that any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the consent decree shall include a determination that the county department, department, in a county having a population of 500,000 or more, or agency primarily responsible for providing services under the consent decree is not required to make reasonable efforts with respect to the parent to make it possible for the child to return safely to his or her home, unless the judge or circuit court commissioner determines or has determined under a prior order that such efforts would be in the best interests of the child.

NOTE: This SECTION specifies that in a CHIPS consent decree the juvenile court must determine that an agency is not required to make reasonable efforts to return a child

safely home when the statutorily defined egregious circumstances are found to exist, unless the court determines that such efforts would be in the best interests of the child.

SECTION 7. 48.355 (2) (b) 6r. of the statutes is amended to read:

48.355 **(2)** (b) 6r. If the court finds that any of the circumstances specified in sub. (2d) (b) 1. to 5. applies with respect to a parent, a determination that the county department, department, in a county having a population of 500,000 or more, or agency primarily responsible for providing services under the court order is not required to make reasonable efforts with respect to the parent to make it possible for the child to return safely to his or her home, unless the court determines or has determined under a prior order that such efforts would be in the best interests of the child.

NOTE: This SECTION requires the juvenile court to include in a CHIPS dispositional order a determination that an agency is not required to make reasonable efforts to return a child safely home when the statutorily defined egregious circumstances are found to exist, unless the court determines that such efforts would be in the best interests of the child.

SECTION 8. 48.355 (2d) (b) (intro.) of the statutes is amended to read:

48.355 **(2d)** (b) (intro.) ~~Notwithstanding sub. (2) (b) 6., the~~ The court ~~is not required to~~ shall include in a dispositional order a ~~finding as to whether~~ determination that 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~~ is not required to make 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~~ or to achieve the permanency goal of returning the child safely to his or her home, unless the court determines or has

determined under a prior order that such efforts would be in the best interests of the child, if the court finds any of the following:

NOTE: This SECTION requires the juvenile court to include in a CHIPS dispositional order a determination that an agency is not required to make reasonable efforts to prevent a child's removal or return a child safely home when the statutorily defined egregious circumstances are found to exist, unless the court determines that such efforts would be in the best interests of the child.

SECTION 9. 48.355 (2d) (c) of the statutes is renumbered 48.355 (2d) (c) (intro.) and amended to read:

48.355 **(2d)** (c) If the court finds that any of the circumstances specified in par. (b) 1. to 5. applies with respect to a parent, the court shall ~~hold~~ do all of the following:

2. Hold a hearing under s. 48.38 (4m) within 30 days after the date of that finding to determine the permanency goal and, if applicable, any concurrent permanency goals for the child.

SECTION 10. 48.355 (2d) (c) 1. of the statutes is created to read:

48.355 **(2d)** (c) 1. Include in the order a determination that the person or agency primarily responsible for providing services to the child is not required to make reasonable efforts with respect to the parent to make it possible for the child to return safely to his or her home, unless the court determines that such efforts would be in the best interests of the child.

NOTE: SECTIONS 9 and 10 require the juvenile court to include in a CHIPS dispositional order a determination that an agency is not required to make reasonable efforts to return a child safely home when the statutorily defined egregious circumstances are found to exist, unless the court determines that such efforts would be in the best interests of the child.

SECTION 11. 48.357 (2v) (a) 3. of the statutes is amended to read:

48.357 **(2v)** (a) 3. If the court finds that any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, a determination that the agency primarily responsible for providing services under the change in placement order is not required to make reasonable efforts with respect to the parent to make

it possible for the child to return safely to his or her home, unless the court determines or has determined under a prior order that such efforts would be in the best interests of the child.

NOTE: This SECTION specifies that in a CHIPS change–in–placement order the juvenile court must determine that an agency is not required to make reasonable efforts to return a child safely home when the statutorily defined egregious circumstances are found to exist, unless the court determines that such efforts would be in the best interests of the child.

SECTION 12. 48.365 (2m) (a) 2. of the statutes is amended to read:

48.365 **(2m)** (a) 2. If the judge finds that any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the order shall include a determination that the person or agency primarily responsible for providing services to the child is not required to make reasonable efforts with respect to the parent to make it possible for the child to return safely to his or her home, unless the judge determines or has determined under a prior order that such efforts would be in the best interests of the child.

NOTE: This SECTION specifies that in a CHIPS extension order, the juvenile court must determine that an agency is not required to make reasonable efforts to return a child safely home when the statutorily defined egregious circumstances are found to exist, unless the court determines that such efforts would be in the best interests of the child.

SECTION 13. 48.415 (2) (a) 2. b. of the statutes is amended to read:

48.415 **(2)** (a) 2. b. 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, excluding any period during which the responsible agency was not required under s. 48.355 (2) (b) 6r., 48.357 (2v) (a) 3., 48.365 (2m) (a) 2., 938.355 (2) (b) 6r., 938.357 (2v) (a) 3., or 938.365 (2m) (a) 2. to make reasonable efforts with respect to a parent to make it possible for the child to return safely to his or her home.

NOTE: This SECTION specifies that, for the TPR ground of continuing CHIPS, the requirement that reasonable efforts have been made to provide the services ordered by

the juvenile court does not apply to any period when reasonable efforts for reunification were not required by the juvenile court.

SECTION 14. 48.415 (2) (a) 3. of the statutes is amended to read:

48.415 **(2)** (a) 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~~; and, if the child has been placed outside of his or her home for less than 15 of the last 22 months, that there is a substantial likelihood that the parent will not meet these conditions as of the date on which the child will have been placed outside of his or her home pursuant to such orders 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 was residing in a trial reunification home.

NOTE: This SECTION revises the continuing CHIPS ground for involuntary TPR to eliminate the requirement to show that a parent is substantially likely to not meet the conditions for the safe return of the child within the next nine months following the fact–finding hearing. If, however, the child has been placed outside the home for less than 15 of the last 22 months, the petitioner must show that there is a substantial likelihood that the parent will not meet the conditions at the time the child will reach the 15th of the last 22 months of placement outside the home.

SECTION 15. 48.415 (3) (a) of the statutes is amended to read:

48.415 **(3)** (a) The parent is presently, and for a cumulative total period of at least ~~2 years~~ 15 months within the ~~5 years~~ 22 months 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~~ approved 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), developmental disability, as defined in s. 55.01 (2), or other like incapacities, as defined in s. 55.01 (5);

NOTE: This SECTION revises the TPR ground of a continuing parental disability to require a parent to have had inpatient treatment history for at least 15 of the last 22 months prior to the filing of the TPR petition, rather than an inpatient treatment history for at least two of the last five years. This SECTION also corrects the terminology for an "approved treatment facility," as defined in the statutes.

SECTION 16. 48.415 (5) (a) of the statutes is amended to read:

48.415 **(5)** (a) That the parent has caused death or injury to a child or children ~~resulting in a~~, which may be proved by a final judgment of felony conviction or other evidence produced at a fact–finding hearing under s. 48.424 indicating that the person caused the death or injury.

NOTE: This SECTION revises the TPR ground of a pattern of child abuse to allow evidence of the criminal conduct itself to be proven, as an alternative to allowing proof by a final judgment of conviction.

SECTION 17. 48.415 (8) of the statutes is amended to read:

48.415 **(8)** HOMICIDE OR SOLICITATION TO COMMIT HOMICIDE OF PARENT. Homicide or solicitation to commit homicide of a parent, which shall be established by proving that a parent of the child has been a victim of first–degree intentional homicide in violation of s. 940.01, first–degree reckless homicide in violation of s. 940.02, or 2nd–degree intentional homicide in violation of s. 940.05 or a crime under federal law or the law of any other state that is comparable to any of those crimes, or has been the intended victim of a solicitation to commit first–degree intentional homicide in violation of s. 939.30 or a crime under federal law or the law of any other state that is comparable to that crime, and that the person whose parental rights are sought to be terminated has ~~been convicted of~~ committed that intentional or reckless homicide~~,~~ or solicitation or comparable crime under federal law or the law of any other state as evidenced by a final judgment of conviction or other evidence produced

at a fact–finding hearing under s. 48.424 indicating that the person committed or solicited homicide of a parent as described in this subsection.

NOTE: This SECTION revises the TPR ground of homicide, or a solicitation to commit homicide, of the child's other parent to allow evidence of the criminal conduct itself to be proven, as an alternative to allowing proof by a final judgment of conviction.

SECTION 18. 48.415 (9) (a) of the statutes is amended to read:

48.415 **(9)** (a) ~~Parenthood~~ Except as provided in par. (c), parenthood as a result of sexual assault, which shall be established by proving that the child was conceived as a result of a sexual assault in violation of s. 940.225 (1), (2), or (3), 948.02 (1) or (2), 948.025, or 948.085. Conception as a result of sexual assault as specified in this paragraph may be proved by a final judgment of conviction or other evidence produced at a fact–finding hearing under s. 48.424 indicating that the ~~person who may be the father~~ parent of the child committed, during a possible time of conception, a sexual assault as specified in this paragraph against the ~~mother~~ other parent of the child.

NOTE: This SECTION revises the TPR ground of conception as a result of sexual assault to apply that ground equally to a mother, as well as a father, who commits a sexual assault leading to the conception of a child, rather than referring only to the father as the ~~perpetrator~~ person who committed the sexual assault.

SECTION 19. 48.415 (9) (b) of the statutes is amended to read:

48.415 **(9)** (b) If the conviction or other evidence specified in par. (a) indicates that the child was conceived as a result of a sexual assault in violation of s. 948.02 (1) or (2) or 948.085, the ~~mother of the child~~ parent who was the victim of the sexual assault may be heard on his or her desire for the termination of the ~~father's~~ other person's parental rights.

NOTE: This SECTION specifies that a juvenile court must allow either a mother or father who was a victim of sexual assault of a minor, or a victim of sexual assault of a minor by an out–of–home care provider, to be heard on his or her desires regarding the TPR of the other parent, rather than allowing only a mother, as a victim, to be heard.

SECTION 20. 48.415 (9) (c) of the statutes is created to read:

48.415 **(9)** (c) This subsection does not apply to a parent who committed sexual assault under s. 948.02 (1) (b) or (e) or (2) or 948.09, if that person was under 18 years of age at the time of the sexual assault and was not more than 4 years older or not more than 4 years younger than the victim and if the assault did not involve the use or threat of force or violence.

NOTE: This SECTION specifies that the TPR ground of conception as a result of sexual assault is inapplicable to a ~~perpetrator of~~ a nonviolent sexual assault of a minor, if the ~~perpetrator~~ was also a minor at the time of the assault and the age difference between the ~~perpetrator~~ and the victim is four years or less.

SECTION 21. 48.415 (9m) (a) of the statutes is amended to read:

48.415 **(9m)** (a) Commission of a serious felony against one of the person's children, which shall be established by proving that a child of the person whose parental rights are sought to be terminated was the victim of a serious felony and that the person whose parental rights are sought to be terminated has ~~been convicted of~~ committed that serious felony as evidenced by a final judgment of conviction or other evidence produced at a fact–finding hearing under s. 48.424 indicating that the person committed a serious felony against one of the person's children.

NOTE: This SECTION revises the TPR ground of felony against a child to allow evidence of the criminal conduct itself to be proven, as an alternative to allowing proof by a final judgment of conviction.

SECTION 22. 48.415 (10) (a) of the statutes is amended to read:

48.415 **(10)** (a) That the child who is the subject of the petition has been adjudged to be in need of protection or services under s. 48.13 (2), (3) ~~or~~, (10), or (14); or that the child who is the subject of the petition was born after the filing of a petition under this subsection whose subject is a sibling of the child.

NOTE: This SECTION allows a TPR petition to be filed if the parent's child was found to be in need of protection or services based on the new CHIPS ground created under SECTION 1.

SECTION 23. 48.42 (2) (b) 3. of the statutes is amended to read:

48.42 **(2)** (b) 3. A person who has ~~lived in~~ established and maintained a familial relationship with the child and who may be the father of the child.

NOTE: This SECTION specifies that in order for an alleged father to be summoned for a TPR proceeding, one method of protecting that right is by having established and maintained a familial relationship with the child, even if the alleged father ~~had~~ not lived with the child.

SECTION 24. 48.42 (2m) (a) of the statutes is amended to read:

48.42 **(2m)** (a) *Parent as a result of sexual assault.* Except as provided in this paragraph, notice is not required to be given to a person who may be the father of a child ~~conceived as a result of~~ if a sexual assault of the child's mother in violation of s. 940.225 (1), (2), or (3), 948.02 (1) or (2), 948.025, or 948.085 ~~if a physician attests to his or her belief that a sexual assault as specified in this paragraph has occurred or if the person who may be the father of the child has been convicted of sexual assault as specified in this paragraph for conduct which may have led to the child's conception~~ that may have resulted in the child's conception is proved by a final judgment of conviction or other evidence. A person who under this paragraph is not given notice does not have standing to appear and contest a petition for the termination of his parental rights, present evidence relevant to the issue of disposition, or make alternative dispositional recommendations. This paragraph does not apply to a person who may be the father of a child conceived as a result of a sexual assault ~~in violation of~~ under s. 948.02 (1) (b) or (e) or (2) or 948.09, if that person was under 18 years of age at the time of the sexual assault and was not more than 4 years older or not more than 4 years younger than the victim and if the assault did not involve the use or threat of force or violence.

NOTE: This SECTION removes the requirement that a physician attest to a belief that there was a sexual assault from the exception from providing notice of a TPR proceeding to a person who may be the father of the child, and instead requires proof by a final judgment of conviction or other evidence. This SECTION, however, requires notice of a TPR proceeding to be given to a father who was under 18 years of age at the time of

a nonviolent sexual assault of a minor, if the age difference between the perpetrator and the victim is four years or less.

SECTION 25. 48.423 (1) of the statutes is amended to read:

48.423 **(1)** RIGHTS TO PATERNITY DETERMINATION. If a person appears at the hearing and claims that he is the father of the child, the court shall set a date for a hearing on the issue of paternity or, 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) (b) 1. or 3. or (bm), or establishes that he has been deprived of the opportunity to assume parental responsibility for the child.

NOTE: This SECTION removes the right of a man alleged to be the father of a child, who has not filed a declaration of parental interest or established and maintained a familial relationship with the child, to further participate in a TPR proceeding after his paternity has been determined, unless he establishes that he has been deprived of the opportunity to assume parental responsibility for the child.

SECTION 26. 48.427 (7) of the statutes is amended to read:

48.427 **(7)** (a) If an order is entered under sub. (3), the court may orally inform the parent or parents who appear in court of the ground for termination of parental rights specified in s. 48.415 (10), except that the court shall orally inform the parent or parents of the ground for termination of parental rights specified in s. 48.415 (10) (a) to a child who has been adjudged to be in need of protection or services under s. 48.13 (14).

(b) In addition to the notice permitted under par. (a), any written order under sub. (3) may notify the parent or parents of the information specified in par. (a),

except that the court shall provide written notification to the parent or parents of the ground for termination of parental rights specified in s. 48.415 (10) (a) to a child who has been adjudged to be in need of protection or services under s. 48.13 (14).

NOTE: This SECTION requires the juvenile court, when entering a TPR order, to provide oral and written notification to the parent or parents of the fact that this TPR order may be used to terminate their parental rights to another child, if the child is born within three years after the date of the TPR and the child is found to be in need of protection or services under the new CHIPS ground created under SECTION 1 of the bill.

SECTION 27. 48.46 (1), (1m) and (2) of the statutes are amended to read:

48.46 **(1)** Except as provided in subs. (1m), (2), and (3), the child whose status is adjudicated by the court, the parent, guardian, or legal custodian of that child, the unborn child whose status is adjudicated by the court, or the expectant mother of that unborn child may, at any time within one year after ~~the entering~~ entry of the court's order, petition the court for a rehearing on the ground that new evidence has been discovered affecting the advisability of the court's original adjudication. Upon a showing that such evidence does exist, the court shall order a new hearing. Notwithstanding s. 802.05 (1), a petition by a parent under this subsection shall be signed by the parent and by the parent's attorney of record, if any.

(1m) Except as provided in sub. (2), the parent, guardian, or legal custodian of the child or the child whose status is adjudicated by the court in an order entered under s. 48.43 or an order adjudicating paternity under subch. VIII may, within the time permitted under this subsection, petition the court for a rehearing on the ground that new evidence has been discovered affecting the advisability of the court's adjudication. Upon a showing that such evidence does exist, the court shall order a new hearing. A petition under this subsection shall be filed within one year after the date on which the order under s. 48.43 or order adjudicating paternity under subch. VIII is entered, unless within that ~~one–year~~ period a court in this state or in another

jurisdiction enters an order granting adoption of the child, in which case a petition under this subsection shall be filed before the date on which the order granting adoption is entered or within 30 days after the date on which the order under s. 48.43 or order adjudicating paternity under subch. VIII is entered, whichever is later. Notwithstanding s. 802.05 (1), a petition by a parent under this subsection shall be signed by the parent and by the parent's attorney of record, if any.

(2) A parent who has consented to the termination of his or her parental rights under s. 48.41 or who did not contest the petition initiating the proceeding in which his or her parental rights were terminated may move the court for relief from the judgment on any of the grounds specified in s. 806.07 (1) (a), (b), (c), (d), or (f). Notwithstanding s. 802.05 (1), a motion by a parent under this subsection shall be signed by the parent and by the parent's attorney of record, if any. Any such motion shall be filed within 30 days after the entry of the judgment or order terminating parental rights, unless the parent files a timely notice of intent to pursue relief from the judgment under s. 808.04 (7m), in which case the motion shall be filed within the time permitted by s. 809.107 (5). A motion under this subsection does not affect the finality or suspend the operation of the judgment or order terminating parental rights. A parent who has consented to the termination of his or her parental rights to an Indian child under s. 48.41 (2) (e) may also move for relief from the judgment under s. 48.028 (5) (c) or (6). Motions under this subsection or s. 48.028 (5) (c) or (6) and appeals to the court of appeals shall be the exclusive remedies for such a parent to obtain a new hearing in a termination of parental rights proceeding.

NOTE: This SECTION requires a parent to sign a petition for rehearing or motion for postdisposition relief from a CHIPS adjudication, paternity adjudication, or TPR order, whether or not the parent is represented, and retains the requirement under current law that the parent's attorney sign the petition or motion if the parent is represented.

SECTION 28. 48.977 (2) (a) of the statutes is amended to read:

48.977 **(2)** (a) That the child has been adjudged to be in need of protection or services under s. 48.13 (1), (2), (3), (3m), (4), (4m), (5), (8), (9), (10), (10m), (11), ~~or~~ (11m), or (14) or 938.13 (4) and been placed, or continued in a placement, outside of his or her home pursuant to one or more court orders under s. 48.345, 48.357, 48.363, 48.365, 938.345, 938.357, 938.363, or 938.365 or that the child has been so adjudged and placement of the child in the home of a guardian under this section has been recommended under s. 48.33 (1) or 938.33 (1).

SECTION 29. 48.977 (4) (b) 3. of the statutes is amended to read:

48.977 **(4)** (b) 3. The date on which the child was adjudged in need of protection or services under s. 48.13 (1), (2), (3), (3m), (4), (4m), (5), (8), (9), (10), (10m), (11), ~~or~~ (11m), or (14) or 938.13 (4) and the dates on which the child has been placed, or continued in a placement, outside of his or her home pursuant to one or more court orders under s. 48.345, 48.357, 48.363, 48.365, 938.345, 938.357, 938.363, or 938.365 or, if the child has been so adjudged, but not so placed, the date of the report under s. 48.33 (1) or 938.33 (1) in which placement of the child in the home of the person is recommended.

NOTE: SECTIONS 28 and 29 allow the juvenile court to appoint a guardian for a child in need of protection or services based on the new ground created under SECTION 1.

SECTION 30. 809.10 (1) (b) 7. of the statutes is created to read:

809.10 **(1)** (b) 7. Notwithstanding s. 802.05 (1), if the appellant is a parent appealing an order or judgment under s. 48.43, the parent's signature, and the parent's attorney of record's signature, if the parent is represented.

NOTE: This SECTION requires a parent to sign a notice of appeal from a TPR order, whether or not the parent is represented, and retains the requirement under current law that the parent's attorney sign the notice if the parent is represented.

SECTION 31. 809.107 (2) (bm) 6. of the statutes is created to read:

809.107 **(2)** (bm) 6. Notwithstanding s. 802.05 (1), if the appellant is the parent, the parent's signature, and the parent's attorney of record's signature, if the parent is represented.

NOTE: This SECTION requires a parent to sign a notice of intent to appeal a TPR order, whether or not the parent is represented, and retains the requirement under current law that the parent's attorney sign the notice if the parent is represented.

SECTION 32. 938.21 (5) (b) 3. of the statutes is amended to read:

938.21 **(5)** (b) 3. If the court finds that any of the circumstances specified in s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent, a determination that the county department or agency primarily responsible for providing services under the custody order is not required to make reasonable efforts with respect to the parent to make it possible for the juvenile to return safely to his or her home, unless the court determines or has determined under a prior order that such efforts would be in the best interests of the juvenile.

NOTE: This SECTION specifies that at a TPC hearing for a juvenile alleged to be in need of protection or services, a court must determine that an agency is not required to make reasonable efforts to return a juvenile safely home when the statutorily defined egregious circumstances are found to exist, unless the court determines that such efforts would be in the best interests of the juvenile.

SECTION 33. 938.32 (1) (c) 2. of the statutes is amended to read:

938.32 **(1)** (c) 2. If the court finds that any of the circumstances specified in s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the consent decree shall include a determination that the county department or agency primarily responsible for providing services under the consent decree is not required to make reasonable efforts with respect to the parent to make it possible for the juvenile to return safely to his or her home, unless the court determines or has determined under a prior order that such efforts would be in the best interests of the juvenile.

NOTE: This SECTION specifies that in a consent decree for a juvenile alleged to be in need of protection or services (JIPS) the juvenile court must determine that an agency is not required make reasonable efforts to return a juvenile safely home when the

statutorily defined egregious circumstances are found to exist, unless the court determines that such efforts would be in the best interests of the juvenile.

SECTION 34. 938.355 (2) (b) 6r. of the statutes is amended to read:

938.355 **(2)** (b) 6r. If the court finds that any of the circumstances under sub. (2d) (b) 1. to 4. applies with respect to a parent, a determination that the county department or agency primarily responsible for providing services under the court order is not required to make reasonable efforts with respect to the parent to make it possible for the juvenile to return safely to his or her home, unless the court determines or has determined under a prior order that such efforts would be in the best interests of the juvenile.

NOTE: This SECTION requires the juvenile court to include in a JIPS dispositional order a determination that an agency is not required to make reasonable efforts to return a juvenile safely home when the statutorily defined egregious circumstances are found to exist, unless the court determines that such efforts would be in the best interests of the juvenile.

SECTION 35. 938.355 (2d) (b) (intro.) of the statutes is amended to read:

938.355 **(2d)** (b) (intro.) ~~Notwithstanding sub. (2) (b) 6., the~~ The court ~~is not required to~~ shall include in a dispositional order a ~~finding as to whether~~ determination that the county department or the agency primarily responsible for providing services under a court order ~~has made~~ is not required to make reasonable efforts with respect to a parent of a juvenile to prevent the removal of the juvenile from the home, ~~while assuring that the juvenile's health and safety are the paramount concerns, or, if applicable, a finding as to whether the county department or agency has made reasonable efforts with respect to a parent of a juvenile~~ or to achieve the permanency goal of returning the juvenile safely to his or her home, unless the court determines or has determined under a prior order that such efforts would be in the best interests of the juvenile, if the court finds any of the following:

NOTE: This SECTION requires the juvenile court to include in a JIPS dispositional order a determination that an agency is not required to make reasonable efforts to

prevent a juvenile's removal or return a juvenile safely home when the statutorily defined egregious circumstances are found to exist, unless the court determines that such efforts would be in the best interests of the juvenile.

SECTION 36. 938.355 (2d) (c) of the statutes is renumbered 938.355 (2d) (c) (intro.) and amended to read:

938.355 **(2d)** (c) (intro.) If the court finds that any of the circumstances under par. (b) 1. to 4. applies with respect to a parent, the court shall ~~hold~~ do all of the following:

2. Hold a hearing under s. 938.38 (4m) within 30 days after the date of that finding to determine the permanency goal and, if applicable, any concurrent permanency goals for the juvenile.

SECTION 37. 938.355 (2d) (c) 1. of the statutes is created to read:

938.355 **(2d)** (c) 1. Include in the order a determination that the person or agency primarily responsible for providing services to the juvenile is not required to make reasonable efforts with respect to the parent to make it possible for the juvenile to return safely to his or her home, unless the court determines that such efforts would be in the best interests of the juvenile.

NOTE: SECTIONS 36 and 37 require the juvenile court to include in a JIPS dispositional order a determination that an agency is not required to make reasonable efforts to return a juvenile safely home when the statutorily defined egregious circumstances are found to exist, unless the court determines that such efforts would be in the best interests of the juvenile.

SECTION 38. 938.357 (2v) (a) 3. of the statutes is amended to read:

938.357 **(2v)** (a) 3. If the court finds that any of the circumstances under s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent, a determination that the agency primarily responsible for providing services under the change in placement order is not required to make reasonable efforts with respect to the parent to make it possible for the juvenile to return safely to his or her home, unless the court

determines or has determined under a prior order that such efforts would be in the best interests of the juvenile.

NOTE: This SECTION specifies that in a JIPS change–in–placement order the juvenile court must determine that an agency is not required to make reasonable efforts to return a juvenile safely home when the statutorily defined egregious circumstances are found to exist, unless the court determines that such efforts would be in the best interests of the juvenile.

SECTION 39. 938.365 (2m) (a) 2. of the statutes is amended to read:

938.365 **(2m)** (a) 2. If the court finds that any of the circumstances under s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the order shall include a determination that the person or agency primarily responsible for providing services to the juvenile is not required to make reasonable efforts with respect to the parent to make it possible for the juvenile to return safely to his or her home, unless the court determines or has determined under a prior order that such efforts would be in the best interests of the juvenile.

NOTE: This SECTION specifies that in a JIPS extension order, the juvenile court must determine that an agency is not required to make reasonable efforts to return a juvenile safely home when the statutorily defined egregious circumstances are found to exist, unless the court determines that such efforts would be in the best interests of the juvenile.

SECTION 40. Initial applicability.

(1) PATERNAL PARTICIPATION IN TERMINATION OF PARENTAL RIGHTS PROCEEDINGS. The treatment of section 48.423 (1) of the statutes first applies to a termination of parental rights proceeding for which the petition is filed on the effective date of this subsection.

NOTE: This subsection specifies that the provision of the bill providing that an alleged father who had not otherwise declared or established a relationship with the child may not further participate in a TPR proceeding first applies to a TPR proceeding for which the petition is filed on the effective date of the bill.

(2) CHILD IN NEED OF PROTECTION OR SERVICES GROUND. The treatment of section 48.13 (14) of the statutes first applies to a petition filed under section 48.13 of the

statutes on the effective date of this subsection after a parent has been given notice under section 48.427 (7) (a) and (b) of the statutes.

NOTE: This subsection specifies that the new CHIPS ground based on a parent's prior TPR within three years applies to a new CHIPS petition if the CHIPS petition is filed after the parent has been informed at a TPR proceeding that the TPR could be a CHIPS ground for a child born within the next three years.

(3) WARNINGS FOR GROUNDS OF AN INVOLUNTARY TERMINATION OF PARENTAL RIGHTS. The treatment of section 48.415 (2) (a) 2. b. and 3., (3) (a), (5) (a), (8), (9) (a) to (c), and (9m) (a) of the statutes first applies to court orders required to contain the notice under section 48.356 (2) or 938.356 (2) of the statutes granted on the effective date of this subsection.

NOTE: This subsection specifies that each of the TPR grounds revised in the bill, except the ground of prior TPR to another child, whose initial applicability is covered in subsection (2), first apply after a parent has been informed of any grounds for TPR that may be applicable, in a written order placing the child outside the home.

(4) WAIVER BY PARENT OF RIGHT TO COUNSEL BY FAILURE TO APPEAR. The treatment of section 48.23 (2) (c) 2. of the statutes first applies to a parent who is ordered on the effective date of this subsection to appear in person at a hearing in a contested adoption or an involuntary termination of parental rights proceeding.

NOTE: This subsection specifies that the provision of the bill providing for a waiver of counsel by a parent's failure to appear first applies to a parent who is ordered on the effective date of the bill to appear.

(5) POSTDISPOSITIONAL RELIEF PETITION OR NOTICE OF APPEAL; PARENT'S SIGNATURE REQUIRED. The treatment of sections 48.46 (1), (1m), and (2), 809.10 (1) (b) 7., and 809.107 (2) (bm) 6. of the statutes first apply to a parent who files a petition for rehearing, motion for postdisposition relief, notice of intent to appeal, or notice of appeal on the effective date of this subsection.

NOTE: This subsection specifies that the provisions of the bill requiring a parent's signature on a postdisposition motion, petition, notice of intent to appeal, or notice of appeal first apply to such document filed on the effective date of the bill.

SECTION 41. Effective date.

(1) This act takes effect on the first day of the 6th month beginning after publication.

NOTE: This SECTION delays the effective date of the bill until the first day of the 6th month following publication.

(END)

Parisi, Lori

From: Schmidt, Melissa
Sent: Wednesday, March 20, 2013 9:45 AM
To: LRB.Legal
Cc: Kelley, Margit; Mautz, Kelly
Subject: Draft Review: LRB -1630/1 Topic: Various changes relating to children in need of protection or services and termination of parental rights

Please Jacket LRB -1630/1 for the ASSEMBLY.