2005 DRAFTING REQUEST

Bill

Received: **04/13/2005**

Received By: **gmalaise**

Wanted: **As time permits**

Identical to LRB:

For: **Legislative Council - JLC 7-9485**

By/Representing: **Anne Sappenfield**

This file may be shown to any legislator: **NO**

Drafter: **gmalaise**

May Contact:

Addl. Drafters:

Subject: **Children - TPR and adoption**

Extra Copies:

Submit via email: **YES**

Requester's email: **anne.sappenfield@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Termination of parental rights and adoption

Instructions:

Draft up WLCS: 0166/1, which was the work product of the 2004 Study Committee on Termination of Parental Rights and Adoption

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Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?							
/P1	gmalaise 05/11/2005	kfollett 06/03/2005		_____ _____			S&L Crime
/1			rschluet 06/07/2005	_____ _____	sbasford 06/07/2005	sbasford 06/09/2005	

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/?	gmalaise	1/kgf 6/13	LC conversion ch 4-13 675 pg				

FE Sent For:

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ADOP WLC: 0166/1

AS:LR:tlu:ksm 03/28/2005

AN ACT ***to renumber*** 48.025 (3); ***to renumber and amend*** 48.025 (2), 48.355 (2) (b) 1., 48.41 (2) (b), 48.42 (2m) and 48.43 (6); ***to amend*** 46.03 (7) (bm), 48.025 (1), 48.27 (3) (b) 1. a., 48.27 (5), 48.295 (1), 48.368 (1), 48.415 (intro.), 48.415 (2) (a) 3., 48.415 (6) (a) and (b), 48.415 (10) (a), 48.42 (2) (b) (intro.), 48.42 (2) (b) 1., 48.42 (4) (a), 48.422 (6) (a), 48.423, 48.64 (4) (a), 48.64 (4) (c), 48.72, 48.78 (2) (a), 48.825 (5), 48.837 (4) (c), 48.837 (4) (e), 48.91 (2), 48.913 (1) (c), (i) and (m), 808.04 (7m), 808.04 (8), 809.82 (2) (b), 938.27 (3) (b) 1. a., 938.27 (5), 938.78 (2) (a) and 977.07 (1) (c); and ***to create*** 48.025 (2) (b), 48.025 (2) (d), 48.025 (3) (a), 48.025 (3) (c) and (d), 48.025 (5), 48.025 (6), 48.235 (1) (g), 48.235 (5m), 48.295 (2c), 48.355 (2) (b) 1. a., b., c., and d., 48.41 (2) (b) 2., 48.42 (1g), 48.42 (2) (am), 48.42 (2m) (b), 48.42 (4) (b) 1., 48.42 (5), 48.43 (6) (b) and (c), 48.43 (6m), 48.48 (17) (bm), 48.57 (2m), 48.825 (3m), 48.837 (1m), 48.837 (4) (cf), 48.8395, 809.107 (5) (am) and 938.57 (2m) of the statutes; **relating to:** termination of parental rights and adoption.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill draft was prepared for the joint legislative council's special committee on adoption and termination of parental rights law. The draft contains the following provisions:

Declarations of Paternal Interest

Under current law, a man claiming to be the father of a nonmarital child who is not adopted and whose parents have not married ("nonmarital child") may file a declaration of his interest in matters affecting the child ("declaration of paternal interest") with the department of health and family services (DHFS). The declaration may be filed at any time before

the termination of the father's parental rights. The declaration must be in writing and must be signed by the person declaring the paternal interest.

DHFS maintains a file containing records of declarations of paternal interest. DHFS may not release these records except under a court order or to the department of workforce development (DWD) or a county child support agency upon request by DWD or the child support agency for purposes of establishing paternity or enforcing child support or upon request by any other person with a direct and tangible interest in the record.

A person who files a declaration of paternal interest is entitled to receive notice of a proceeding to terminate his parental rights to the child. In addition, the following must receive notice of a termination of parental rights (TPR) proceeding under current law:

- A person or persons alleged to the court to be the father of the child or who may, based upon the statements of the mother or other information presented to the court, be the father of the child, unless that person has waived the right to notice.

- A person who has lived in a familial relationship with the child and who may be the father of the child.

Notice is generally not required to be given, however, to a 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 a sexual assault has occurred or if the person who may be the father has been convicted of sexual assault for conduct which may have led to the child's conception. A person who is not given notice under this provision does not have standing to appear and contest the termination of his parental rights.

If a man who alleges that he is the father of the child appears at the TPR hearing and wishes to contest the termination of his parental rights, the court must set a date for a hearing on the issue of paternity or, if all parties agree, the court may immediately commence hearing testimony on the issue of paternity. The man must prove paternity by clear and convincing evidence.

If the child is being placed for adoption, before holding a hearing on the adoptive placement and TPR petitions, the court must ascertain whether the child's paternity has been established. If any person has filed a declaration of paternal interest, the court must determine the rights of that person. If the child's paternity has not been established and if no person has filed a declaration, the court must attempt to ascertain the paternity of the child. The court may not proceed with the hearing on a placement or TPR petition unless the parental rights of the

nonpetitioning parent, whether known or unknown, have been terminated.

At the final adoption hearing, the court must establish whether the rights of any persons who have filed declarations of paternal interest have been determined or whether the child's paternity has been established. If the court finds that no such determination has been made, the court must proceed to ascertain the paternity of the child and the rights of any person who has filed a declaration before it may take any action on the petition for adoption.

The bill draft modifies current law relating to declarations of paternal interest and notification to putative fathers of TPR and adoption proceedings.

The bill draft makes various changes relating to declarations of paternal interest. The bill draft generally requires a declaration to be filed before the child's birth or within 14 days after the child's birth and permits a declaration to be revoked at any time. The bill draft also requires a declaration or revocation to be verified upon oath or affirmation and, in the case of a minor, to also be signed by the parent or guardian of the minor.

The bill draft requires DHFS to publicize information about declarations of paternal interest in a manner calculated to provide maximum notice to all persons who might claim to be the father of a nonmarital child.

The bill draft provides that a person who makes a false statement in a declaration, revocation of a declaration, or response to a declaration that the person does not believe is true is subject to prosecution for false swearing. False swearing is a Class A misdemeanor punishable by a fine not to exceed $10,000 or imprisonment not to exceed 9 months, or both.

Also, a person who intentionally obtains, uses, or discloses information relating to a declaration that is confidential may be fined up to $1,000 or imprisoned for up to 90 days, or both.

The bill draft also creates a new provision under which the petitioner in a proceeding to terminate the parental rights of a person who may be the father of a nonmarital child who is under one year of age must file with the TPR petition an affidavit signed by the child's mother that identifies or describes the father. The petitioner is required to notify any man alleged to be the father in the affidavit that he may file a declaration of paternal interest within 21 days after the date on which the notification was mailed. If the mother cannot, with reasonable diligence, be found, the petitioner must attach to the TPR petition a statement of efforts made to locate the mother.

The bill draft creates alternative TPR notice requirements for a person who may be the father of a nonmarital child who is under one year of age at the time the TPR petition is filed whose paternity has not been established in a TPR proceeding concerning the child, if an affidavit signed by the birth mother or a statement that the birth mother cannot be found, as described above, is filed with the petition. In these cases, the bill draft requires notice to be provided to the following:

1. A person who has filed an unrevoked declaration of paternal interest, within 14 days after the birth of the child or within 21 days after the notice of his right to file a declaration is mailed, whichever is later.

2. A person who has lived in a familial relationship with the child and who may be the father of the child.

The bill draft specifies that a person who is not entitled to actual notice of a TPR proceeding under the bill draft does not have standing to appear and contest the petition, present evidence relevant to the issue of disposition, or make alternative dispositional recommendations.

Finally, the bill draft prohibits a mother who has completed an affidavit relating to the identity of the child's father from attacking a TPR judgment on the basis that the father was not identified correctly.

Grounds for TPR

The draft provides that the grounds for involuntary TPR apply to parents and to persons who ***may*** be the parent of a child. In addition, the draft modifies the grounds in current law for TPR, as follows:

- **Failure to Assume Parental Responsibility: Substantial Parental Relationship**

Under current law, the ground of failure to assume parental responsibility is established by proving by clear and convincing evidence that the parent has never had a substantial parental relationship with the child. "Substantial parental relationship" is defined as the acceptance and exercise of significant responsibility for the daily supervision, education, protection, and care of the child.

In evaluating whether the person has had a substantial parental relationship with the child, the court may consider whether the person has ever expressed concern for or interest in the child's support, care, or well–being; whether the person has neglected or refused to provide care or support; and whether, with respect to the father, the parent has ever expressed concern for or interest in the mother's support, care, or well–being during her pregnancy.

The bill draft changes this ground by providing that this ground is established by proving by clear and convincing evidence that the parent has not had a substantial parental relationship with the child.

- **Prior Involuntary TPR to Another Child**

Under current law, the ground of involuntary TPR to another child may be established by proving both of the following:

- The child who is the subject of the petition has been adjudged to be in continuing need of protection or services (CHIPS) because he or she has been abandoned or has been the victim of abuse or because his or her parent neglects, refuses, or is unable for reasons other than poverty to provide the necessary care, clothing, medical or dental care, or shelter so as to seriously endanger the physical health of the child.

- Within three years of the CHIPS adjudication, a court has ordered the involuntary TPR with respect to another child of the person.

The draft modifies the ground that requires a showing of prior involuntary TPR to another child so that it may also apply to a child who is found to be CHIPS because he or she is at risk of being abused or neglected.

- **Continuing Need for Protection and Services**

Under current law, the ground of continuing CHIPS may be established by proving all of the following:

- The child has been adjudged to be CHIPS and placed outside of his or her home by a court.

- The agency that is responsible for the care of the child and the family has made a reasonable effort to provide the services ordered by the court.

- The child has been outside the home for a cumulative period of six months or longer pursuant to court orders and 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 12–month period following the TPR fact–finding hearing.

The draft modifies the ground that requires a showing that the child is in continuing need of protection or services so that the court must determine if the parent is likely to meet the conditions set forth in the CHIPS order within the upcoming nine months instead of the upcoming 12 months.

TPR Procedures

- **Penalty for False Statement in TPR Proceeding**

Under current law, a person may be convicted of perjury for orally making a false statement under oath or affirmation. Perjury is a Class H felony, punishable by a fine not to exceed $10,000 or imprisonment not to exceed 6 years, or both. In addition, a person who makes or subscribes to a false statement under oath or affirmation may be convicted of false swearing. False swearing is a Class H felony if the statement is required or authorized by law or required by a public officer or governmental agency as a prerequisite to official action. Otherwise, it is a Class A misdemeanor punishable by a fine not to exceed $10,000 or imprisonment not to exceed 9 months, or both. There is no general penalty for making a false statement if it is not made under oath or affirmation, although some statutes contain penalties for making a false statement under specified conditions.

The bill draft creates a penalty for making a false statement or representation of material fact in the course of a TPR proceeding with the intent to prevent a person who is entitled to receive notice of the TPR proceeding from receiving notice.

- **Voluntary Consent to TPR by Telephone or Audiovisual Means**

Under current law, a person may give voluntary consent to the termination of his or her parental rights. If the court finds that it would be difficult or impossible for the parent to appear in person at the hearing, the court may accept the written consent of the parent given before an embassy or consul official, a military judge, or a judge of any court of record in another country or state of a foreign jurisdiction. This written consent must be accompanied by the signed findings of the embassy or consul official or judge who accepted the consent. The findings must recite that the embassy or consul official or judge, or an attorney who represents any of the parties, has questioned the parent and found that the consent was informed and voluntary before the embassy or consul official or judge accepted the consent of the parent.

This draft permits a parent who is unable to appear in person at the hearing to provide testimony by telephone or through live audiovisual means, upon request of the parent, unless good cause is shown. The telephone and audiovisual proceedings must comply with s. 807.13, stats.

Notice in Cases in Which a Child is Relinquished as a Newborn

Current law prohibits the state from seeking identifying information about the parents of a newborn whose custody was relinquished under

the "safe haven law". However, there is no provision in the notice portion of the CHIPS or TPR statute that exempts the state from providing notice by personal service to the parents of these proceedings. Because there is no publishing requirement in the CHIPS portion of the statute, there is no notice option readily available, unless the parent has chosen to provide their identity to the person to whom they relinquished the baby.

In addition, parents who relinquish their newborns are guaranteed anonymity. In order to notice them of the TPR and CHIPS proceedings, the statute requires sending them notice by certified mail or have them personally served with a summons and a copy of the TPR and CHIPS petition. This may present considerable problems for the relinquishing parent, who may be under the impression that she or he would have no further contact regarding the child.

The bill draft provides that notice of a TPR proceeding may be given to the parents of a child whose custody was relinquished when he or she was less than 72 hours old by publication in a newspaper instead of by personal service.

- **Guardian ad Litem (GAL) for Parent in TPR Proceeding**

Current law sets out the appointment procedure of a GAL under ch. 48, and sets out the duties and responsibilities of a GAL in various types of proceedings. Current statute and case law authorize, but do not require, courts to appoint GALs for parents who are not competent to participate in TPR cases.

This draft requires the court to appoint a GAL for a parent who is not competent to assist counsel or the court in protecting the parent's rights in the proceeding. This draft also directs a GAL of such a parent, who is contesting the termination of his or her parental rights in a proceeding that involves a child in need of protection or services, to provide information to the court relating to the parent's competency to participate in the proceeding, and shall also provide assistance to the court and to the parent's defense counsel in protecting the parent's rights.

- **Admissibility of Results of Examination of Parent in TPR Proceedings**

Current law provides for mental, physical, psychological or developmental examinations, and alcohol and other drug abuse assessments of various parties during the course of proceeding under ch. 48, including TPR proceedings.

Current law provides that a court in a CHIPS proceeding may order a physical, psychological, mental, developmental, or alcohol and other

drug abuse evaluation of any parent or child and establishes procedures for doing so. Current law is unclear regarding the admissibility of these evaluations as evidence in CHIPS and TPR proceedings, or whether the client–patient privilege applies to these reports.

This draft specifies that statements made by a parent and the results of any tests conducted and any diagnosis made in the course of an examination or assessment are not privileged. The draft requires the judge to inform a party of this provision at the time the judge orders the party to undergo an examination or assessment.

- **Services Under Dispositional Order for Incarcerated Parent**

The committee heard testimony regarding the difficulty of providing services to an incarcerated parent who is the subject of a dispositional order in a CHIPS case. In most of these cases, the only involuntary ground for TPR of these individuals is continuing CHIPS, under s. 48.415 (2), stats. This ground allows for a finding that grounds exist for termination if the parent is substantially unlikely to complete the court conditions detailed in the foster care order within 12 months of the trial. Any parent who would be incarcerated for more than 12 months after the trial would be unable to complete the condition.

However, this ground also requires that the court or jury find that "reasonable efforts" were made by the county or, in Milwaukee county, the bureau of Milwaukee county child welfare (BMCW) in DHFS, to assist the parent in completing their court conditions. The committee discussed the difficulty of determining what efforts are considered "reasonable" when the parent may be incarcerated for many years and would never be able to provide a home for their child. The committee also discussed the resources expended by agencies in working with parents who will never be able to be a placement option for their child and that the agency may not have access to a parent while incarcerated.

The draft provides that services under a dispositional order for a parent who is serving a prison sentence must be limited to the following during any period of incarceration:

- The agency responsible for the provision of services must advise the parent of services that may be available within the correctional facility.

- The agency must advise the correctional facility of the mandated services and conditions of return contained in the court order.

- The agency must monitor the parent's participation and progress in relevant services made available to the parent within the correctional facility.

• The agency must arrange for visitation between the parent and child if the court finds that visitation is in the best interests of the child.

Appeals in TPR Proceedings

This draft makes several changes relating to appeals in TPR proceedings:

• **Time for Filing of Notice of Appeal**

Current law provides that if the judgment or order that is being appealed was entered after the notice of appeal was filed, the notice of appeal is treated as if it were filed after the judgment or order was entered. An appeal of a TPR judgment is initiated by the filing of a notice of intent to appeal. Currently, in a few cases each year, the notice of intent to appeal is filed before the TPR judgment is entered and is found to be filed too early in violation of current law.

This draft amends s. 808.04 (8), stats., to provide that if the record discloses that the judgment or order appealed from was entered after the notice of appeal or the notice of intent to appeal was filed, the notice shall be treated as filed after such entry and on the day thereof.

• **Notification That Appeal Will Not Be Filed**

Under current law, in a TPR case, a person has 30 days from the date of the entry of judgment to file a notice of appeal. Within 15 days after filing this notice, the person must request the transcript and court record. The clerk of circuit court must serve a copy of the case record on the person filing the notice of intent to appeal within 30 days after the court record is requested. Within 30 days after service of the transcript, the person filing a notice of intent to appeal must file a notice of appeal, and serve a copy of the notice on the required persons. Current law places no obligation on that appellate counsel to notify the parties that the appeal will not be filed.

This draft requires a person who decides not to file a notice of appeal to notify the persons who would have been required to be served with the notice of appeal that the appeal will not be pursued.

• **State Public Defender Indigency Determinations in TPR appeals**

Under current law, a representative of the state public defender must determine indigency for all referrals made under ss. 809.30 [appeals in criminal, chs. 48, 51, 55, and 938 cases], 974.06 (3) (b) [postconvinction proceedings], and 974.07 (11) [motions for deoxyribonucleic acid (DNA) testing of certain evidence], except for a referral of a child who is entitled to be represented by counsel under the children's or juvenile justice code. For these referrals, the representative of the state public defender may, unless a request for redetermination of indigency has been

filed, or the defendant's request for representation states that his or her financial circumstances have materially improved, rely upon a determination of indigency made for purposes of trial representation under this section.

This draft permits the state public defender representative to rely upon a determination of indigency made for purposes of trial representation for referrals made under s. 809.107, stats., relating to appeals in proceedings relating to TPR, unless a request for a redetermination is filed or the person's request for representation states that his or her financial circumstances have materially improved.

- **Continuing Representation in TPR Appeals**

Currently, continuing representation of a person in a TPR proceeding during the appeal process is not automatic.

Under this draft, an attorney who represents a person in a TPR proceeding continues representation of that person during the appeal process by filing a notice of intent to appeal under s. 809.107 (2), unless the attorney has been previously discharged during the proceeding by the person or by the trial court.

- **Written Notification of Time Limits for TPR Appeals**

Current law provides that TPR judgments are final and appealable. However, current law does not require notice of the applicable appeal time limits be given to a person whose parental rights were terminated.

This draft requires the court that orders the termination of a person's parental rights to provide written notification to the person, if present in court when the order is entered, of the time limits for appeal of the judgment. The person must sign the written notification, indicating that he or she has been notified of the time limits for filing an appeal under ss. 808.04 (7m) and 809.107. The person's counsel shall file a copy of the signed, written notification with the court on the date the judgment is entered.

- **Enlargement of Time for Filing Notice of Appeal**

Under current law, relating to appellate procedure, the time for filing a notice of appeal or cross–appeal of a final judgment or order, other than in a criminal, Children's Code [ch. 48], Mental Health Act [ch. 51], Protective Services System [ch. 55], or Juvenile Justice Code [ch. 938] case or a no merit order, may not be enlarged. In *Gloria A. v. State*, 195 Wis. 2d 268, 536 N.W.2d 396 (1995), the court of appeals held that the rule for enlargement of time in which to file notice of appeal does not apply to TPR cases.

The bill draft provides that the time in which to file notice of appeal in a TPR case may be enlarged if the judgment or order was entered as a result of a TPR petition that was filed by a district attorney, corporation counsel, or other representative of the public.

- **Time Limit for Collateral Attack of TPR Judgment**

Under current law, a person whose parental rights have been terminated may petition for a rehearing on the grounds that new evidence has been discovered affecting the advisability of the court's adjudication no later than one year after the date on which the TPR judgment was entered. However, a parent who has consented to the TPR or who did not contest the TPR petition may move for relief from the judgment no later than 30 days after entry of the TPR judgment.

This bill prohibits any person, for any reason, from collaterally attacking a TPR judgment more than one year after the date on which the time limit for filing an appeal from the judgment has expired, or more than one year after the date on which all appeals from the judgment, if any were filed, have been decided.

Adoption Provisions

- **Adoption Expenses**

Under current law, the proposed adoptive parents of a child, or a person acting on behalf of the proposed adoptive parents, may pay the actual cost of any of the following:

- Pre–adoptive counseling for a birth parent of the child or an alleged or presumed father of the child.

- Post–adoptive counseling for a birth parent of the child or an alleged or presumed father of the child.

- Maternity clothes for the child's birth mother, not to exceed a reasonable amount.

- Local transportation expenses of a birth parent of the child that are related to the pregnancy or adoption.

- Services provided by a licensed child welfare agency in connection with the adoption.

- Medical and hospital care received by the child's birth mother in connection with the pregnancy or birth of the child, not including lost wages or living expenses.

- Medical and hospital care received by the child.

• Legal and other services received by a birth parent of the child, an alleged or presumed father of the child or the child in connection with the adoption.

• Living expenses of the child's birth mother, in an amount not to exceed $1,000, if payment of the expenses by the proposed adoptive parents or a person acting on their behalf is necessary to protect the health and welfare of the birth mother or fetus.

• Any investigation of the proposed adoptive placement, according to a fee schedule established by DHFS based on ability to pay.

• If the adoption is completed, the cost of any care provided for the child in a placement preceding placement with the adoptive parents.

• Birthing classes.

• A gift to the child's birth mother from the proposed adoptive parents, of no greater than $50 in value.

The bill draft places a $300 cap on the amount that proposed adoptive parents may pay for the cost of maternity clothes for the birth mother and increases the amount proposed adoptive parents may pay for living expenses for the birth mother from $1,000 to $5,000 and the amount they may pay for a gift to the birth mother from $50 to $100.

• **Pre–Adoptive Placement With Out–Of–State Petitioners**

Current law provides that a parent having custody of a child and the proposed adoptive parent or parents of the child may petition the court for placement of the child for adoption in the home of a nonrelative of the child if the home is licensed as a foster home or treatment foster home. This is sometimes referred to as a "legal risk" placement, because at the point the child is placed in the pre–adoptive placement with the proposed adoptive parent, the TPR has not been finalized.

This draft provides that, notwithstanding the provisions of the interstate compact on the placement of children, if the proposed adoptive parent or parents of the child live out–of–state, they may petition the court for the pre–adoptive placement of the child in their home, if their home meets the criteria established by the laws of their state of residence for accepting a child for a pre–adoptive placement by nonrelatives.

• **Adoption Advertising**

Under current law, no person may advertise for the purpose of finding a child to adopt or that the person will find an adoptive home for a child or arrange for or assist in the adoption of a child or will place a child for adoption. This prohibition does not apply to DHFS, a county

department, or a child welfare agency licensed by DHFS to place children for adoption.

The bill draft prohibits publishing adoption advertisements that violate current law.

• **Pre–Adoption Preparation for First–Time Adoptive Parents**

Under current law, pre–adoption preparation is not required.

The draft requires a court, in a proceeding for the adoption of a child by nonrelatives, to order the person or persons who are petitioning to adopt the child if they have not adopted any prior children, to obtain pre–adoption preparation on issues that may confront adoptive parents. The preparation may be provided by a licensed child welfare agency, a licensed private adoption agency, or a state–funded post–adoption resource center. The department is required to promulgate rules on the number of hours of required pre–adoption preparation, as well as topics to be covered in the training. The proposed adoptive parents must pay for the training.

Under the draft, the same provisions apply to persons who are petitioning to adopt a foreign child.

• **Continuation of Dispositional Orders**

Current law provides that, if a petition for the TPR is filed or an appeal from a judgment terminating or denying TPR is filed during the year in which a dispositional order or an extension order is in effect, the dispositional or extension order remains in effect until all proceedings relating to the petition or appeal are concluded. However, in some TPR cases, especially with newborn infants, there may be an issue as to whether a parent may contest for placement or visits while a TPR case is pending. In such cases, there may not be a dispositional or extension order, but there may be an existing voluntary placement agreement with an adoption agency, or a guardianship order with respect to the child.

This draft provides that a voluntary agreement for the placement of the child, or a guardianship order for the child, shall also remain in effect until all proceedings relating to a TPR petition or appeal are concluded, as is allowed under current law with respect to dispositional or extension orders.

Foster Parent Provisions

• **Fair Hearings for Head of Home**

Under current law, any decision or order issued by DHFS, the department of corrections, a county department, or a licensed child

welfare agency authorized to place children in foster homes, treatment foster homes, or group homes that affects the head of a foster, treatment foster, or group home or the children involved may be appealed to DHFS under fair hearing procedures. DHFS must, upon receipt of a request for an appeal, give the head of home notice and the opportunity for a fair hearing. At all appeal hearings under this provision, the head of home, or his or her representative, must have adequate opportunity to examine all documents and records to be used at the hearing.

Also under current law, the circuit court for the county where the child is placed has jurisdiction upon the petition of any interested party over a child who is placed in a foster home, treatment foster home, or group home. The circuit court may call a hearing for the purpose of reviewing any decision or order of the agency that placed the child that involves the placement and care of the child. The court must determine the case so as to promote the best interests of the child.

The bill draft provides that the head of a foster, treatment foster, or group home who receives notice of an appeal of a decision or order issued by an agency that affects the head of the home is a party to that proceeding and provides that the head of the home may examine documents and records that are relevant to the issue of the child's removal for purposes of such a proceeding.

The bill draft also provides that the county where the dispositional order was entered has jurisdiction to review an agency decision or order involving the placement of a child. Under the bill draft, the petitioner must show by clear and convincing evidence that the agency's decision or order is not in the best interests of the child.

- **Appeals of Licensing Decisions**

Under current law, s. 48.75, stats., relates to licensing of foster homes and treatment foster homes by public licensing agencies and child welfare agencies. The "public licensing agency" is "the county department in a county other than Milwaukee county. For licensing of Milwaukee county foster and treatment foster homes, DHFS, BMCW, is the public licensing agency. Under s. 48.75 (2), any foster home or treatment foster home applicant or licensee of a public licensing agency or a child welfare agency may, if aggrieved by the failure to issue or renew its license or by revocation of its license, appeal as provided in s. 48.72. The statute further provides that judicial review of the department's decision may be had as provided in ch. 227.

Section 48.72 sets forth the appeal procedure of licensing decisions. Under s. 48.72, any person aggrieved by the DHFS's refusal or failure to issue, renew, or continue a license has the right to an administrative

hearing provided for contested cases in ch. 227. Because this statute does not specify that the public licensing agency or child welfare agency also has a right to subsequent judicial review of the administrative law judge's decision on a licensing issue, the BMCW has taken the position that they do not have the right to challenge decisions of administrative law judges in circuit court.

This draft specifically grants the BMCW the right to judicial review of the administrative law judge's decision, in cases where an administrative law judge has made a licensing decision that the BMCW disagrees with and wishes to appeal.

CHIPS Provisions

- **Change in County of Residence of Child Welfare Services Clients**

Current law does not require notice to a new county of residence when a person who is receiving child welfare services moves to another county.

The bill draft provides that as soon as practicable after learning that a person who is receiving child welfare services has changed his or her county of residence, the county department or, in Milwaukee county, DHFS must provide notice of that change to the county department of the person's new county of residence. Notice must be provided to DHFS if the person's new county of residence is Milwaukee County.

SECTION 1. 46.03 (7) (bm) of the statutes is amended to read:

46.03 **(7)** (bm) Maintain a file containing records of artificial inseminations under s. 891.40 ~~and records of~~, declarations of paternal interest under s. 48.025, and ~~of~~ statements acknowledging paternity under s. 69.15 (3) (b). The department ~~shall~~ may release ~~these~~ those records, declarations, and statements only upon an order of the court except that the department may use nonidentifying information concerning artificial inseminations for the purpose of compiling statistics ~~and except that records relating to~~, declarations of paternal interest shall be released as provided in s. 48.025 (3) (b) and (c), and statements acknowledging paternity shall be released without a court order to the department of workforce development or a county child support agency under s. 59.53 (5) ~~without a court order~~ upon the request of ~~the~~ that department ~~of workforce development or a~~ or county child

support agency ~~under s. 59.53 (5)~~ pursuant to the program responsibilities under s. 49.22 or ~~by~~ to any other person with a direct and tangible interest in the ~~record~~ statement.

NOTE: Permits DHFS to release declarations of paternal interest filed under s. 48.025, stats., upon court order and as provided in s. 48.025 (3) (c), stats. Current law requires DHFS to release a declaration of paternal interest to the department of workforce development (DWD) or a county child support agency upon request or to any other person with a direct and tangible interest in the declaration and permits DHFS to release a declaration to any other person only upon court order. The bill draft does not allow declarations to be released to DWD or a county child support agency.

SECTION 2. 48.025 (1) of the statutes is amended to read:

48.025 **(1)** Any person claiming to be the father of a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.60 and whose paternity has not been established may, in accordance with procedures under this section, file with the department a declaration of his interest in matters affecting ~~such~~ the child. The department may not charge a fee for filing a declaration under this section.

NOTE: Provides that DHFS may not charge a fee for filing a declaration of paternal interest.

SECTION 3. 48.025 (2) of the statutes is renumbered 48.025 (2) (a) and amended to read:

48.025 **(2)** (a) ~~The~~ A declaration ~~provided in~~ under sub. (1) may be filed at any time ~~except after~~ before a termination of the father's parental rights under subch. VIII. This paragraph does not apply to a declaration that is filed on or after the effective date of this paragraph .... [revisor inserts date].

(c) The declaration shall be in writing, shall be signed and verified upon oath or affirmation by the person filing the declaration, and shall contain the person's name and address, the name and last–known address of the mother, the month and year of the birth or expected birth of the child, and a statement that ~~he~~ the person filing the declaration has reason

to believe that he may be the father of the child. If the person filing the declaration is under 18 years of age, the declaration shall also be signed by a parent or guardian of the person.

NOTE: Requires that a declaration of paternal interest be signed and verified upon oath or affirmation. If the person filing the declaration is a minor, the declaration must also be signed by the person's parent or guardian.

SECTION 4. 48.025 (2) (b) of the statutes is created to read:

48.025 **(2)** (b) A declaration under sub. (1) may be filed at any time before the birth of the child or within 14 days after the birth of the child, except that a man who receives a notice under s. 48.42 (1g) (b) may file a declaration within 21 days of the date that the notice was mailed. This paragraph does not apply to a declaration filed before the effective date of this paragraph .... [revisor inserts date].

NOTE: Provides that a declaration of paternal interest may be filed at any time before the birth of the child or within 14 days after the birth, unless the man receives a notice as provided in s. 48.42 (1g) (b), stats. In that case, the man may file a declaration within 21 days of the mailing date of the notice.

SECTION 5. 48.025 (2) (d) of the statutes is created to read:

48.025 **(2)** (d) A person who has filed a declaration under sub. (1) may revoke the declaration at any time by filing with the department a statement, signed and verified upon oath or affirmation, that the person, to the best of his knowledge and belief, is not the father of the child or that another person has been adjudicated as the father of the child. If the person filing the revocation is under 18 years of age, the revocation shall also be signed by a parent or guardian of the person.

NOTE: Permits a person who has filed a declaration of paternal interest to revoke the declaration. If the person filing the revocation is a minor, the revocation must also be signed by the person's parent or guardian.

SECTION 6. 48.025 (3) of the statutes is renumbered 48.025 (3) (b).

SECTION 7. 48.025 (3) (a) of the statutes is created to read:

48.025 **(3)** (a) The department shall keep confidential and may not open to public inspection or disclose the contents of any declaration, revocation of a declaration, or response to a declaration filed under this section, except as provided under pars. (b) and (c) or by order of the court for good cause shown.

SECTION 8. 48.025 (3) (c) and (d) of the statutes are created to read:

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

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

NOTE: Requires DHFS to keep declarations of paternal interest confidential, except that DHFS must, on the request of a court assigned to exercise jurisdiction under the Children's Code and the Juvenile

Justice Code (juvenile court) in a CHIPS, a juvenile in need of protection or services (JIPS), TPR, or adoption proceeding or of a person authorized to file a CHIPS, JIPS, TPR, or adoption petition, search its files to determine whether a person who may be the father of the child who is the subject of the proceeding or action has filed a declaration. If DHFS has a declaration on file, it must issue to the requester a copy of the declaration. If DHFS does not have a declaration on file, it must issue to the requester a statement that no declaration could be located. A TPR petitioner then must file with the juvenile court, prior to the plea hearing, the copy of the declaration or the statement that no declaration could be located.

SECTION 9. 48.025 (5) of the statutes is created to read:

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

1. That a person claiming to be the father of a nonmarital child may affirmatively protect his parental rights by filing a declaration of interest under this section.

2. The procedures for filing a declaration of interest.

3. The consequences of filing a declaration of interest.

4. The consequences of not filing a declaration of interest.

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

NOTE: Requires DHFS to publicize information about declarations of paternal interest. Specifically, DHFS must publicize that a person who may be the father of a child may affirmatively protect his parental rights by filing a declaration, the procedures for and consequences of filing a declaration, and the consequences of not filing a declaration.

DHFS may publicize this information on the Internet, through a brochure, and by requiring agencies that provide services under contract with DHFS to provide the information to clients.

SECTION 10. 48.025 (6) of the statutes is created to read:

48.025 **(6)** (a) Any person who makes a false statement in a declaration, revocation of a declaration, or response to a declaration filed under this section that the person does not believe is true is subject to prosecution for false swearing under s. 946.32 (2).

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

NOTE: Provides that a person who makes a false statement in a declaration, revocation of a declaration, or response to a declaration that the person does not believe is true is subject to prosecution for false swearing. False swearing is a Class A misdemeanor punishable by a fine not to exceed $10,000 or imprisonment not to exceed 9 months, or both.

Also, a person who intentionally obtains, uses, or discloses information relating to a declaration that is confidential may be fined up to $1,000 or imprisoned for up to 90 days or both.

SECTION 11. 48.235 (1) (g) of the statutes is created to read:

48.235 **(1)** (g) The court shall appoint a guardian ad litem for a parent who is the subject of a termination of parental rights proceeding, if any assessment or examination of a parent that is ordered under s. 48.295 (1) shows that the parent is not competent to assist his or her counsel or the court in protecting the parent's rights in the proceeding.

NOTE: Requires a court, in a TPR proceeding, to appoint a GAL for a parent who is the subject of such a proceeding if any assessment or examination of the parent shows that the parent is not competent to assist his or her counsel of the court in protecting the parent's rights in the proceeding.

SECTION 12. 48.235 (5m) of the statutes is created to read:

48.235 **(5m)** MATTERS INVOLVING CONTESTED TERMINATION OF PARENTAL RIGHTS PROCEEDINGS. (a) In any termination of parental rights proceeding involving a child who has been found to be in need of protection or services and whose parent is contesting the

termination of his or her parental rights, a guardian ad litem for a parent who has been appointed under sub. (1) (g) shall provide information to the court relating to the parent's competency to participate in the proceeding, and shall also provide assistance to the court and the parent's defense counsel in protecting the parent's rights in the proceeding.

(b) The guardian ad litem may not participate in the proceeding as a party, and may not call witnesses, provide opening statements or closing arguments, or participate in any activity at trial that is required to be performed by the parent's counsel.

NOTE: Requires the GAL for a parent to provide information to the court relating to the parent's competency to participate in a contested TPR proceeding, and to also provide assistance to the court and to the parent's defense counsel in protecting the parent's rights in the proceeding. This provision also specifies that the GAL may not participate in the proceeding as a party, and may not call witnesses, provide opening statements or closing arguments, or participate in any activity at trial that is required to be performed by the parent's counsel.

SECTION 13. 48.27 (3) (b) 1. a. of the statutes is amended to read:

48.27 **(3)** (b) 1. a. A person who has filed a declaration of paternal interest under s. 48.025.

SECTION 14. 48.27 (5) of the statutes is amended to read:

48.27 **(5)** Subject to sub. (3) (b), the court shall make every reasonable effort to identify and notify any person who has filed a declaration of paternal interest under s. 48.025, any person who has acknowledged paternity of the child under s. 767.62 (1), and any person who has been adjudged to be the ~~biological~~ father of the child in a judicial proceeding unless the ~~biological father's~~ person's parental rights have been terminated.

NOTE: Under current law, the juvenile court must make every reasonable effort to identify any person who has filed a declaration and any person who has been adjudged to be the father of the child, if his parental rights have not been terminated, of a CHIPS or unborn CHIPS proceeding.

This SECTION also requires the court to make every reasonable effort to identify and notify a person who has acknowledged paternity of the child.

SECTION 15. 48.295 (1) of the statutes is amended to read:

48.295 **(1)** After the filing of a petition and upon a finding by the court that reasonable cause exists to warrant ~~an~~ a physical, psychological, mental, or developmental examination or an alcohol and other drug abuse assessment that conforms to the criteria specified under s. 48.547 (4), the court may order any child coming within its jurisdiction to be examined as an outpatient by personnel in an approved treatment facility for alcohol and other drug abuse, by a physician, psychiatrist or licensed psychologist, or by another expert appointed by the court holding at least a master's degree in social work or another related field of child development, in order that the child's physical, psychological, alcohol or other drug dependency, mental or developmental condition may be considered. The court may also order ~~an~~ a physical, psychological, mental, or developmental examination or an alcohol and other drug abuse assessment that conforms to the criteria specified under s. 48.547 (4) of a parent, guardian or legal custodian whose ability to care for a child is at issue before the court or of an expectant mother whose ability to control her use of alcohol beverages, controlled substances or controlled substance analogs is at issue before the court. The court shall hear any objections by the child, the child's parents, guardian or legal custodian to the request for such an examination or assessment before ordering the examination or assessment. At the time an examination of a parent, guardian, or legal custodian is ordered, the court shall advise the subject of the examination of the provisions of sub. (2c). The expenses of an examination, if approved by the court, shall be paid by the county of the court ordering the examination in a county having a population of less than 500,000 or by the department in a county having a

population of 500,000 or more. The payment for an alcohol and other drug abuse assessment shall be in accordance with s. 48.361.

NOTE: Adds language to clarify that the "examination" referred to in s. 48.295 (1) is a physical, psychological, mental or developmental examination, as is specified in the title to this statutory section. Requires the court to inform a parent, guardian or legal custodian of the provisions of s. 48.295 (2c), stats., when an examination is ordered.

SECTION 16. 48.295 (2c) of the statutes is created to read:

48.295 **(2c)** Statements made by a parent, guardian, or legal custodian, and the results of any tests conducted and any diagnosis made, in the course of an assessment or examination performed under sub. (1), are not privileged in any proceeding under ch. 48 or ch. 938, except in a delinquency proceeding under s. 938.12.

NOTE: Provides that statements made by a parent and the results of any tests conducted and any diagnosis made in the course of an alcohol or drug abuse assessment or physical, psychological, mental or developmental examination under 48.295 (1), are not privileged in any proceeding under ch. 48 or ch. 938, except in a delinquency proceeding under s. 938.12.

SECTION 17. 48.355 (2) (b) 1. of the statutes is renumbered 48.355 (2) (b) 1. (intro.) and amended to read:

48.355 **(2)** (b) 1. (intro.) The specific services or continuum of services to be provided to the child and family, to the child expectant mother and family or to the adult expectant mother, the identity of the agencies which are to be primarily responsible for the provision of the services ordered by the judge, the identity of the person or agency who will provide case management or coordination of services, if any, and, if custody of the child is to be transferred to effect the treatment plan, the identity of the legal custodian. Regardless of any other provision of an order under this section, during any period of incarceration of a parent serving a prison sentence, services shall be limited to the following for that parent: