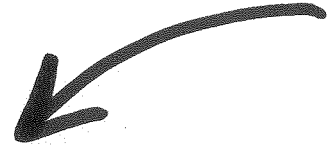


Appendix B



LEGISLATIVE REFERENCE BUREAU
DRAFTING HISTORY RESEARCH APPENDIX

☞ The drafting file for 2019 LRB-4082 (For: Rep. Dittrich)
has been copied/transferred to the drafting file for
2019 LRB-3119 (For: Rep. Dittrich)



☞ Are These “Companion Bills” ?? ... No

RESEARCH APPENDIX -
PLEASE KEEP WITH THE DRAFTING FILE

☞ Request Made By: EAW

☞ Date: 09/27/2019

2019 DRAFTING REQUEST

Bill

For: **Barbara Dittrich (608) 266-8551** Drafter: **ewheeler**
By: **Rachel** Secondary Drafters:
Date: **8/26/2019** May Contact: **Rachel Snyder - Leg. Council**

Same as LRB:

Submit via email: **YES**
Requester's email: **Rep.Dittrich@legis.wisconsin.gov**
Carbon copy (CC) to: **Elizabeth.Wheeler@legis.wisconsin.gov**
elisabeth.shea@legis.wisconsin.gov
Rachel.Snyder@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

CHIPS and TPR grounds

Instructions:

Create CHIPS and TPR grounds for drug affected child, continuing CHIPS, denial of physical placement, abandonment and failure to assume parental responsibility - see attached.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	ewheeler 9/9/2019	kfollett 9/11/2019			
/P1			mbarman 9/11/2019		State S&L

FE Sent For: **<END>**

To: Members, Speaker's Task Force on Adoption
From: Henry J. Plum, Attorney
Date: August 19, 2019
Re: Recommendations for Improvement in the Termination of Parental Rights/Adoption Process

As the legislative co-chair of the Children and Law Section of the State Bar of Wisconsin, I, also along with Deanna Weiss my colleague and co-chair, would like to thank Chairwoman Dittrich and members of the Task Force on Adoption for this opportunity to speak to you. Having just completed serving as a committee member of the Study committee on minor guardianships, I appreciate your time and effort as committee members that you have spent in listening and gaining the various perspectives to identifying the problems surrounding the termination of parental rights and adoption process in Wisconsin.

My practice and experience in the child welfare area spans several decades as an assistant district attorney in Milwaukee at the children's court and then in private practice serving as a special prosecutor / or special counsel representing various counties around the state in termination of parental rights cases. In addition, my practice also includes consulting and training for the Wisconsin Child Welfare Professional Development through the University of Wisconsin which involves training County social workers on a state-wide basis on the legal issues involving termination of parental rights. The perspective that I would share with you today is that from both practitioner as well as an educator as I hear the state-wide anecdotal challenges County Departments of Human Services agencies encounter with termination of parental rights.

In identifying the problem areas, it is helpful to view the process of termination of parental rights and adoption as a continuum from referral of a case to removal of the child with hopefully reunification, but if that is not possible then reaching a permanent plan which includes termination of parental rights and adoption. One of the concerns which has been raised in several public hearings regarding this continuum is the length of time that it takes to get from removal of the child to an eventual termination of parental rights and then adoption. We need to identify and then eliminate some of the choke points along the permanency process continuum.

Proposed Changes:

1. Procedural: - time limits

The difficulty with timelines is that TPR's get delayed because of clogged court calendars where the court is unable to provide a trial date within a reasonable time period. The statutes require the hearing to be set within 45 days, but that time requirement can be waived for good cause. There is no speedy trial provision in the children's code similar to that in the criminal code under Wis. Stats. § 971.10. The first suggestion would be to include such a speedy trial requirement such that if the trial is not set within 90 days, then as in the criminal procedure, the case is reassigned to a different judge. It is also recommended that this speedy trial right be extended to all parties not just the parent. With this change and requirement, parent's counsel would have sufficient time to prepare without the case languishing for months before going to trial.

~~2. Grounds~~

Under current federal law, permanency must be achieved after 15 out of 22 months. In addition, a permanency plan must be filed within 60 days of the child's removal from the parental home. Thereafter, the permanency plan is reviewed every six months either by the court or in some jurisdictions an administrative panel.

There is a disconnect between these time requirements under the federal law and certain grounds for Termination of parental rights under Wisconsin law which have time requirements. In other words, the 15/22 months under federal law do not line up with the grounds for termination of parental rights under Wisconsin law. There are three grounds under Wisconsin law that contain a timeline requirement. In addition, these grounds also require a CHIPS finding and written termination of parental rights warning from the court that is attached to the Court's order. I will address changes to two of these grounds which include: Continuing Need for Protection and Services under Wis. Stats. §48.415(2) and Denial of Periods of Physical Placement or Visitation under Wis. Stats. § 48.415(4). Each of these grounds have minimum time period that must lapse before the ground ripens. The Continuing CHIPS grounds has a six-month requirement and the Denial of Visitation has a twelve-month requirement. However, in addition to the time requirement, each ground contains the requirement that the child is removed from the home, but the time is triggered not by the removal but when the court makes a CHIPS finding and enters a dispositional order along with a TPR warning. Thus, if it takes 12 months to get to a CHIPS finding, then all of the time spent out of home prior to the CHIPS finding does not count towards the grounds time requirement.

~~A. Continuing Need of Protection and Services Wis. Stats. § 48.415(2)~~ ✓

It is recommended that this ground for termination be amended to include all court orders where the child is removed or continues to remain out of the parental home. This would include the CHIPS dispositional order under Wis. Stats. §48.355 but also a Temporary Physical Custody order under Wis. Stats. §48.21, a consent decree order under Wis. Stats. §48.32, and a permanency plan order under Wis. Stats. §48.38. The change to this TPR ground should also require that the TPR warnings be attached to these orders along with a listing of the goals which the parent must meet in order to have the child returned. It is also recommended that the triggering mechanism for the clock to begin running under this TPR ground would be the removal of the child from the home by a court order rather than a CHIPS adjudication. With this change, the time requirements for reunification would begin much earlier under this TPR ground. This would also allow the Wisconsin TPR ground under Wis. Stats. §48.415(2) to line up with the Federal requirements for reunification or moving more quickly to permanency for the child.

With this change, it is also recommended that that first permanency plan hearing within 6 months of the removal date be a court hearing before a judge rather than an administrative panel. In this way, the condition for return listed in the permanency plan would be given to the parents along with the TPR warning and a court order would be issued. The administrative panel does not issue court orders when it reviews a case whereas the Court signs a permanency plan order. These changes as recommended would significantly cut down the long waiting periods before the grounds for TPR under Continuing Need of Protection and Services ripens.

~~B. Denial of Period of Physical Placement or Visitation Wis. Stats. §48.415(4).~~

A similar recommendation would be made to amend the Denial of Periods of Physical Placement or Visitation ground under Wis. Stats. §48.415(4) to allow for any Children's Court Order in which the judge has suspended parental visitation to apply, regardless whether the order is made under a Temporary Physical Custody order Wis. Stats. §48.21, Consent Decree Wis. Stats. §48.32, Revision order Wis. Stats. §48.363, Dispositional order Wis. Stats. §48.355, Permanency Plan order Wis. Stats. §48.38 or Visitation order entered under Wis. Stats. §48.355(3).

Courts clearly have authority to make orders affecting visitation which also includes suspension of visitation. However, under current law only orders that are entered after a CHIPS findings and dispositional order can be considered to be applicable under this ground. For example, if a parent delays the CHIPS trial and the Court suspends visitation, this ground does not apply. This proposed change modifies current TPR grounds to consider any court order which contains a no contact or no visitation order. This order would still have to have the TPR warnings attached as well as the conditions for reinstatement of visitation but would eliminate waiting until a CHIPS finding is entered

before triggering the 12-month clock for TPR grounds under Wis. Stats. § 48.415(4). This would speed up those cases in which children are just waiting and the parent's visitation rights have been suspended.

~~Appeals~~

There is a need to address the problem with the absent parent who requests an appeal of a TPR and then does not cooperate with either getting their lawyer or cooperating with their lawyer. There should be an affirmative duty to either follow through or abandon the appeal. The law should require cooperation and participation of the parent in the appeal. If there is a failure, then appeal should be deemed abandoned. The current rules place a burden on the appellate counsel to advise the court that the parent has abandoned the appeal. Some lawyers representing parents are hesitant to raise such a motion. The law should allow for the Guardian Ad litem or the County to move the appellate court for finding that the parent has abandoned the appeal.

809.107 (5) (am)
48.43 (6) - (am)?

4. Effective date And Implementation of Legislation.

Typically, all new legislation includes the effective date the law goes into effect. However, frequently there is little or no direction as to how the law should be applied to existing or pending TPR or CHIPS cases. This might include when should the warnings of the new law be given to the parents and how will the grounds be applied to pending TPR cases. It is recommended that the Committee consider and include in any legislation how any proposed legislative changes will impact pending cases and how the trial court should address these issues. This instruction in the legislation would eliminate needless confusion, delays and unnecessary appeals.

5. Open adoption.

It is recommended that open adoption provisions be included in the statutes. Current law does not allow for open adoption, although neighboring states such as Minnesota do have such legislation. Any agreement for an open adoption entered into in Wisconsin is currently unenforceable under the law. This legislative change would open up permanency options much earlier for children.

I would note that there are several issues to consider when drafting such provisions:

- A. The types of cases in which this is allowed.
- B. The types of post adoption contact that is allowed.
- C. The frequency of contact or communication, as well as what information might be provided to the biological parent regarding the child.

D. How the open adoption agreement can be modified, rescinded, or expanded and which parties bear the legal costs of such action.

E. How and which court would enforce an open adoption agreement.

F. Clarifying that failure to honor the agreement will not void the adoption.

G. Caution must be given to the unintended consequences of this legislation such that these open adoption agreements are used appropriately and not as way of forcing foster/adoptive parents into agreeing to an open adoption.

Hopefully, the Task Force on Adoption will find these recommendations helpful. The Children and Law Section of the Wisconsin State Bar remains willing to answer any questions or provide any assistance to the Task Force that it requested. Thank you for your time and attention.



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-4082 ^{DP}
EAW: ^{jf}

in 9/9
due 9/11

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

- 1 **AN ACT ...; relating to:** grounds for finding a child in need of protection or services
2 or for terminating parental rights and permanency plan review requirements.

Analysis by the Legislative Reference Bureau

This bill makes changes to the grounds for finding that a child is in need of protection or services under the Children's Code and for the involuntary termination of parental rights (TPR), and changes the procedure for review of a permanency plan under the Children's Code and Juvenile Justice Code.

Grounds for CHIPS

Under current law, the court assigned to exercise jurisdiction under the Children's Code (juvenile court) has exclusive original jurisdiction over a child who is alleged to be in need of protection or services (CHIPS) that can be ordered by the juvenile court and who meets certain grounds. This bill creates a new ground for CHIPS where a child is found to be a drug-affected child. Under the bill, a drug-affected child is defined as a child who suffered prenatal exposure to a controlled substance or a child whose basic needs and safety have been adversely affected by a parent's or guardian's chronic and severe use of alcohol or a controlled substance.

Grounds for TPR

Under current law, in a proceeding for involuntary TPR, the juvenile court must determine whether grounds exist for TPR. One of the grounds for TPR under current law is failure to assume parental responsibility for a child, which is established by proving that the parent or the person who may be the parent of the child has not had a substantial parental relationship with the child. "Substantial parental

relationship" is defined in current law as the acceptance and exercise of significant responsibility for the daily supervision, education, protection, and care of the child. In evaluating whether a person has had a substantial parental relationship with the child, current law allows the juvenile court to consider certain factors, including whether the person has expressed concern for or interest in the support, care, or well-being of the child and whether, with respect to a person who is or may be the father of the child, the person has expressed concern for or interest in the support, care, or well-being of the mother during her pregnancy.

This bill changes the factor related to expressing concern for or interest in the support, care, and well-being of the child to whether the person has provided care or support for the child. The bill eliminates the factor of whether the person has expressed concern for or interest in the support, care, or well-being of the mother during her pregnancy. The bill instead provides that proving that a person who is or may be the father of the child failed to provide care and support for the mother during her pregnancy, without reasonable cause, establishes abandonment of a child, which is a ground for TPR under current law. Also under the bill, proving that a parent has failed without reasonable cause to pay court-ordered payments of child support establishes abandonment of the child. 2) (1)

Other grounds for TPR under current law include continuing need of protection or services (continuing CHIPS), if a child is placed outside of the home for 15 of the last 22 months under a court order; or a continuing denial of periods of physical placement or visitation, court order denying physical placement or visitation has been in place for one year. Under current law, the timeline for both of these grounds begins when a court order is entered in a CHIPS or juvenile in need of protection or services (JIPS) proceeding. Under this bill, the timeline for these two grounds can also begin when the court enters an order for temporary custody, when a child or juvenile is placed outside the home under a consent decree, or when a court-approved permanency plan places a child outside the home.

This bill also creates a new ground for involuntary TPR where the child is a drug-affected child, which is established by showing that the child has been found to be a drug-affected child in a CHIPS proceeding. Under the bill, parental rights may not be terminated if a parent proves, by a preponderance of the evidence, that he or she enrolled in a substance abuse treatment or recovery program within 90 days of the birth of the child or the placement of the child outside of the home under a CHIPS order, and that he or she continues to maintain substantial compliance with the substance abuse treatment or recovery program.

Permanency plan reviews

Under current law, within six months after a child is removed from his or her home in proceeding under the Children's Code or the Juvenile Justice Code and every twelve months after that, the permanency plan is reviewed by the court or by a panel that is appointed by the court or by a child welfare agency. Within six months of the initial review and every twelve months after that, the permanency plan is reviewed in a hearing before the court. Under this bill, the initial six-month review and the reviews done every 12 months after that are done in a hearing before the court.

↓
SIX-MONTH
REVIEW

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:

1 SECTION 1. 48.02 (5e) of the statutes is created to read:

2 48.02 (5e) "Drug-affected child" means any of the following:

3 (a) A child who suffered prenatal exposure to a controlled substance or alcohol,
4 used by the mother for a nonmedical purpose, as evidenced by withdrawal symptoms
5 in the child at birth, a positive result from a toxicology test of the mother or child at
6 the time of the child's birth, or developmental delays or other symptoms during the
7 child's first year of life that have been diagnosed as a fetal alcohol spectrum disorder
8 or as caused by prenatal exposure to a controlled substance.

9 (b) A child whose basic needs and safety have been adversely affected by a
10 parent's or guardian's chronic and severe use of alcohol or a controlled substance.

11 SECTION 2. 48.13 (15) of the statutes is created to read:

12 48.13 (15) The child is a drug-affected child.

subsection
***** Note: This creates a new ground for CHIPS but does not change current reporting requirements*

13 SECTION 3. 48.356 (1) of the statutes is amended to read:

14 48.356 (1) Whenever the court orders a child to be placed outside his or her
15 home, orders an expectant mother of an unborn child to be placed outside of her
16 home, or denies a parent visitation because the child or unborn child has been
17 adjudged to be in need of protection or services under s. 48.21 (4), 48.32, 48.345,
18 48.347, 48.357, 48.363, or 48.365 and whenever the court reviews a permanency plan
19 under s. 48.38 (5m), the court shall orally inform the parent or parents who appear
20 in court or the expectant mother who appears in court of any grounds for termination
21 of parental rights under s. 48.415 which may be applicable and of the conditions

for abuse or neglect. If you want to tie it into mandatory reporting requirements, please let me know.

1 necessary for the child or expectant mother to be returned to the home or for the
2 parent to be granted visitation.

History: 1979 c. 330; 1983 a. 399; 1989 a. 86; 1991 a. 39; 1995 a. 275; 1997 a. 292; 2003 a. 321; 2009 a. 185.

3 SECTION 4. 48.38 (5) (a) of the statutes is amended to read:

4 48.38 (5) (a) Except as provided in s. 48.63 (5) (d), the court or a panel appointed
5 under par. (ag) shall review the permanency plan for each child for whom a
6 permanency plan is required under sub. (2) in the manner provided in this subsection
7 not later than 6 months after the date on which the child was first removed from his
8 or her home of a hearing held under sub. (5m) and every 6 months after a previous
9 review under this subsection for as long as the child is placed outside the home,
10 except that for the review that is required to be conducted not later than 12 months
11 after the child was first removed from his or her home and the reviews that are
12 required to be conducted every 12 months after that review the initial hearing under
13 sub. (5m), the court shall hold a hearing under sub. (5m) to review the permanency
14 plan, which. The hearing may be instead of or in addition to the review under this
15 subsection. The 6-month and 12-month periods referred to in this paragraph
16 include trial reunifications under s. 48.358.

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; 2007 a. 20; 2009 a. 28, 79, 94, 185; 2011 a. 32, 181, 258; 2011 a. 260 ss. 80, 81; 2013 a. 165; 2013 a. 168 s. 21; 2013 a. 334, 335; 2015 a. 55, 128, 172, 373; 2017 a. 251; 2019 a. 9.

NOTE: 1993 Wis. Act 395, which affects subs. (5) and (5m), contains extensive explanatory notes.

17 SECTION 5. 48.38 (5m) (a) of the statutes is amended to read:

18 48.38 (5m) (a) The court shall hold a hearing to review the permanency plan
19 and to make the determinations specified in sub. (5) (c) for each child for whom a
20 permanency plan is required under sub. (2) no later than 12 6 months after the date
21 on which the child was first removed from the home and every 12 months after a
22 previous hearing under this subsection for as long as the child is placed outside the

1 home. The 6-month and 12-month periods referred to in this paragraph include
2 trial reunifications under s. 48.358.

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; 2007 a. 20; 2009 a. 28, 79, 94, 185; 2011 a. 32, 181, 258; 2011 a. 260 ss. 80, 81; 2013 a. 165; 2013 a. 168 s. 21; 2013 a. 334, 335; 2015 a. 55, 128, 172, 373; 2017 a. 251; 2019 a. 9.

NOTE: 1993 Wis. Act 395, which affects subs. (5) and (5m), contains extensive explanatory notes.

3 **SECTION 6.** 48.415 (1) (a) 4. of the statutes is created to read:

4 48.415 (1) (a) 4. That a person who is or may be the father of the child failed
5 without reasonable cause to provide care and support for the mother during her
6 pregnancy.

7 **SECTION 7.** 48.415 (1) (a) 5. of the statutes is created to read:

8 48.415 (1) (a) 5. That the parent has failed without reasonable cause to pay
9 court-ordered payments of child support.

10 **SECTION 8.** 48.415 (2) (a) 1. of the statutes is amended to read:

11 48.415 (2) (a) 1. That the child has been adjudged to be a child or an unborn
12 child in need of protection or services and placed, or continued in a placement,
13 outside his or her home pursuant to one or more court orders under s. 48.21 (4), 48.32,
14 48.345, 48.347, 48.357, 48.363, 48.365, 48.38, 938.21 (4), 938.32, 938.345, 938.357,
15 938.363 ~~or~~, 938.365, or 938.38 containing the notice required by s. 48.356 (2) or
16 938.356 (2).

History: 1979 c. 330; 1983 a. 189 s. 329 (5); 1983 a. 326; 1983 a. 447 ss. 8, 67; 1983 a. 488, 538; 1987 a. 355, 383; 1989 a. 86; 1993 a. 235, 395; 1995 a. 77, 108, 225, 275; 1997 a. 35, 80, 237, 292, 294; 1999 a. 9, 32; 2001 a. 2, 109; 2005 a. 277, 293; 2007 a. 45, 116; 2009 a. 94; 2011 a. 257 s. 56; 2011 a. 271; 2015 a. 366; 2017 a. 128, 256.

17 **SECTION 9.** 48.415 (4) (a) of the statutes is amended to read:

18 48.415 (4) (a) That the parent has been denied periods of physical placement
19 by court order in an action affecting the family or has been denied visitation under
20 an order under s. 48.21 (4), 48.32, 48.345, 48.355 (3), 48.363, 48.365, 48.38, 938.21

1 ✓ ✓ ✓
1 ~~(4), 938.32, 938.345, 938.363 or, 938.365, or 938.38~~ containing the notice required by
2 s. 48.356 (2) or 938.356 (2).

History: 1979 c. 330; 1983 a. 189 s. 329 (5); 1983 a. 326; 1983 a. 447 ss. 8, 67; 1983 a. 488, 538; 1987 a. 355, 383; 1989 a. 86; 1993 a. 235, 395; 1995 a. 77, 108, 225, 275; 1997 a. 35, 80, 237, 292, 294; 1999 a. 9, 32; 2001 a. 2, 109; 2005 a. 277, 293; 2007 a. 45, 116; 2009 a. 94; 2011 a. 257 s. 56; 2011 a. 271; 2015 a. 366; 2017 a. 128, 256.

3 **SECTION 10.** 48.415 (6) (b) of the statutes is amended to read:

4 48.415 (6) (b) In this subsection, "substantial parental relationship" means the
5 acceptance and exercise of significant responsibility for the daily supervision,
6 education, protection, and care of the child. In evaluating whether the person has
7 had a substantial parental relationship with the child, the court may consider such
8 factors, including, ~~but not limited to,~~ whether the person has expressed concern for
9 ~~or interest in the provided care or support, care or well-being of~~ for the child, ~~and~~
10 whether the person has neglected or refused to provide care or support for the child
11 and whether, with respect to a person who is or may be the father of the child, the
12 person has expressed concern for or interest in the support, care or well-being of the
13 mother during her pregnancy.

14 **SECTION 11.** 48.415 (11) of the statutes is created to read:

15 48.415 (11) ~~DRUG-AFFECTED CHILD.~~ The child is a drug-affected child, which shall
16 be established by proving that the child has been adjudged to be a child in need of
17 protection or services under s. 48.13 (15), unless the parent proves all of the following
18 by a preponderance of the evidence:

19 (a) That the parent enrolled in a substance abuse treatment or recovery
20 program within 90 days of the birth of the child or placement of the child outside of
21 the home pursuant to a dispositional order under s. 48.345.

22 (b) That the parent continues to maintain substantial compliance with a
23 substance abuse treatment or recovery program.

24 **SECTION 12.** 938.356 (1) of the statutes is amended to read:

1 938.356 (1) ORAL WARNING. Whenever the court orders a juvenile to be placed
2 outside his or her home or denies a parent visitation because the juvenile has been
3 adjudged to be delinquent or to be in need of protection or services under s. 938.21
4 (4), 938.32, 938.34, 938.345, 938.357, 938.363, or 938.365 and whenever the court
5 reviews a permanency plan under s. 938.38 (5m), the court shall orally inform the
6 parent or parents who appear in court of any grounds for termination of parental
7 rights under s. 48.415 which may be applicable and of the conditions necessary for
8 the juvenile to be returned to the home or for the parent to be granted visitation.

History: 1995 a. 77, 275; 2005 a. 344; 2009 a. 185.

9 **SECTION 13.** 938.38 (5) (a) of the statutes is amended to read:

10 938.38 (5) (a) Except as provided in s. 48.63 (5) (d), the court or a panel
11 appointed under par. (ag) shall review the permanency plan for each juvenile for
12 whom a permanency plan is required under sub. (2) in the manner provided in this
13 subsection not later than 6 months after the date ~~on which the juvenile was first~~
14 ~~removed from his or her home of a hearing held under sub. (5m)~~ and every 6 months
15 after a previous review under this subsection for as long as the juvenile is placed
16 outside the home, except that for the review ~~that is required to be conducted not later~~
17 ~~than 12 months after the juvenile was first removed from his or her home and the~~
18 reviews that are required to be conducted every 12 months after ~~that review the~~
19 initial hearing under sub. (5m), the court shall hold a hearing under sub. (5m) to
20 review the permanency plan. The hearing may be instead of or in addition to the
21 review under this subsection. The 6-month and 12-month periods referred to in this
22 paragraph include trial reunifications under s. 938.358.

History: 1995 a. 77, 275, 352; 1997 a. 35, 237, 296; 1999 a. 9; 2001 a. 59, 69, 109; 2003 a. 321; 2005 a. 156, 344, 448; 2007 a. 20, 97; 2009 a. 28, 79, 94, 185; 2011 a. 32, 181, 258; 2011 a. 260 s. 80; 2013 a. 165, 334, 335; 2015 a. 55, 128, 373; 2017 a. 251; 2017 a. 364 s. 49; 2017 a. 365.

NOTE: The above annotation cites to s. 48.38, the predecessor statute to s. 938.38.

23 **SECTION 14.** 938.38 (5m) (a) of the statutes is amended to read:

1 938.38 (5m) (a) The court shall hold a hearing to review the permanency plan
2 and to make the determinations specified in sub. (5) (c) for each juvenile for whom
3 a permanency plan is required under sub. (2) no later than 12 6 months after the date
4 on which the juvenile was first removed from the home and every 12 months after
5 a previous hearing under this subsection for as long as the juvenile is placed outside
6 the home. The 6-month and 12-month periods referred to in this paragraph include
7 trial reunifications under s. 938.358.

History: 1995 a. 77, 275, 352; 1997 a. 35, 237, 296; 1999 a. 9; 2001 a. 59, 69, 109; 2003 a. 321; 2005 a. 156, 344, 448; 2007 a. 20, 97; 2009 a. 28, 79, 94, 185; 2011 a. 32, 181, 258; 2011 a. 260 s. 80; 2013 a. 165, 334, 335; 2015 a. 55, 128, 373; 2017 a. 251; 2017 a. 364 s. 49; 2017 a. 365.

NOTE: The above annotation cites to s. 48.38, the predecessor statute to s. 938.38.

8 **SECTION 15. Initial applicability.**

9 (1) CHILD IN NEED OF PROTECTION OR SERVICES GROUND. The treatment of s. 48.13
10 (15) first applies to a petition filed under s. 48.13 on the effective date of this
11 subsection.

12 ~~(2)~~ WARNINGS FOR GROUNDS OF AN INVOLUNTARY TERMINATION OF PARENTAL RIGHTS.
13 The treatment of s. 48.415 (11) first applies to court orders required to contain the
14 notice under section 48.356 (2) or 938.356 (2) of the statutes granted on the effective
15 date of this subsection.

16 ~~(2)~~ PERMANENCY PLAN REVIEWS. The treatment of ss. 48.38 (5) (a) and (5m) (a)
17 and 938.38 (5) (a) and (5m) (a) first applies to a permanency plan that is filed with
18 the court under s. 48.38 (3) or 938.38 (3) on the effective date of this subsection.

****NOTE: Do you want a delayed effective date for this bill?

19

(END)



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-4082/P1
EAW:kjf

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT to amend** 48.356 (1), 48.38 (5) (a), 48.38 (5m) (a), 48.415 (2) (a) 1., 48.415
2 (4) (a), 48.415 (6) (b), 938.356 (1), 938.38 (5) (a) and 938.38 (5m) (a); and **to**
3 **create** 48.02 (5e), 48.13 (15), 48.415 (1) (a) 4., 48.415 (1) (a) 5. and 48.415 (11)
4 of the statutes; **relating to:** grounds for finding a child in need of protection or
5 services or for terminating parental rights and permanency plan review
6 requirements.

Analysis by the Legislative Reference Bureau

This bill makes changes to the grounds for finding that a child is in need of protection or services under the Children's Code and for the involuntary termination of parental rights (TPR), and changes the procedure for review of a permanency plan under the Children's Code and Juvenile Justice Code.

Grounds for CHIPS

Under current law, the court assigned to exercise jurisdiction under the Children's Code (juvenile court) has exclusive original jurisdiction over a child who is alleged to be in need of protection or services (CHIPS) that can be ordered by the juvenile court and who meets certain grounds. This bill creates a new ground for CHIPS where a child is found to be a drug-affected child. Under the bill, a drug-affected child is defined as a child who suffered prenatal exposure to a controlled substance or a child whose basic needs and safety have been adversely affected by a parent's or guardian's chronic and severe use of alcohol or a controlled substance.

Grounds for TPR

Under current law, in a proceeding for involuntary TPR, the juvenile court must determine whether grounds exist for TPR. One of the grounds for TPR under current law is failure to assume parental responsibility for a child, which is established by proving that the parent or the person who may be the parent of the child has not had a substantial parental relationship with the child. "Substantial parental relationship" is defined in current law as the acceptance and exercise of significant responsibility for the daily supervision, education, protection, and care of the child. In evaluating whether a person has had a substantial parental relationship with the child, current law allows the juvenile court to consider certain factors, including whether the person has expressed concern for or interest in the support, care, or well-being of the child and whether, with respect to a person who is or may be the father of the child, the person has expressed concern for or interest in the support, care, or well-being of the mother during her pregnancy.

This bill changes the factor related to expressing concern for or interest in the support, care, and well-being of the child to whether the person has provided care or support for the child. The bill eliminates the factor of whether the person has expressed concern for or interest in the support, care, or well-being of the mother during her pregnancy. The bill instead provides that proving that a person who is or may be the father of the child failed to provide care and support for the mother during her pregnancy, without reasonable cause, establishes abandonment of a child, which is a ground for TPR under current law. Also under the bill, proving that a parent has failed without reasonable cause to pay court-ordered payments of child support establishes abandonment of the child.

Other grounds for TPR under current law include 1) continuing need of protection or services (continuing CHIPS), if a child is placed outside of the home for 15 of the last 22 months under a court order; or 2) a continuing denial of periods of physical placement or visitation, if a court order denying physical placement or visitation has been in place for one year. Under current law, the timeline for both of these grounds begins when a court order is entered in a CHIPS or juvenile in need of protection or services (JIPS) proceeding. Under this bill, the timeline for these two grounds can also begin when the court enters an order for temporary custody, when a child or juvenile is placed outside the home under a consent decree, or when a court-approved permanency plan places a child outside the home.

This bill also creates a new ground for involuntary TPR where the child is a drug-affected child, which is established by showing that the child has been found to be a drug-affected child in a CHIPS proceeding. Under the bill, parental rights may not be terminated if a parent proves, by a preponderance of the evidence, that he or she enrolled in a substance abuse treatment or recovery program within 90 days of the birth of the child or the placement of the child outside of the home under a CHIPS order, and that he or she continues to maintain substantial compliance with the substance abuse treatment or recovery program.

Permanency plan reviews

Under current law, within six months after a child is removed from his or her home in a proceeding under the Children's Code or the Juvenile Justice Code and

every 12 months after that, the permanency plan is reviewed by the court or by a panel that is appointed by the court or by a child welfare agency. Within six months of the initial review and every 12 months after that, the permanency plan is reviewed in a hearing before the court. Under this bill, the initial six-month review and the reviews done every 12 months after that six-month review are done in a hearing before the court.

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:

1 **SECTION 1.** 48.02 (5e) of the statutes is created to read:

2 48.02 (5e) "Drug-affected child" means any of the following:

3 (a) A child who suffered prenatal exposure to a controlled substance or alcohol,
4 used by the mother for a nonmedical purpose, as evidenced by withdrawal symptoms
5 in the child at birth, a positive result from a toxicology test of the mother or child at
6 the time of the child's birth, or developmental delays or other symptoms during the
7 child's first year of life that have been diagnosed as a fetal alcohol spectrum disorder
8 or as caused by prenatal exposure to a controlled substance.

9 (b) A child whose basic needs and safety have been adversely affected by a
10 parent's or guardian's chronic and severe use of alcohol or a controlled substance.

11 **SECTION 2.** 48.13 (15) of the statutes is created to read:

12 48.13 (15) The child is a drug-affected child.

 ****NOTE: This subsection creates a new ground for CHIPS but does not change
current reporting requirements for abuse or neglect. If you want to tie it into mandatory
reporting requirements, please let me know.

13 **SECTION 3.** 48.356 (1) of the statutes is amended to read:

14 48.356 (1) Whenever the court orders a child to be placed outside his or her
15 home, orders an expectant mother of an unborn child to be placed outside of her
16 home, or denies a parent visitation because the child or unborn child has been

1 adjudged to be in need of protection or services under s. ~~48.21 (4), 48.32,~~ 48.345,
2 48.347, 48.357, 48.363, or 48.365 and whenever the court reviews a permanency plan
3 under s. 48.38 (5m), the court shall orally inform the parent or parents who appear
4 in court or the expectant mother who appears in court of any grounds for termination
5 of parental rights under s. 48.415 which may be applicable and of the conditions
6 necessary for the child or expectant mother to be returned to the home or for the
7 parent to be granted visitation.

8 **SECTION 4.** 48.38 (5) (a) of the statutes is amended to read:

9 48.38 (5) (a) Except as provided in s. 48.63 (5) (d), the court or a panel appointed
10 under par. (ag) shall review the permanency plan for each child for whom a
11 permanency plan is required under sub. (2) in the manner provided in this subsection
12 not later than 6 months after the date ~~on which the child was first removed from his~~
13 ~~or her home of a hearing held under sub. (5m)~~ and every 6 months after a previous
14 review under this subsection for as long as the child is placed outside the home,
15 except that for the review ~~that is required to be conducted not later than 12 months~~
16 ~~after the child was first removed from his or her home and the reviews that are~~
17 required to be conducted every 12 months after ~~that review~~ the initial hearing under
18 sub. (5m), the court shall hold a hearing under sub. (5m) to review the permanency
19 plan, ~~which.~~ The hearing may be instead of or in addition to the review under this
20 subsection. The 6-month and 12-month periods referred to in this paragraph
21 include trial reunifications under s. 48.358.

22 **SECTION 5.** 48.38 (5m) (a) of the statutes is amended to read:

23 48.38 (5m) (a) The court shall hold a hearing to review the permanency plan
24 and to make the determinations specified in sub. (5) (c) for each child for whom a
25 permanency plan is required under sub. (2) no later than ~~12~~ 6 months after the date

1 on which the child was first removed from the home and every 12 months after a
2 previous hearing under this subsection for as long as the child is placed outside the
3 home. The 6-month and 12-month periods referred to in this paragraph include
4 trial reunifications under s. 48.358.

5 **SECTION 6.** 48.415 (1) (a) 4. of the statutes is created to read:

6 48.415 (1) (a) 4. That a person who is or may be the father of the child failed
7 without reasonable cause to provide care and support for the mother during her
8 pregnancy.

9 **SECTION 7.** 48.415 (1) (a) 5. of the statutes is created to read:

10 48.415 (1) (a) 5. That the parent has failed without reasonable cause to pay
11 court-ordered payments of child support.

12 **SECTION 8.** 48.415 (2) (a) 1. of the statutes is amended to read:

13 48.415 (2) (a) 1. That the child has been adjudged to be a child or an unborn
14 child in need of protection or services and placed, or continued in a placement,
15 outside his or her home pursuant to one or more court orders under s. 48.21 (4), 48.32,
16 48.345, 48.347, 48.357, 48.363, 48.365, 48.38, 938.21 (4), 938.32, 938.345, 938.357,
17 938.363 or, 938.365, or 938.38 containing the notice required by s. 48.356 (2) or
18 938.356 (2).

19 **SECTION 9.** 48.415 (4) (a) of the statutes is amended to read:

20 48.415 (4) (a) That the parent has been denied periods of physical placement
21 by court order in an action affecting the family or has been denied visitation under
22 an order under s. 48.21 (4), 48.32, 48.345, 48.355 (3), 48.363, 48.365, 48.38, 938.21
23 (4), 938.32, 938.345, 938.363 or, 938.365, or 938.38 containing the notice required by
24 s. 48.356 (2) or 938.356 (2).

25 **SECTION 10.** 48.415 (6) (b) of the statutes is amended to read:

1 48.415 (6) (b) In this subsection, “substantial parental relationship” means the
2 acceptance and exercise of significant responsibility for the daily supervision,
3 education, protection, and care of the child. In evaluating whether the person has
4 had a substantial parental relationship with the child, the court may consider such
5 factors, including, ~~but not limited to,~~ whether the person has ~~expressed concern for~~
6 ~~or interest in the provided care or support, care or well-being of~~ for the child, and
7 whether the person has neglected or refused to provide care or support for the child
8 and whether, with respect to a person who is or may be the father of the child, the
9 person has expressed concern for or interest in the support, care or well-being of the
10 mother during her pregnancy.

11 **SECTION 11.** 48.415 (11) of the statutes is created to read:

12 48.415 (11) DRUG-AFFECTED CHILD. The child is a drug-affected child, which
13 shall be established by proving that the child has been adjudged to be a child in need
14 of protection or services under s. 48.13 (15), unless the parent proves all of the
15 following by a preponderance of the evidence:

16 (a) That the parent enrolled in a substance abuse treatment or recovery
17 program within 90 days of the birth of the child or placement of the child outside of
18 the home pursuant to a dispositional order under s. 48.345.

19 (b) That the parent continues to maintain substantial compliance with a
20 substance abuse treatment or recovery program.

21 **SECTION 12.** 938.356 (1) of the statutes is amended to read:

22 938.356 (1) ORAL WARNING. Whenever the court orders a juvenile to be placed
23 outside his or her home or denies a parent visitation because the juvenile has been
24 adjudged to be delinquent or to be in need of protection or services under s. 938.21
25 (4), 938.32, 938.34, 938.345, 938.357, 938.363, or 938.365 and whenever the court

1 reviews a permanency plan under s. 938.38 (5m), the court shall orally inform the
2 parent or parents who appear in court of any grounds for termination of parental
3 rights under s. 48.415 which may be applicable and of the conditions necessary for
4 the juvenile to be returned to the home or for the parent to be granted visitation.

5 **SECTION 13.** 938.38 (5) (a) of the statutes is amended to read:

6 938.38 (5) (a) Except as provided in s. 48.63 (5) (d), the court or a panel
7 appointed under par. (ag) shall review the permanency plan for each juvenile for
8 whom a permanency plan is required under sub. (2) in the manner provided in this
9 subsection not later than 6 months after the date ~~on which the juvenile was first~~
10 ~~removed from his or her home~~ of a hearing held under sub. (5m) and every 6 months
11 after a previous review under this subsection for as long as the juvenile is placed
12 outside the home, except that for the ~~review that is required to be conducted not later~~
13 ~~than 12 months after the juvenile was first removed from his or her home and the~~
14 reviews that are required to be conducted every 12 months after ~~that review the~~
15 initial hearing under sub. (5m), the court shall hold a hearing under sub. (5m) to
16 review the permanency plan. The hearing may be instead of or in addition to the
17 review under this subsection. The 6-month and 12-month periods referred to in this
18 paragraph include trial reunifications under s. 938.358.

19 **SECTION 14.** 938.38 (5m) (a) of the statutes is amended to read:

20 938.38 (5m) (a) The court shall hold a hearing to review the permanency plan
21 and to make the determinations specified in sub. (5) (c) for each juvenile for whom
22 a permanency plan is required under sub. (2) no later than ~~12~~ 6 months after the date
23 on which the juvenile was first removed from the home and every 12 months after
24 a previous hearing under this subsection for as long as the juvenile is placed outside

1 the home. The 6-month and 12-month periods referred to in this paragraph include
2 trial reunifications under s. 938.358.

3 **SECTION 15. Initial applicability.**

4 (1) CHILD IN NEED OF PROTECTION OR SERVICES GROUND. The treatment of s. 48.13
5 (15) first applies to a petition filed under s. 48.13 on the effective date of this
6 subsection.

7 (2) WARNINGS FOR GROUNDS OF AN INVOLUNTARY TERMINATION OF PARENTAL RIGHTS.
8 The treatment of s. 48.415 (11) first applies to court orders required to contain the
9 notice under s. 48.356 (2) or 938.356 (2) granted on the effective date of this
10 subsection.

11 (3) PERMANENCY PLAN REVIEWS. The treatment of ss. 48.38 (5) (a) and (5m) (a)
12 and 938.38 (5) (a) and (5m) (a) first applies to a permanency plan that is filed with
13 the court under s. 48.38 (3) or 938.38 (3) on the effective date of this subsection.

****NOTE: Do you want a delayed effective date for this bill?

14

(END)