

1 **SECTION 18.** 48.355 (2) (b) 1. a., b., c., and d. of the statutes are created to read:

2 48.355 (2) (b) 1. a. The agency shall advise the parent of services that may be available
3 within the correctional facility.

4 b. The agency shall advise the correctional facility of the mandated services and
5 conditions of return contained in the court order.

6 c. The agency shall monitor the parent's participation and progress in relevant services
7 made available to the parent within the correctional facility.

8 d. The agency shall arrange for visitation between the parent and child if the court finds
9 that visitation is in the best interests of the child.

NOTE: 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.

10 **SECTION 19.** 48.368 (1) of the statutes is amended to read:

11 **48.368 Continuation of dispositional orders.** (1) If a petition for termination of
12 parental rights is filed under s. 48.41 or 48.415 or an appeal from a judgment terminating or
13 denying termination of parental rights is filed during the year in which a dispositional order
14 under s. 48.355 or, an extension order under s. 48.365, a voluntary agreement for placement
15 of the child under s. 48.63, or a guardianship order under ch. 880 is in effect, the dispositional

1 or extension order, voluntary agreement, or guardianship order shall remain in effect until all
2 proceedings related to the filing of the petition or an appeal are concluded.

NOTE: Current law provides that if a petition for the TPR is filed or an appeal from a judgment terminating or denying termination of parental rights 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. This SECTION 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.

3 **SECTION 20.** 48.41 (2) (b) of the statutes is renumbered 48.41 (2) (b) (intro.) and
4 amended to read:

5 48.41 (2) (b) (intro.) If the court finds that it would be difficult or impossible for the
6 parent to appear in person at the hearing, the court may do any of the following:

7 1. Accept ~~accept~~ the written consent of the parent given before an embassy or consul
8 official, a military judge or a judge of any court of record in another county or state or a foreign
9 jurisdiction. This written consent shall be accompanied by the signed findings of the embassy
10 or consul official or judge who accepted the parent's consent. These findings shall recite that
11 the embassy or consul official or judge or an attorney who represents any of the parties
12 questioned the parent and found that the consent was informed and voluntary before the
13 embassy or consul official or judge accepted the consent of the parent.

14 **SECTION 21.** 48.41 (2) (b) 2. of the statutes is created to read:

15 48.41 (2) (b) 2. On request of the parent, unless good cause to the contrary is shown,
16 provide testimony on the record by telephone or live audiovisual means as prescribed in s.
17 807.13 (2).

NOTE: Permits a parent to provide testimony on the record in a voluntary TPR proceeding via telephone or live audiovisual means, in addition to the methods provided for under current law.

1 **SECTION 22.** 48.415 (intro.) of the statutes is amended to read:

2 **48.415 Grounds for involuntary termination of parental rights.** (intro.) In this
3 section, "parent" includes a person or persons who may be the parent of the child. At the
4 fact-finding hearing the court or jury may make a finding that grounds exist for the
5 termination of parental rights. Grounds for termination of parental rights shall be one of the
6 following:

NOTE: Provides that the grounds for involuntary TPR apply to parents
 and to persons who may be the parent of the child.

7 **SECTION 23.** 48.415 (2) (a) 3. of the statutes is amended to read:

8 **48.415 (2) (a) 3.** That the child has been outside the home for a cumulative total period
9 of 6 months or longer pursuant to such orders not including time spent outside the home as
10 an unborn child; and that the parent has failed to meet the conditions established for the safe
11 return of the child to the home and there is a substantial likelihood that the parent will not meet
12 these conditions within the ~~12-month~~ 9-month period following the fact-finding hearing
13 under s. 48.424.

NOTE: Requires proof that there is a substantial likelihood that the
 parent will not meet the conditions for the child's safe return in the
 9-month, instead of 12-month, period following the TPR fact-finding
 hearing when parental rights are terminated on the ground that the child
 is in continuing need of protection and services.

14 **SECTION 24.** 48.415 (6) (a) and (b) of the statutes are amended to read:

15 **48.415 (6) (a)** Failure to assume parental responsibility, which shall be established by
16 proving that the parent or the person or persons who may be the parent of the child have ~~never~~
17 not had a substantial parental relationship with the child.

18 (b) In this subsection, "substantial parental relationship" means the acceptance and
19 exercise of significant responsibility for the daily supervision, education, protection and care

1 of the child. In evaluating whether the person has had a substantial parental relationship with
2 the child, the court may consider such factors, including, but not limited to, whether the person
3 has ever expressed concern for or interest in the support, care or well-being of the child,
4 whether the person has neglected or refused to provide care or support for the child and
5 whether, with respect to a person who is or may be the father of the child, the person has ever
6 expressed concern for or interest in the support, care or well-being of the mother during her
7 pregnancy.

NOTE: Modifies the involuntary TPR ground that the person failed to assume parental responsibility to provide that the state must show that the person has not had a substantial parental relationship with the child instead of requiring a showing that the person has never had a substantial parental relationship with the child.

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

9 48.415 (10) (a) That the child who is the subject of the petition has been adjudged to
10 be in need of protection or services under s. 48.13 (2), (3) ~~or (3m)~~, (10), or (10m).

NOTE: Under current law, parental rights may be involuntarily terminated by proving both of the following:

1. The child who is the subject of the petition has been adjudged to be in 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 necessary care, clothing, medical or dental care, or shelter so as to seriously endanger the physical health of the child.
2. Within 3 years of the CHIPS adjudication, a court has ordered the involuntary TPR with respect to another child of the person.

This SECTION modifies the first criterion so that the ground also applies to a child who has been adjudged to be CHIPS because he or she is at substantial risk of becoming the victim of abuse or because his or her parent is at substantial risk of neglecting, refusing, or being unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care, or shelter so as to seriously endanger the physical health of the child, based on reliable and credible information that the child's parent has neglected, refused, or been unable for reasons other

than poverty to provide necessary care, food, clothing medical or dental care, or shelter so as to endanger seriously the physical health of another child in the home.

1 **SECTION 26.** 48.42 (1g) of the statutes is created to read:

2 48.42 (1g) (a) If the petition is filed by a person or agency other than the district
3 attorney, corporation counsel, or other appropriate official under s. 48.09 and the petition
4 seeks to terminate the parental rights of a person who may be the father of a nonmarital child
5 who is under one year of age at the time the petition is filed, who is not adopted or whose
6 parents do not subsequently intermarry under s. 767.60, and paternity has not been established,
7 the petitioner shall file with the petition an affidavit signed by the birth mother of the child
8 if the birth mother has voluntarily terminated or seeks to voluntarily terminate her parental
9 rights to the child except as provided under par. (c). The affidavit shall include all of the
10 following:

11 1. A statement that the mother has voluntarily terminated or seeks to voluntarily
12 terminate her parental rights to the child.

13 2. A statement acknowledging that the mother has been asked to identify the father of
14 the child.

15 3. A statement that the mother knows and is identifying the father or that she does not
16 know the identity of the father.

17 4. A statement identifying any man who may be the child's father has lived in a familial
18 relationship with the child.

19 5. If the mother states that she knows and is identifying the father under subd. 3. or 4.,
20 the father's name, last-known mailing address, last-known employer address, and age.

21 6. If the mother states that she does not know the identity of the father, an explanation
22 of why she is unable to identify him and a physical description of the father.

1 7. A statement that the mother has been informed and understands that if she
2 misidentifies the father, she is permanently barred from attacking the proceedings for the
3 termination of the father's or her parental rights on the basis that the father was not correctly
4 identified.

5 8. A statement that the mother understands that she may be prosecuted under s. 946.32
6 (2) for false swearing if she makes a false statement that she does not believe is true in the
7 affidavit under this paragraph.

8 9. A statement that the mother has reviewed and understands the affidavit, the name of
9 the person who explained the affidavit and the consequences of signing the affidavit to her,
10 and a statement that the mother is signing the affidavit voluntarily.

11 (b) The petitioner shall notify any man identified in the affidavit under par. (a) as an
12 alleged father of his right to file a declaration of paternal interest under s. 48.025 before the
13 birth of the child, within 14 days after the birth of the child, or within 21 days after the date
14 the notice is mailed, whichever is later; the birthdate or anticipated birthdate of the child; and
15 the consequences of filing and of not filing a declaration of paternal interest. The petitioner
16 shall include with the notice a copy of the form required to file a declaration of paternal interest
17 under s. 48.025. The notice shall be sent by certified mail to the last-known address of the
18 alleged father.

19 (c) If the birth mother relinquished custody of the child under s. 48.195 and has not
20 subsequently identified herself as the child's mother or if the petitioner cannot locate the birth
21 mother with reasonable diligence, the petitioner shall attach to the petition a statement that the
22 birth mother relinquished custody of the child under s. 48.195 and has not subsequently
23 identified herself as the child's mother or of the efforts the petitioner made to locate the mother
24 instead of the affidavit under sub. (1).

NOTE: Requires a petitioner, other than a district attorney, corporation counsel, or other appropriate official, for the involuntary TPR of an alleged father of a nonmarital child who is under one year of age to file with the petition an affidavit signed by the birth mother if the mother has voluntarily or seeks to voluntarily terminate her parental rights to the child. The affidavit must include the following:

1. A statement that the mother has voluntarily terminated or seeks to voluntarily terminate her parental rights to the child.
2. A statement acknowledging that the mother has been asked to identify the father of the child.
3. A statement that she knows and is identifying the father or that she does not know the identity of the father.
4. If she states that she knows the identity of the father and is identifying the father, the father's name, last-known mailing address, last-known employer address, and age.
5. If she states that she does not know the identity of the father, an explanation of why she is unable to identify him and a physical description of the father.
6. A statement that she has been informed and understands that if she misidentifies the father, she is permanently barred from attacking the TPR proceedings on the basis that the father was not correctly identified.
7. A statement that she understands that she may be prosecuted for false swearing if she makes a false statement that she does not believe is true.
8. A statement that she has reviewed and understands the affidavit, the name of the person who explained the affidavit and the consequences of signing it, and a statement that she is signing the affidavit voluntarily.

The petitioner must notify any man who is identified in the affidavit of his right to file a declaration of paternal interest before the birth of the child, within 14 days after the birth of the child, or within 21 days after the notice is mailed, whichever is later, the birthdate or anticipated birthdate of the child, and of the consequences of filing or not filing a declaration. The mailing must include a form to file a declaration. The notice must be sent by certified mail to the man's last-known address.

The bill draft provides that if the child was relinquished by the mother as a newborn and the mother has not subsequently identified herself as the child's mother or if the petitioner cannot locate the mother with reasonable diligence, the petitioner must attach to the TPR petition a statement that the mother relinquished custody of her child as a newborn

and has not identified herself as the mother or of the efforts made to locate the mother.

1 **SECTION 27.** 48.42 (2) (am) of the statutes is created to read:

2 48.42 (2) (am) If the child is a nonmarital child who is under one year of age at the time
3 the petition is filed and who is not adopted or whose parents do not subsequently intermarry
4 under s. 767.60 and paternity has not been established and an affidavit under sub. (1g) (a) or
5 a statement under sub. (1g) (c) is filed with the petition:

6 1. A person who has filed an unrevoked declaration of paternal interest under s. 48.025
7 within 14 days after the birth of the child or within 21 days after a notice under sub. (1g) (b)
8 is mailed, whichever is later.

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

NOTE: Under current law, certain persons who may be the father of a nonmarital child whose paternity has not been established must be served with a summons and petition notifying the person of a TPR proceeding involving the child. Those persons include, in addition to a person who files a declaration of paternal interest, a person who is alleged to be the father of the child or who, based on statements made by the mother or other information, may be the father of the child, and a person who has lived in a familial relationship with the child and who may be the father of the child. A person who receives a summons and petition in a TPR proceeding has standing to appear and contest the TPR petition and, if grounds for TPR are found, may present evidence relevant to the disposition of the case and make alternative dispositional recommendations.

This SECTION creates a separate notice requirement for an alleged father in a TPR proceeding concerning a nonmarital child who is under one year of age at the time the petition is filed if an affidavit or a statement that an affidavit cannot be filed, as provided under sub. (1g), is filed with the TPR petition. Under this circumstance, an alleged father must receive notice if one of the following conditions is met:

1. He has filed an unrevoked declaration of paternal interest before the birth of the child, within 14 days after the birth of the child, or within 21 days after the date a notice under sub. (1g) (c) was mailed.

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

1 **SECTION 28.** 48.42 (2) (b) (intro.) of the statutes is amended to read:

2 48.42 (2) (b) (intro.) If Except as provided in par. (am), if the child is a nonmarital child
3 who is not adopted or whose parents do not subsequently intermarry under s. 767.60 and
4 paternity has not been established:

5 **SECTION 29.** 48.42 (2) (b) 1. of the statutes is amended to read:

6 48.42 (2) (b) 1. A person who has filed ~~a~~ an unrevoked declaration of paternal interest
7 under s. 48.025 before the birth of the child or within 14 days after the birth of the child.

NOTE: Amends the current notice requirements for alleged fathers to reflect the creation of par. (am) and the new time limit for filing a declaration of paternal interest under s. 48.025 (2) (b).

8 **SECTION 30.** 48.42 (2m) of the statutes is renumbered 48.42 (2m) (a) and amended to
9 read:

10 48.42 (2m) (a) Parent as a result of sexual assault. Except as provided in this subsection
11 paragraph, notice is not required to be given to a person who may be the father of a child
12 conceived as a result of a sexual assault in violation of s. 940.225 (1), (2) or (3), 948.02 (1)
13 or (2), or 948.025 if a physician attests to his or her belief that a sexual assault as specified in
14 this subsection paragraph has occurred or if the person who may be the father of the child has
15 been convicted of sexual assault as specified in this subsection paragraph for conduct which
16 may have led to the child's conception. A person who under this subsection paragraph is not
17 given notice does not have standing to appear and contest a petition for the termination of his
18 parental rights, present evidence relevant to the issue of disposition, or make alternative
19 dispositional recommendations. This subsection paragraph does not apply to a person who

1 may be the father of a child conceived as a result of a sexual assault in violation of s. 948.02
2 (1) or (2) if that person was under 18 years of age at the time of the sexual assault.

3 **SECTION 31.** 48.42 (2m) (b) of the statutes is created to read:

4 48.42 (2m) (b) *Parent of nonmarital child.* A person who may be the father of a
5 nonmarital child who is not adopted or whose parents do not subsequently intermarry under
6 s. 767.60 and whose paternity has not been established, by virtue of the fact that he has engaged
7 in sexual intercourse with the mother of the child, is considered to be on notice that a
8 pregnancy and a termination of parental rights proceeding concerning the child may occur, and
9 has the duty to protect his own rights and interests. He is therefore entitled to actual notice
10 of such a proceeding only as provided in sub. (2) (am) and (b). A person who is not entitled
11 to notice under sub. (2) (am) or (b) does not have standing to appear and contest a petition for
12 the termination of his parental rights, present evidence relevant to the issue of disposition, or
13 make alternative dispositional recommendations.

NOTE: Provides that a person who may be the father of a nonmarital child who has under one year of age at the time the TPR petition was filed and whose paternity has not been established, by virtue of the fact that the person had sexual intercourse with the mother of the child, is considered to be on notice that a pregnancy and a TPR proceeding might result, has the duty to protect his own rights and interests, and, therefore, is entitled to actual notice of the TPR proceeding only as provided in the bill. In addition, specifies that a person who is not entitled to actual notice of a TPR proceeding does not have standing to appear and contest the petition, present evidence relevant to the issue of disposition, or make alternative dispositional recommendations.

14 **SECTION 32.** 48.42 (4) (a) of the statutes is amended to read:

15 48.42 (4) (a) *Personal service.* A Except as provided in par. (b), a copy of the summons
16 and petition shall be served personally upon the parties specified in sub. (2), if known, at least
17 7 days before the date of the hearing, ~~except that service.~~ Service of summons is not required

1 if the party submits to the jurisdiction of the court. Service upon parties who are not natural
2 persons and upon persons under a disability shall be as prescribed in s. 801.11.

3 **SECTION 33.** 48.42 (4) (b) 1. of the statutes is created to read:

4 48.42 (4) (b) 1. If the child's custody was relinquished under s. 48.195, service to the
5 parents of the child may be made by publication of the notice under subd. 4.

NOTE: Under current law, a copy of a TPR summons and petition must be served personally upon the parties to the proceeding, if known, at least 7 days before the date of the TPR fact-finding hearing. If with reasonable diligence a party cannot be personally served, service must be made by publication in a newspaper that is likely to give notice to the person affected. The court may also order that notice be given in a newspaper to an unknown father.

Also under current law, a parent of a child who is 72 hours old or younger may relinquish custody of the child to a law enforcement officer, emergency medical technician, or hospital staff person. A parent who relinquishes custody of a child and any person who assists the parent have the right to remain anonymous.

The bill draft allows notice of a TPR proceeding to be given by publication in a newspaper to the parents of a child whose custody was relinquished when the child was less than 72 hours old.

6 **SECTION 34.** 48.42 (5) of the statutes is created to read:

7 48.42 (5) **PENALTY.** Any person who knowingly and willfully makes or causes to be
8 made any false statement or representation of a material fact in the course of a proceeding
9 under this section with an intent to deceive or mislead the court for the purpose of preventing
10 a person who is entitled to receive notice of a proceeding under this section from receiving
11 notice may be fined not more than \$10,000 or imprisoned for not more than 9 months, or both.

NOTE: Creates a penalty under which a person who knowingly and willfully makes or causes to be made a false statement or representation of material fact in the course of a TPR proceeding with an intent to deceive or mislead the court for the purpose of preventing a person who is entitled to receive notice of a TPR proceeding from receiving notice may be fined not more than \$10,000 or imprisoned for not more than 9 months, or both.

1 **SECTION 35.** 48.422 (6) (a) of the statutes is amended to read:

2 48.422 (6) (a) ~~If the child is~~ In the case of a nonmarital child who is not adopted or whose
3 parents do not subsequently intermarry under s. 767.60 and for whom paternity has not been
4 established, or a declaration of paternal interest has not been filed under s. 48.025 within 14
5 days after the date of birth of the child or, if s. 48.42 (1g) (b) applies, within 21 days after the
6 date the notice under s. 48.42 (1g) (b) is mailed, the court shall hear testimony concerning the
7 paternity of the child. Based on the testimony, the court shall determine whether all interested
8 parties who are known have been notified under s. 48.42 (2). If not, the court shall adjourn
9 the hearing and order appropriate notice to be given.

NOTE: Under current law, if paternity has not been established at the time of a TPR fact-finding hearing regarding a nonmarital child, the court must hear testimony concerning the paternity of the child. Based on the testimony, the court must determine whether all interested parties who are known have been notified of the hearing. If not, the court must adjourn the hearing and order appropriate notice to be given.

This SECTION requires the court to determine whether all interested parties who are known have been notified of the hearing in cases in which a declaration of paternal interest has not been timely filed.

10 **SECTION 36.** 48.423 of the statutes is amended to read:

11 48.423 ~~If a man who alleges that he is the father of the child~~ person appears at the hearing
12 ~~and wishes to contest the termination of his parental rights~~ claims that he is the father of the
13 child, the court shall set a date for a hearing on the issue of paternity or, if all parties agree,
14 the court may immediately commence hearing testimony concerning the issue of paternity.
15 The court shall inform the ~~man~~ person claiming to be the father of the child of any right to
16 counsel under s. 48.23. The ~~man~~ person claiming to be the father of the child must prove
17 paternity by clear and convincing evidence. A person who establishes his paternity of the child

1 under this subsection may further participate in the termination of parental rights proceeding
2 only if the person meets a condition specified in s. 48.42 (2) (am) or (b).

NOTE: Under current law, if a man who alleges that he is the father of the child appears at the 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 the parties all agree, the court may immediately commence hearing testimony concerning the issue of paternity. The man must prove paternity by clear and convincing evidence.

Under this SECTION, the man may participate in the TPR proceeding only if he would be entitled to notice under s. 48.42 (2) (am) or (b).

3 SECTION 37. 48.43 (6) of the statutes is renumbered 48.43 (6) (a) and amended to read:

4 48.43 (6) (a) Judgments under this subchapter terminating parental rights are final and
5 are appealable under s. 808.03 (1) according to the procedure specified in s. 809.107, and are
6 subject to a petition for rehearing or a motion for relief only as provided in s. 48.46 (1m) and
7 (2). The attorney representing a person during a proceeding under this subchapter shall
8 continue representation of that person by filing a notice of intent to appeal under s. 809.107
9 (2), unless the attorney has been previously discharged during the proceeding by the person
10 or by the trial court.

11 SECTION 38. 48.43 (6) (b) and (c) of the statutes are created to read:

12 48.43 (6) (b) The mother of a child who completes an affidavit under s. 48.42 (1g) may
13 not collaterally attack a judgment terminating parental rights on the basis that the father of the
14 child was not correctly identified.

15 (c) In no event may any person, for any reason, collaterally attack a judgment
16 terminating parental rights more than one year after the date on which the time limit for filing
17 an appeal from the judgment has expired, or more than one year after the date on which all
18 appeals from the judgment, if any were filed, have been decided.

NOTE: Under current law, a parent who has consented to a TPR or a parent who did not contest a petition for an involuntary TPR and whose rights were terminated may file a motion with the court for relief from judgment. The motion must be based on specified grounds such as mistake, newly discovered evidence, or fraud. Such a motion must generally be filed within 30 days after the entry of the TPR judgment. A person may also appeal to the court of appeals.

Current law does not address the appeal rights of a person who was not a party in the TPR proceeding.

The bill draft modifies current law as follows:

- Requires an attorney who represents a person in a TPR proceeding to continue 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.
- 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.
- Prohibits a mother who has completed an affidavit under s. 48.42 (1g), relating to the identity of the child's father from attacking a TPR judgment on the basis that the father was not identified correctly.

1 **SECTION 39.** 48.43 (6m) of the statutes is created to read:

2 48.43 (6m) When the court orders the termination of a person's parental rights, the court
3 shall provide written notification to the person, if present in court when the order is entered,
4 of the time limits for appeal of the judgment. The person shall sign the written notification,
5 indicating that he or she has been notified of the time limits for filing an appeal under ss. 808.04
6 (7m) and 809.107. The person's counsel shall file a copy of the signed, written notification
7 with the court on the date the judgment is entered.

NOTE: 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.

1 **SECTION 40.** 48.48 (17) (bm) of the statutes is created to read:

2 48.48 (17) (bm) As soon as practicable after learning that a person who is receiving
3 child welfare services under par. (a) from the department has changed his or her county of
4 residence, the department shall provide notice of that change to the county department of the
5 person's new county of residence. The notice shall include a brief, written description of the
6 services offered or provided to the person by the department and the name, phone number, and
7 address of a person to contact for more information.

NOTE: Provides that as soon as practicable after learning that a person who is receiving child welfare services from DHFS has changed his or her county of residence from Milwaukee County, DHFS must provide notice of that change to the county department of that person's new county of residence.

The notice must include a brief, written description of the services offered or provided to the person by DHFS and the name, telephone number, and address of a person to contact for more information.

8 **SECTION 41.** 48.57 (2m) of the statutes is created to read:

9 48.57 (2m) A county department, as soon as practicable after learning that a person who
10 is receiving child welfare services under sub. (1) from the county department has changed his
11 or her county of residence, shall provide notice of that change to the county department of the
12 person's new county of residence or, if that new county of residence is a county having a
13 population of 500,000 or more, the department. The notice shall include a brief, written
14 description of the services offered or provided to the person by the county department and the
15 name, phone number, and address of a person to contact for more information.

NOTE: Requires notice when a person who is receiving child welfare services moves from a county other than Milwaukee County, to another county. See the note to s. 48.48 (17) (bm) in this bill draft.

1 **SECTION 42.** 48.64 (4) (a) of the statutes is amended to read:

2 48.64 (4) (a) Any decision or order issued by an agency that affects the head of a foster,
3 treatment foster or group home or the children involved may be appealed to the department
4 under fair hearing procedures established under department rules. The department shall, upon
5 receipt of an appeal, give the head of the home reasonable notice and opportunity for a fair
6 hearing. The department may make such additional investigation as the department considers
7 necessary. The department shall give notice of the hearing to the head of the home and to the
8 departmental subunit, county department or child welfare agency that issued the decision or
9 order. Each person receiving notice is entitled to be represented at the hearing. The head of
10 a home who receives notice under sub. (1m) is a party to the proceeding under this paragraph.
11 At all hearings conducted under this subsection, the head of the home, or a representative of
12 the head of the home, shall have an adequate opportunity, notwithstanding s. 48.78 (2) (a), to
13 examine all documents and records ~~to be used at the hearing~~ relevant to the issue of the child's
14 removal at a reasonable time before the date of the hearing as well as during the hearing, except
15 that the agency may redact information from documents and records to protect the identity of
16 an individual who provided information under s. 48.981 (2). The head of home, or a
17 representative of the head of home, shall also have adequate opportunity to bring witnesses,
18 to establish all pertinent facts and circumstances, and to question or refute any testimony or
19 evidence, including opportunity to confront and cross-examine adverse witnesses. The
20 department shall grant a continuance for a reasonable period of time when an issue is raised
21 for the first time during a hearing. This requirement may be waived with the consent of the
22 parties. The decision of the department shall be based exclusively on evidence introduced at
23 the hearing. A transcript of testimony and exhibits, or an official report containing the
24 substance of what transpired at the hearing, together with all papers and requests filed in the

1 proceeding, and the findings of the hearing examiner shall constitute the exclusive record for
2 decision by the department. The department shall make the record available at any reasonable
3 time and at an accessible place to the head of the home or his or her representative. Decisions
4 by the department shall specify the reasons for the decision and identify the supporting
5 evidence. No person participating in an agency action being appealed may participate in the
6 final administrative decision on that action. The department shall render its decision as soon
7 as possible after the hearing and shall send a certified copy of its decision to the head of the
8 home and to the departmental subunit, county department or child welfare agency that issued
9 the decision or order. The decision shall be binding on all parties concerned.

NOTE: Provides that a head of a home who receives notice of a fair hearing is a party to that proceeding. In addition, allows the head of the home, or his or her representative, to examine all documents and records, except that an agency may redact information from documents and records that are relevant to the child's removal in order to protect the identity of an individual who provided information in reporting suspected child abuse or neglect.

10 **SECTION 43.** 48.64 (4) (c) of the statutes is amended to read:

11 48.64 (4) (c) The circuit court for the county where the ~~child is placed~~ dispositional
12 order was entered has jurisdiction upon petition of any interested party over a child who is
13 placed in a foster home, treatment foster home, or group home. The circuit court may call a
14 hearing, at which the head of the home and the supervising agency under sub. (2) shall be
15 present, for the purpose of reviewing any decision or order of that agency involving the
16 placement and care of the child. If the child has been placed in a foster home, the foster parent
17 may present relevant evidence at the hearing. ~~The court shall determine the case so as to~~
18 ~~promote~~ The petitioner has the burden of proving by clear and convincing evidence that the
19 decision or order issued by the agency is not in the best interests of the child.

NOTE: Provides that the circuit court in which a CHIPS dispositional order was entered has jurisdiction upon petition of any interested party over a child who is placed in a foster home or group home. If the court holds a hearing to review an agency decision or order involving the care of the child, provides that the petitioner has the burden of proving by clear and convincing evidence that the decision or order is not in the best interests of the child.

1 **SECTION 44.** 48.72 of the statutes is amended to read:

2 **48.72 Appeal procedure.** Except as provided in s. 48.715 (6) and (7), any person
3 aggrieved by the department's refusal or failure to issue, renew or continue a license or by any
4 action taken by the department under s. 48.715 has the right to an administrative hearing
5 provided for contested cases in ch. 227. To receive an administrative hearing under ch. 227,
6 the aggrieved person shall send to the department a written request for a hearing under s.
7 227.44 within 10 days after the date of the department's refusal or failure to issue, renew or
8 continue a license or the department's action taken under s. 48.715. The department shall hold
9 an administrative hearing under s. 227.44 within 30 days after receipt of the request for the
10 administrative hearing unless the aggrieved person consents to an extension of that time
11 period. Judicial review of the department's decision may be had by any party in the contested
12 case as provided in ch. 227.

NOTE: 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.

Section 48.72 sets forth the appeal procedure of foster home 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.

1 **SECTION 45.** 48.78 (2) (a) of the statutes is amended to read:

2 48.78 (2) (a) No agency may make available for inspection or disclose the contents of
3 any record kept or information received about an individual in its care or legal custody, except
4 as provided under s. 48.371, 48.38 (5) (b) or (d) or (5m) (d), 48.432, 48.433, 48.48 (17) (bm),
5 48.57 (2m), 48.93, 48.981 (7), 938.51, or 938.78 or by order of the court.

NOTE: Permits a county department or DHFS to make available for inspection or disclose the contents of any record kept or information received about an individual in its care or legal custody in order to provide the notice as required under ss. 48.48 (17) (bm) and 48.57 (2m) when a child receiving child welfare services moves to another county.

6 **SECTION 46.** 48.825 (3m) of the statutes is created to read:

7 48.825 (3m) No person may publish by a public medium an advertisement that violates
8 this section. If the owner, agent, or employee of the public medium receives a copy of the
9 license of the person or agency requesting the advertisement that indicates that the person or
10 agency is licensed to provide adoption services in this state, there is a rebuttable presumption
11 that the advertisement does not violate this section.

12 **SECTION 47.** 48.825 (5) of the statutes is amended to read:

13 48.825 (5) Any person who violates sub. (2) or (3m) may be fined not more than \$10,000
14 or imprisoned not more than 9 months or both.

NOTE: Prohibits any person from publishing by public medium an adoption advertisement that violates current law relating to advertising for adoption. Under this provision, if the owner, agent, or employee of the public medium receives a copy of the license of the person or agency requesting the advertisement that indicates that the person or agency is licensed to provide adoption services in this state, there is a rebuttable presumption that the advertisement does not violate the prohibition on certain advertising.

A person who violates this provision is subject to a penalty of a fine not to exceed \$10,000 and imprisonment not to exceed 9 months.

15 **SECTION 48.** 48.837 (1m) of the statutes is created to read:

1 48.837 (1m) Notwithstanding s. 48.988, a parent having custody of a child, and the
2 proposed adoptive parent or parents of the child if those proposed adoptive parents live out
3 of this state and are not related to the child, may petition the court for placement of the child
4 for adoption in the home, if the home meets the criteria established by the laws of the other
5 state for the acceptance of the child by nonrelatives for a pre-adoptive placement.

6 **SECTION 49.** 48.837 (4) (c) of the statutes is amended to read:

7 48.837 (4) (c) ~~Shall~~ When the petition has been filed under sub. (1), shall order the
8 department or a county department under s. 48.57 (1) (e) or (hm) to investigate the proposed
9 adoptive placement, to interview each petitioner, to provide counseling if requested and to
10 report its recommendation to the court at least 5 days before the hearing on the petition. If a
11 licensed child welfare agency has investigated the proposed adoptive placement and
12 interviewed the petitioners, the court may accept a report and recommendation from the child
13 welfare agency in place of the court-ordered report required under this paragraph.

NOTE: Creates a new provision, in the statute relating to pre-adoptive placement of a child in the home of the proposed adoptive parents who are nonrelatives, that applies when the proposed adoptive parents live in a state outside of Wisconsin. Under this provision, a parent having custody of the child, and the proposed adoptive parent or parents of the child if those parents live out of this state and are not related to the child, may petition the court for placement of the child for adoption in the home, if the home meets the criteria established by the laws of the other state for the acceptance of the child by nonrelatives for a pre-adoptive placement.

14 **SECTION 50.** 48.837 (4) (cf) of the statutes is created to read:

15 48.837 (4) (cf) When the petition has been filed under sub. (1m), shall request that the
16 appropriate agency where the proposed adoptive parent or parents reside to follow the
17 procedure established by the laws of that state to ensure that the proposed adoptive home meets
18 the criteria for the acceptance of the child by nonrelatives for a pre-adoptive placement.

NOTE: Requires the court to request, rather than order, an out-of-state agency to ensure that the proposed adoptive home meets the criteria for the acceptance of the child by nonrelatives for a pre-adoptive placement, when the proposed adoptive parents live in a state outside of Wisconsin and are seeking a pre-adoptive placement of the child in their home under s. 48.837 (1m).

1 **SECTION 51.** 48.837 (4) (e) of the statutes is amended to read:

2 48.837 (4) (e) Shall, before hearing the petitions under subs. (2) and (3), ascertain
3 whether the child's paternity of a nonmarital child who is not adopted or whose parents do not
4 subsequently intermarry under s. 767.60 has been acknowledged under s. 767.62 (1) or a
5 substantially similar law of another state or adjudicated in this state or another jurisdiction.
6 ~~If any person has filed a declaration of paternal interest under s. 48.025, the court shall~~
7 ~~determine the rights of that person.~~ If the child's paternity has not been acknowledged or
8 adjudicated ~~and if no person has filed a declaration under s. 48.025,~~ the court shall attempt to
9 ascertain the paternity of the child and shall determine the rights of any person who may be
10 the father of the child as provided under s. 48.423. The court may not proceed with the hearing
11 on the petitions under this section unless the parental rights of the nonpetitioning parent,
12 whether known or unknown, have been terminated.

NOTE: Provides that before holding a hearing on adoptive placement and TPR petitions filed by the child's parent and the proposed adoptive parent or parents, the court must ascertain whether the paternity of a nonmarital child has been established. If the child's paternity has not been established, the court must attempt to ascertain the paternity of the child and must determine the rights of any person who may be the father of the child. These rights are the rights that are set forth regarding alleged fathers' participation in TPR proceedings under s. 48.42 (2m) (b). As under current law, the court may not proceed with the hearing on the petitions unless the parental rights of the nonpetitioning parent have been terminated.

13 **SECTION 52.** 48.8395 of the statutes is created to read:

1 **48.8395 Preparation for prospective adoptive parents.** (1) A person who petitions
2 to adopt a child under s. 48.833 or 48.837 or is proposing to adopt a foreign child under s.
3 48.839 and has not previously adopted any children, shall complete preparation prior to the
4 placement of the child in the prospective adoptive home. The preparation shall be provided
5 by a licensed child welfare agency, a licensed private adoption agency, or a state-funded
6 post-adoption resource center. If the person does not live in this state, the person may meet
7 this requirement by obtaining equivalent preparation in the person's state of residence.

8 (2) The department shall promulgate rules establishing the number of hours of required
9 pre-adoption preparation under sub. (1) and the topics it shall cover. The preparation shall
10 include training on issues that may confront adoptive parents, in general, and that may
11 confront adoptive parents of special needs or foreign children.

12 (3) Persons petitioning to adopt a child under s. 48.837 or 48.839 shall pay the costs of
13 pre-adoption preparation required under sub. (1). The county department of the prospective
14 adoptive parents' county of residence, or, if the prospective adoptive parents reside in a county
15 with a population of 500,000 or more, the department, shall pay the costs of the training for
16 persons petitioning to adopt a child under s. 48.833.

NOTE: Requires the court, in a proceeding on a petition for adoption of a child by nonrelatives, to order a person who is a first-time adoptive parent 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. If the person lives in another state, the petitioner may obtain equivalent preparation in that state. The department is required to promulgate rules on the number of hours of required pre-adoption preparation, as well as topics to be covered.

Requires the proposed adoptive parents to pay the costs of the required pre-adoption preparation, unless the child is being adopted from the child welfare system.

17 **SECTION 53.** 48.91 (2) of the statutes is amended to read:

1 48.91 (2) In an adoption proceeding for a nonmarital child who is not adopted or whose
2 parents do not subsequently intermarry under s. 767.60, the court shall establish whether the
3 ~~rights of any persons who have filed declarations of paternal interest under s. 48.025 have been~~
4 ~~determined or whether~~ the child's paternity has been acknowledged under s. 767.62 (1) or a
5 substantially similar law of another state or adjudicated in this state or in another jurisdiction.
6 ~~If the court finds that no such determination has been made~~ child's paternity has not been
7 acknowledged or adjudicated, the court shall proceed, prior to any action on the petition for
8 adoption, to attempt to ascertain the paternity of the child and ~~the rights of any person who~~
9 ~~has filed a declaration under s. 48.025~~ shall determine the rights of any person who may be
10 the father of the child as provided under s. 48.423. The court may not proceed with the hearing
11 on the petition for adoption unless the parental rights of the nonpetitioning parent, whether
12 known or unknown, have been terminated.

NOTE: Provides that, at the final adoption hearing, the court must determine whether a nonmarital child's paternity has been established. If the child's paternity has not been established, the court must attempt to ascertain the paternity of the child and must determine the rights of any person who may be the father of the child. The bill draft specifies that the court may not proceed with the hearing on the petition for adoption unless the parental rights of the nonpetitioning parent have been terminated.

13 **SECTION 54.** 48.913 (1) (c), (i) and (m) of the statutes are amended to read:

14 48.913 (1) (c) Maternity clothes for the child's birth mother, ~~not to exceed a reasonable~~
15 in an amount not to exceed \$300.

16 (i) Living expenses of the child's birth mother, in an amount not to exceed \$1,000
17 \$5,000, if payment of the expenses by the proposed adoptive parents or a person acting on their
18 behalf is necessary to protect the health and welfare of the birth mother or the fetus.

- 1 (m) A gift to the child's birth mother from the proposed adoptive parents, of no greater
2 than ~~\$50~~ \$100 in value.

NOTE: 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 various expenses, including the following:

- Maternity clothes for the child's birth mother, not to exceed a reasonable amount.
- 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.
- A gift to the child's birth mother from the proposed adoptive parents, of no greater than \$50 in value.

This SECTION does the following:

- Provides that the cost for maternity clothes may not exceed \$300.
- Increases the amount that may be paid for living expenses to \$5,000.
- Increases the amount that may be paid for a gift to the birth mother to \$100.

3 **SECTION 55.** 808.04 (7m) of the statutes is amended to read:

4 808.04 (7m) An appeal from a judgment or order terminating parental rights or denying
5 termination of parental rights shall be initiated by filing the notice required by s. 809.107 (2)
6 within 30 days after the date of entry of the judgment or order appealed from. Notwithstanding
7 s. 809.82 (2) (b), this time period may not be enlarged unless the judgment or order was entered
8 as a result of a petition under s. 48.417 that was filed by a representative of the public under
9 s. 48.09.

NOTE: Provides that the time in which to file a notice of appeal of a final judgment in a TPR case may be enlarged if the judgment or order was entered as a result of a petition for involuntary TPR filed by a district attorney, corporation counsel, or other representative of the public.

10 **SECTION 56.** 808.04 (8) of the statutes is amended to read:

1 808.04 (8) If the record discloses that the judgment or order appealed from was entered
2 after the notice of appeal or intent to appeal was filed, the notice of appeal shall be treated as
3 filed after such entry and on the day thereof.

NOTE: Current s. 808.04 (8), stats., provides that if the record discloses that the judgment or order appealed from was entered after the notice of appeal was filed, the notice of appeal shall be treated as filed after such entry and on the day thereof. Currently, this provision affects a few TPR cases each year where a notice of intent to appeal (which is required in TPR cases, under s. 809.107, stats.) is filed prior to the entry of the judgment or order. In those cases, the notice of intent to appeal is treated as being filed too early and in violation of s. 808.04 (8), stats.

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.

4 **SECTION 57.** 809.107 (5) (am) of the statutes is created to read:

5 809.107 (5) (am) *Notice of abandonment of appeal.* If the person who filed a notice of
6 intent to appeal under sub. (2) and requested a transcript and case record under sub. (4) decides
7 not to file a notice of appeal, that person shall notify the person required to be served under
8 sub. (2) of this decision, within 30 days after the service of the transcript and case record under
9 sub. (4).

NOTE: Requires a person to provide notification to certain persons that an appeal will not be filed, within 30 days after service of the transcript on the person.

10 **SECTION 58.** 809.82 (2) (b) of the statutes is amended to read:

11 809.82 (2) (b) Notwithstanding the provisions of par. (a), the time for filing a notice of
12 appeal or cross-appeal of a final judgment or order, other than in an appeal under s. 809.30
13 or 809.32 or as provided under s. 808.04 (7m), may not be enlarged.

NOTE: Provides that the time in which to file notice of appeal of a final judgment in a TPR case may be enlarged as provided under s. 808.04 (7m).

1 **SECTION 59.** 938.27 (3) (b) 1. a. of the statutes is amended to read:

2 938.27 (3) (b) 1. a. A person who has filed a declaration of paternal interest under s.
3 48.025.

4 **SECTION 60.** 938.27 (5) of the statutes is amended to read:

5 938.27 (5) Subject to sub. (3) (b), the court shall make every reasonable effort to identify
6 and notify any person who has filed a declaration of paternal interest under s. 48.025, any
7 person who has acknowledged paternity of the child under s. 767.62 (1), and any person who
8 has been adjudged to be the ~~biological~~ father of the juvenile in a judicial proceeding unless
9 the ~~biological father's~~ person's parental rights have been terminated.

 NOTE: Makes the changes as provided in s. 48.27 (3) (b) 1. a. and (5) for
 proceedings under the juvenile justice code.

10 **SECTION 61.** 938.57 (2m) of the statutes is created to read:

11 938.57 (2m) A county department, as soon as practicable after learning that a person
12 who is receiving juvenile welfare services under sub. (1) from the county department has
13 changed his or her county of residence, shall provide notice of that change to the county
14 department of the person's new county of residence. The notice shall include a brief, written
15 description of the services offered or provided to the person by the county department and the
16 name, phone number, and address of a person to contact for more information.

 NOTE: Requires notice when a person who is receiving juvenile welfare
 services moves from a county to another county. See the note to s. 48.48
 (17) (bm) in this bill draft.

17 **SECTION 62.** 938.78 (2) (a) of the statutes is amended to read:

18 938.78 (2) (a) No agency may make available for inspection or disclose the contents
19 of any record kept or information received about an individual in its care or legal custody,

1 except as provided under sub. (3) or s. 938.371, 938.38 (5) (b) or (d) or (5m) (d), ~~or 938.51,~~
2 or 938.57 (2m) or by order of the court.

NOTE: Permits a county department to make available for inspection or disclose the contents of any record kept or information received about an individual in its care or legal custody in order to provide the notice required under s. 938.57 (2m) when a person receiving juvenile welfare services moves to another county.

3 **SECTION 63.** 977.07 (1) (c) of the statutes is amended to read:

4 977.07 (1) (c) For all referrals made under ss. 809.107, 809.30, 974.06 (3) (b) and
5 974.07 (11), except a referral of a child who is entitled to be represented by counsel under s.
6 48.23 or 938.23, a representative of the state public defender shall determine indigency. For
7 referrals made under ss. 809.107, 809.30 and 974.06 (3) (b), except a referral of a child who
8 is entitled to be represented by counsel under s. 48.23 or 938.23, the representative of the state
9 public defender may, unless a request for redetermination has been filed under s. 809.30 (2)
10 (d) or the ~~defendant's~~ person's request for representation states that his or her financial
11 circumstances have materially improved, rely upon a determination of indigency made for
12 purposes of trial representation under this section.

NOTE: 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, the statute 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.

13 **SECTION 64. Initial applicability.**

14 (1) NOTICE OF AND PARTICIPATION IN TERMINATION OF PARENTAL RIGHTS PROCEEDINGS. The
15 treatment of sections 48.42 (2) (b) (intro.) and 1., 48.422 (6) (a), 48.423, 48.837 (4) (e), and
16 48.91 (2) of the statutes, the renumbering and amendment of sections 48.42 (2m) and 48.43
17 (6) of the statutes, and the creation of sections 48.42 (1g), (2) (am) and (2m) (b) and 48.43 (6)

1 (b) of the statutes first apply to a termination of parental rights petition filed on the effective
2 date of this subsection.

3 (2) NOTICE TO COUNTY WHEN PERSON RECEIVING SERVICES CHANGES COUNTY OF RESIDENCE.
4 The treatment of sections 48.48 (17) (bm), 48.57 (2m), 48.78 (2) (a), 938.57 (2m), and 938.78
5 (2) (a) of the statutes first applies to a person who changes his or her county of residence on
6 the effective date of this subsection.

7 **SECTION 65. Effective date.**

8 This act takes effect on the day after publication except as follows: first day of the 3rd
9 month beginning after publication.

10 (1) The treatment of sections 46.03 (7) (bm), 48.025 (1), (5) and (6), 48.27 (3) (b) 1.
11 a., 48.27 (5), 48.42 (1g), (2) (am), (b) (intro.) and 1., 48.422 (6) (a), 48.423, 48.837 (4) (e),
12 48.91 (2), 938.27 (3) (b) 1. a., and 938.27 (5) of the statutes, the renumbering of sections
13 48.025 (3) and 48.43 (6) of the statutes, the renumbering and amendment of sections 48.025
14 (2) and 48.42 (2m) of the statutes, and the creation of sections 48.025 (2) (b) and (d) and (3)
15 (a), (c), and (d), 48.42 (2m) (b), and 48.43 (6) (b) take effect on the first day of the 3rd month
16 beginning after publication of the act.

NOTE: Provides that the act takes effect on the first day after publication
except that the provisions relating to declarations of paternal interest take
effect on the first day of the 3rd month beginning after publication of the
act.

17

(END)