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**WISCONSIN LEGISLATIVE COUNCIL  
AMENDMENT MEMO**

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<b>2011 Assembly Bill 30</b>	<b>Senate Amendment 1</b>
<i>Memo published: June 22, 2011</i> <span style="float: right;"><i>Contact: Mary Matthias, Senior Staff Attorney (266-0932)</i></span>	

**Current Law**

Under current law, a parent may petition the court assigned to exercise jurisdiction under the Children's Code (juvenile court) for the appointment of a guardian for the parent's child. A guardian has the duty and authority to make important decisions in matters having a permanent effect on the life and development of the child and the duty to be concerned about the child's general welfare.

**Assembly Bill 30**

Assembly Bill 30\* creates a procedure by which a parent may, without court involvement, delegate to another person, for a period not to exceed one year, most of his or her powers regarding the care and custody of their child. The powers that may not be delegated are the power to consent to the marriage or adoption of the child, the performance or inducement of an abortion on or for the child, the termination of parental rights to the child, or the enlistment of the child in the U.S. armed forces.

**Senate Amendment 1**

***Indian Child Welfare Act***

In 2009, the Legislature incorporated the federal Indian Child Welfare Act into the Children's Code. [s. 48.028, Stats.] As a result, the Children's Code contains special procedures that must be followed, and special conditions that apply, when a voluntary out-of-home care placement is made for

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\* References in this Memo to Assembly Bill 30 are to the bill as amended by Assembly Substitute Amendment 1, which was amended by Assembly Amendment 1 to Assembly Substitute Amendment 1.

an Indian child. Senate Amendment 1 (SA 1) specifies that a delegation of powers (as created under the bill) that is made for an Indian child is subject to those same special procedures and conditions. Those procedures and conditions include the following:

- The delegation must be executed in writing and recorded before a judge.
- The delegation must be accompanied by a written certification by the judge stating all of the following:
  - The terms and consequences of the delegation were fully explained to and understood by the parent or custodian executing the delegation.
  - The parent or custodian fully understood the explanation in English or the explanation was translated into a language that the parent or custodian understood.
- A delegation made prior to or within 10 days after the birth of an Indian child is not valid.
- The parents, custodian, or tribe may move the court to invalidate the delegation on the grounds that it was done in violation of federal law pertaining to tribal jurisdiction over certain custody proceedings.

#### ***Children Subject to Jurisdiction of the Juvenile Court***

The bill contains a provision stating that a delegation of powers does not prevent a court from exercising jurisdiction over a child. The bill states that this provision “does not preclude” a delegation of powers that is not in conflict with a court order granted in the exercise of that jurisdiction.

SA 1 retains the provision stating that a delegation of powers does not prevent a court from exercising jurisdiction over a child. SA 1 eliminates the language stating that the provision “does not preclude” a delegation of powers that is not in conflict with a court order, and provides instead that if a child is subject to the jurisdiction of the court, a parent may not execute a delegation of powers pertaining to the child unless the court approves the delegation.

#### **Legislative History**

SA 1 was offered by Senator Moulton on June 15, 2011. On June 16, 2011, the Senate Committee on Public Health, Human Services, and Revenue voted to adopt the amendment and recommend passage of the bill, as amended, on successive votes of Ayes, 5; Noes, 0.

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