



(DRAFT) 6/6 to Gmm
State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-2751/P1 (1)

GMM: lcb

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~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

Regen

1 AN ACT *to renumber* 48.025 (3); *to renumber and amend* 48.025 (2), 48.355
2 (2) (b) 1., 48.41 (2) (b), 48.42 (2m) and 48.43 (6); *to amend* 46.03 (7) (bm), 48.025
3 (1), 48.27 (3) (b) 1. a., 48.27 (5), 48.295 (1), 48.368 (1), 48.415 (intro.), 48.415 (2)
4 (a) 3., 48.415 (6) (a) and (b), 48.415 (10) (a), 48.42 (2) (b) (intro.), 48.42 (2) (b) 1.,
5 48.42 (4) (a), 48.422 (6) (a), 48.423, 48.64 (4) (a), 48.64 (4) (c), 48.72, 48.78 (2)
6 (a), 48.825 (5), 48.837 (4) (c), 48.837 (4) (e), 48.91 (2), 48.913 (1) (c), (i) and (m),
7 808.04 (7m), 808.04 (8), 809.82 (2) (b), 938.27 (3) (b) 1. a., 938.27 (5), 938.78 (2)
8 (a) and 977.07 (1) (c); and *to create* 48.025 (2) (b), 48.025 (2) (d), 48.025 (3) (a),
9 48.025 (3) (c) and (d), 48.025 (5), 48.025 (6), 48.235 (1) (g), 48.235 (5m), 48.295
10 (2c), 48.355 (2) (b) 1. a. to d., 48.41 (2) (b) 2., 48.42 (1g), 48.42 (2) (am), 48.42 (2m)
11 (b), 48.42 (4) (b) 1., 48.42 (5), 48.43 (6) (b) and (c), 48.43 (6m), 48.48 (17) (bm),
12 48.57 (2m), 48.825 (3m), 48.837 (1m), 48.837 (4) (cf), 48.8395, 809.107 (5) (am)

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

1 and 938.57 (2m) of the statutes; **relating to:** termination of parental rights and
2 adoption;

granting rule-making authority, and providing a penalty

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Analysis by the Legislative Reference Bureau

~~This is a preliminary draft. An analysis will be provided in a later version.~~

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

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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:

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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.

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Grounds for TPR

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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.

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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.

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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:

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That 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.

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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.

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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

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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 those 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

Specifies when a court is required or permitted to appoint a GAL for a proceeding.

Under the bill, making such a false statement or representation is punishable by a fine not to exceed \$10,000 or imprisonment not to exceed nine months or both.

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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 DHS, 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.

to be provided under the juvenile court order and, if the child is placed outside the home of the parent...

services that are available within the correctional institution primarily responsible for providing services and remain the agency primarily responsible for providing services to do so...

placed outside the home of the parent...

the child is not subject to CHIPS and placed outside the home by a juvenile court; the agency responsible for the care of the child and the family has made a reasonable effort to provide the services ordered by the court and the child has been outside the home for six months or longer and has failed to meet the conditions established in the court order for the safe return of the child to the home and there is a substantial likelihood that the parent will not meet those conditions within the 12-month period following the TPR fact-finding hearing.

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• 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.

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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.

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• 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) [postconviction 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.

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Children's Code, ch. 48, sta.

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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.

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• Continuing Representation in TPR Appeals

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

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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.

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• 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 to be given to a person whose parental rights were terminated.

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if the person is present in juvenile court when the order is granted

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.

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• 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.

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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.

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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.

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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.

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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.

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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.

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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 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

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- that is required
- visitation
- CHIPS
- use twice
- in effect
- bill
- CHIPS
- child
- bill

placing a child in a foster, treatment foster, or group home

Bureau of Milwaukee Child Welfare (BMCW), which is the subunit of DHFS responsible for providing child welfare services in Milwaukee County,

This bill

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.

1 SECTION 1. 46.03 (7) (bm) of the statutes is amended to read:
2 46.03 (7) (bm) Maintain a file containing records of artificial inseminations
3 under s. 891.40 and records of, declarations of paternal interest under s. 48.025, and
4 of statements acknowledging paternity under s. 69.15 (3) (b). The department shall
5 may release these those records, declarations, and statements only upon an order of
6 the court except that the department may use nonidentifying information

of a voluntary agreement so to placing the child was made

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1 concerning artificial inseminations for the purpose of compiling statistics ~~and except~~
 2 that ~~records relating to,~~ declarations of paternal interest shall be released as
 3 provided in s. 48.025 (3) (b) and (c), and statements acknowledging paternity shall
 4 be released without a court order to the department of workforce development or a
 5 county child support agency under s. 59.53 (5) ~~without a court order~~ upon the request
 6 of ~~the that~~ department of workforce development or a or county child support agency
 7 under s. 59.53 (5) pursuant to the program responsibilities under s. 49.22 or by to any
 8 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.

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

10 48.025 (1) Any person claiming to be the father of a nonmarital child who is not
 11 adopted or whose parents do not subsequently intermarry under s. 767.60 and whose
 12 paternity has not been established may, in accordance with procedures under this
 13 section, file with the department a declaration of his interest in matters affecting
 14 such the child. The department may not charge a fee for filing a declaration under
 15 this section.

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

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

18 48.025 (2) (a) The A declaration provided in under sub. (1) may be filed at any
 19 time ~~except after~~ before a termination of the father's parental rights under subch.

1 VIII. This paragraph does not apply to a declaration that is filed on or after the
 2 effective date of this paragraph [revisor inserts date].

3 (c) The declaration shall be in writing, shall be signed and verified upon oath
 4 or affirmation by the person filing the declaration, and shall contain the person's
 5 name and address, the name and last-known address of the mother, the month and
 6 year of the birth or expected birth of the child, and a statement that he the person
 7 filing the declaration has reason to believe that he may be the father of the child. If
 8 the person filing the declaration is under 18 years of age, the declaration shall also
 9 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.

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

11 48.025 (2) (b) A declaration under sub. (1) may be filed at any time before the
 12 birth of the child or within 14 days after the birth of the child, except that a man who
 13 receives a notice under s. 48.42 (1g) (b) may file a declaration within 21 days of the
 14 date on which the notice was mailed. This paragraph does not apply to a declaration filed
 15 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. after In that case, the man may file a declaration within 21 days as created by the bill. of the mailing date of the notice.

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

17 48.025 (2) (d) A person who has filed a declaration under sub. (1) may revoke
 18 the declaration at any time by filing with the department a statement, signed and
 19 verified upon oath or affirmation, that the person, to the best of his knowledge and
 20 belief, is not the father of the child or that another person has been adjudicated as

1 the father of the child. If the person filing the revocation is under 18 years of age,
2 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.

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

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

5 48.025 (3) (a) The department shall keep confidential and may not open to
6 public inspection or disclose the contents of any declaration, revocation of a
7 declaration, or response to a declaration filed under this section, except as provided
8 under pars. (b) and (c) or by order of the court for good cause shown.

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

10 48.025 (3) (c) A court in a proceeding under s. 48.13, 48.133, 48.14, or 938.13
11 or under a substantially similar law of another state or a person authorized to file
12 a petition under s. 48.42, 48.837, or 938.25 or under a substantially similar law of
13 another state may request the department to search its files to determine whether
14 a person who may be the father of the child who is the subject of the proceeding has
15 filed a declaration under this section. If the department has on file a declaration of
16 paternal interest in matters affecting the child, the department shall issue to the
17 requester a copy of the declaration. If the department does not have on file a
18 declaration of paternal interest in matters affecting the child, the department shall
19 issue to the requester a statement that no declaration could be located. The
20 department may require a person who requests a search under this paragraph to pay
21 a reasonable fee that is sufficient to defray the costs to the department of
22 maintaining its file of declarations and publicizing information relating to
23 declarations of paternal interest under this section.

1 (d) Any person who obtains any information under this subsection may use or
 2 disclose that information only for the purposes of a proceeding under s. 48.13, 48.133,
 3 48.14, or 938.13 or under a substantially similar law of another state and may not
 4 use or disclose that information for any other purpose except by order of the court for
 5 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.

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

7 48.025 (5) (a) The department shall publicize, in a manner calculated to
 8 provide maximum notice to all persons who might claim to be the father of a
 9 nonmarital child, all of the following information:

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

13 2. The procedures for filing a declaration of interest.

14 3. The consequences of filing a declaration of interest.

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

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

d pamphlet

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.

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

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

6 (b) Except as permitted under sub. (3), any person who intentionally obtains,
7 uses, or discloses information that is confidential under this section may be fined not
8 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.

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

10 48.235 (1) (g) The court shall appoint a guardian ad litem for a parent who is
11 the subject of a termination of parental rights proceeding, if any assessment or
12 examination of a parent that is ordered under s. 48.295 (1) shows that the parent is
13 not competent to assist his or her counsel or the court in protecting the parent's rights
14 in the proceeding.

participate in the proceeding or to participate in the proceeding

Juvenile

or Juvenile

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.

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

1 48.235 (5m) MATTERS INVOLVING CONTESTED TERMINATION OF PARENTAL RIGHTS
 2 PROCEEDINGS. (a) In any termination of parental rights proceeding involving a child
 3 who has been found to be in need of protection or services and whose parent is
 4 contesting the termination of his or her parental rights, a guardian ad litem for a
 5 parent who has been appointed under sub. (1) (g) shall provide information to the
 6 court relating to the parent's competency to participate in the proceeding, and shall
 7 also provide assistance to the court and the parent's ^{adversary} ~~defense~~ ^{← adversary} counsel in protecting the
 8 parent's rights in the proceeding.

9 (b) The guardian ad litem may not participate in the proceeding as a party, and
 10 may not call witnesses, provide opening statements or closing arguments, or
 11 participate in any activity at trial that is required to be performed by the parent's
 12 ^{adversary} 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 ^{adversary} ~~defense~~ ^{← adversary} 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 ^{adversary} ~~defense~~ ^{← adversary} counsel.

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

14 48.27 (3) (b) 1. a. A person who has filed a declaration of paternal interest under
 15 s. 48.025.

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

17 48.27 (5) Subject to sub. (3) (b), the court shall make every reasonable effort
 18 to identify and notify any person who has filed a declaration of paternal interest
 19 under s. 48.025, any person who has acknowledged paternity of the child under s.
 20 767.62 (1), and any person who has been adjudged to be the biological father of the

1 child in a judicial proceeding unless the biological father's person's parental rights
2 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 ~~of an unborn CHIPS~~ proceeding.

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

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

4 48.295 (1) After the filing of a petition and upon a finding by the court that
5 reasonable cause exists to warrant an a physical, psychological, mental, or
6 developmental examination or an alcohol and other drug abuse assessment that
7 conforms to the criteria specified under s. 48.547 (4), the court may order any child
8 coming within its jurisdiction to be examined as an outpatient by personnel in an
9 approved treatment facility for alcohol and other drug abuse, by a physician,
10 psychiatrist or licensed psychologist, or by another expert appointed by the court
11 holding at least a master's degree in social work or another related field of child
12 development, in order that the child's physical, psychological, alcohol or other drug
13 dependency, mental² or developmental condition may be considered. The court may
14 also order an a physical, psychological, mental, or developmental examination or an
15 alcohol and other drug abuse assessment that conforms to the criteria specified
16 under s. 48.547 (4) of a parent, guardian² or legal custodian whose ability to care for
17 a child is at issue before the court or of an expectant mother whose ability to control
18 her use of alcohol beverages, controlled substances² or controlled substance analogs
19 is at issue before the court. The court shall hear any objections by the child², the
20 child's parents, guardian² or legal custodian to the request for such an examination
21 or assessment before ordering the examination or assessment. At the time an
22 examination of a parent, guardian, or legal custodian is ordered, the court shall

1 advise the subject of the examination of the provisions of sub. (2c). The expenses of
 2 an examination, if approved by the court, shall be paid by the county of the court
 3 ordering the examination in a county having a population of less than 500,000 or by
 4 the department in a county having a population of 500,000 or more. The payment
 5 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.

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

7 48.295 (2c) Statements made by a parent, guardian, or legal custodian, and the
 8 results of any tests conducted and any diagnosis made, in the course of an
 9 assessment or examination performed under sub. (1), are not privileged in any
 10 proceeding under ch. 48 or ch. 938, except in a delinquency proceeding under s.
 11 938.12.

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.

12 **SECTION 17.** 48.355 (2) (b) 1. of the statutes is renumbered 48.355 (2) (b) 1.

13 (intro.) and amended to read:

14 48.355 (2) (b) 1. (intro.) The specific services or continuum of services to be
 15 provided to the child and family, to the child expectant mother and family or to the
 16 adult expectant mother, the identity of the agencies which are to be primarily
 17 responsible for the provision of the services ordered by the judge, the identity of the
 18 person or agency who will provide case management or coordination of services, if
 19 any, and, if custody of the child is to be transferred to effect the treatment plan, the
 20 identity of the legal custodian. Regardless of any other provision of an order under

Services that are available within the correctional institution, and the agency primarily responsible for the provision of services ordered by the judge shall do all of the following for this section, during any period of incarceration of a parent serving a prison sentence, for the parent
 ② services shall be limited to the following for that parent:

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

4 48.355 (2) (b) 1. a. ^{Advise} The agency shall ^{the} advise the parent of services that may be available within the correctional ^{Institution} facility. ^{Institution} to be provided under the court order

6 b. ^{Advise} The agency shall ^{Advise} advise the correctional facility of the mandated services and conditions of return contained in the court order. ^{Juvenile} for the safe return of the child to the home

8 c. ^{Monitor} The agency shall ^{Monitor} monitor the parent's participation and progress in relevant services made available to the parent within the correctional ^{Institution} facility.

10 d. ^{Arrange} The agency shall ^{Arrange} arrange for visitation between the parent and child if the court finds that visitation is in the best interests of the child. ^{Advise}

to Services that are available within the correctional institution and requires the

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} advise the parent of services that may be available within the correctional ^{Institution} facility.
- The agency must ^{Advise} advise the correctional facility of the mandated services and conditions of return contained in the court order.
- The agency must ^{Monitor} monitor the parent's participation and progress in relevant services made available to the parent within the correctional ^{Institution} facility.
- The agency must ^{Arrange} arrange for visitation between the parent and child if the court finds that visitation is in the best interests of the child.

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

48.368 Continuation of dispositional orders. (1) If a petition for

termination of parental rights is filed under s. 48.41 or 48.415 or an appeal from a

judgment terminating or denying termination of parental rights is filed during the

year in which a dispositional order under s. 48.355 or, an extension order under s.

48.365, a voluntary agreement for placement of the child under s. 48.63, or a

guardianship order under ^{s. 48.977 or} ch. 880 is in effect, the dispositional or extension order,

voluntary agreement, or guardianship order shall remain in effect until all

proceedings related to the filing of the petition or an appeal are concluded.

if the child is placed outside the home, & the

to be provided under the juvenile court order. and, if the child is placed outside the home,

Advise
Monitor
Arrange

agency primarily responsible for the provision of services to do all of the following

for the safe return of the child to the home

Juvenile

Institution

Advise

Institution

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Advise

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CHIPS

TPR

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.

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

3 48.41 (2) (b) (intro.) If the court finds that it would be difficult or impossible for
4 the parent to appear in person at the hearing, the court may do any of the following:

5 1. Accept ~~accept~~ the written consent of the parent given before an embassy or
6 consul official, a military judge⁽²⁾ or a judge of any court of record in another county or
7 state or a foreign jurisdiction. This written consent shall be accompanied by the
8 signed findings of the embassy or consul official or judge who accepted the parent's
9 consent. These findings shall recite that the embassy or consul official or judge or
10 an attorney who represents any of the parties questioned the parent and found that
11 the consent was informed and voluntary before the embassy or consul official or
12 judge accepted the consent of the parent.

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

14 48.41 (2) (b) 2. On request of the parent, unless good cause to the contrary is
15 shown, ~~provide~~^{admit} testimony on the record by telephone or live audiovisual means as
16 prescribed in s. 807.13 (2). Juvenile court to admit

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.

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

18 **48.415 Grounds for involuntary termination of parental rights.** (intro.)

19 In this section, "parent" includes a person or persons who may be the parent of the
20 child. At the fact-finding hearing the court or jury may make a finding that grounds

1 ~~exist for the termination of parental rights. Grounds for termination of parental~~
2 ~~rights shall be one of the following:~~

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

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

4 48.415 (2) (a) 3. That the child has been outside the home for a cumulative total
5 period of 6 months or longer pursuant to such orders not including time spent outside
6 the home as an unborn child; and that the parent has failed to meet the conditions
7 established for the safe return of the child to the home and there is a substantial
8 likelihood that the parent will not meet these conditions within the ~~12-month~~
9 9-month period following the fact-finding hearing 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.

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

11 48.415 (6) (a) Failure to assume parental responsibility, which shall be
12 established by proving that the ~~parent or the person or persons who may be the~~
13 ~~parent of the child have never~~ not had a substantial parental relationship with the
14 child.

15 (b) In this subsection, "substantial parental relationship" means the
16 acceptance and exercise of significant responsibility for the daily supervision,
17 education, protection and care of the child. In evaluating whether the person has had
18 a substantial parental relationship with the child, the court may consider such
19 factors, including, but not limited to, whether the person has ever expressed concern
20 for or interest in the support, care or well-being of the child, whether the person has
21 neglected or refused to provide care or support for the child and whether, with respect

to the home in order to terminate

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plan

stat plan
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1 to a person, who is or may be the father of the child, the person has ever expressed
 2 concern for or interest in the support, care or well-being of the mother during her
 3 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.

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

5 48.415 (10) (a) That the child who is the subject of the petition has been
 6 adjudged to be in need of protection or services under s. 48.13 (2), (3) or, (3m), (10),
 7 or (10m).

NOTE: Under current law, parental rights may be involuntarily terminated by proving both of the following: has neglected, refused, or been unable

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. juvenile

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.

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

9 48.42 (1g) (a) if the petition is filed by a person or agency other than the district
 10 attorney, corporation counsel, or other appropriate official under s. 48.09 and the
 11 petition seeks to terminate the parental rights of a person who may be the father of
 12 a nonmarital child who is under one year of age at the time the petition is filed, who
 13 is not adopted or whose parents do not subsequently intermarry under s. 767.60, and whose
 14 paternity has not been established, the petitioner shall file with the petition an

or seeks to voluntarily consent to
 ; and if the ~~child~~ mother of the child has voluntarily consented to the
 termination of her parental rights to the child,

This section also adds a reference to a person or person who may be the parent of a child because these persons are included in the definition of "parent" in s. 48.40 (1r), as created by the bill.

Insert 22-8

Handwritten notes and corrections in various colors (blue, red, black) are scattered throughout the page, including circles around words like "person", "plan", "parents", "that the", "juvenile", "if", "whose", and "or seeks to voluntarily consent to".

that includes

1 affidavit signed by the ~~birth~~ mother of the child if the birth mother has voluntarily
2 ~~terminated or seeks to voluntarily terminate her parental rights to the child except~~
3 ~~as provided under par. (c).~~ The affidavit shall include all of the following:

4 1. A statement that the ~~mother~~ ^{consented to} has voluntarily ~~terminated~~ ^{consent to the termination of} or seeks to
5 voluntarily ~~terminate~~ her parental rights to the child.

6 2. A statement acknowledging that the ~~mother~~ ^{and} has been asked to identify the
7 father of the child.

8 3. A statement that the ~~mother~~ ^{and} knows and is identifying the father or that she
9 does not know the identity of the father.

10 4. A statement identifying any man who ~~may be the child's father~~ ^{and who} has lived in
11 a familial relationship with the child ^{and who may be the father of the child}

12 5. If the mother states that she knows and is identifying the father under subd.
13 3. or 4., the father's name, ^{age, and} last-known mailing address, ^{and the} last-known employer
14 address, ^{and age} ^{of the father's employer}

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

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

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

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

5 (b) The petitioner shall notify any man identified in the affidavit under par. (a)
 6 as an alleged father of his right to file a declaration of paternal interest under s.
 7 48.025 before the birth of the child, within 14 days after the birth of the child, or
 8 within 21 days after the date ^{on which} the notice is mailed, whichever is later; ^{of} the birth date
 9 or anticipated birth date of the child; and ^{of} the consequences of filing ^{of} and ^{of} not filing
 10 a declaration of paternal interest. The petitioner shall include with the notice a copy
 11 of the form required to file a declaration of paternal interest under s. 48.025. The
 12 notice shall be sent by certified mail to the last-known address of the alleged father.

13 (c) If the ~~birth~~ mother relinquished custody of the child under s. 48.195 and has
 14 not subsequently identified herself as the child's mother or if the petitioner cannot
 15 locate the ~~birth~~ mother with reasonable diligence, the petitioner shall attach to the
 16 petition a statement that the ~~birth~~ mother relinquished custody of the child under
 17 s. 48.195 and has not subsequently identified herself as the child's mother or of the
 18 efforts the petitioner made to locate the mother instead of ^{filing} the affidavit under sub.

19 (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 ^{the mother} she knows and is identifying the father or that she does not know the identity of the father.

4. A statement identifying any ^{man} man who has lived in a ^{familial} familial relationship with the child and who may be the father of the child.

consented to *all of* *consent to the termination of* ← use twice

filing ← *filing*

4. If she states that she knows the identity of the father and is identifying the father, the father's name, ^{the mother} last-known mailing address, ^{age, and} last-known employer address, ^{and the} and age ^{mailing} of the father's employer.

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 birth date or anticipated birth date 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.

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

48.42 (2) (am) If the child is a nonmarital child who is under one year of age

at the time the petition is filed and who is not adopted or whose parents do not

subsequently intermarry under s. 767.60 and ^{whose} paternity has not been established and

an affidavit under sub. (1g) (a) or a statement under sub. (1g) (c) is filed with the

petition: ^{before the birth of the child,}

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

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.

Insert 25-1
from P-26

of

(am)

j

(am)

if

use twice
s. 48.42

as created by the bill,

Move to 25-1

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, ^{whichever is later}
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
3 nonmarital child who is not adopted or whose parents do not subsequently
4 intermarry under s. 767.60 and ^{whose} 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
7 interest under s. 48.025 before the birth of the child or within 14 days after the birth
8 of the child.

s. 48.42 (2) (b) ^{bm} (bm)

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) ^{as created by the bill}

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

11 48.42 (2m) (a) Parent as a result of sexual assault. Except as provided in this
12 subsection paragraph, notice is not required to be given to a person who may be the
13 father of a child conceived as a result of a sexual assault in violation of s. 940.225 (1),
14 (2) or (3), 948.02 (1) or (2), or 948.025 if a physician attests to his or her belief that
15 a sexual assault as specified in this subsection paragraph has occurred or if the
16 person who may be the father of the child has been convicted of sexual assault as
17 specified in this subsection paragraph for conduct which may have led to the child's
18 conception. A person who under this subsection paragraph is not given notice does

1 not have standing to appear and contest a petition for the termination of his parental
2 rights, present evidence relevant to the issue of disposition, or make alternative
3 dispositional recommendations. This subsection paragraph does not apply to a
4 person who may be the father of a child conceived as a result of a sexual assault in
5 violation of s. 948.02 (1) or (2) if that person was under 18 years of age at the time
6 of the sexual assault.

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

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

NOTE: Provides that a person who may be the father of a nonmarital child who ^(is) 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.

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

Insert
27-19
19

*this
the paragraph and*

1 48.42 (4) (a) *Personal service.* ~~A~~ Except as provided in par. (b), a copy of the
2 summons and petition shall be served personally upon the parties specified in sub.
3 (2), if known, at least 7 days before the date of the hearing, ~~except that service.~~
4 Service of summons is not required if the party submits to the jurisdiction of the
5 court. Service upon parties who are not natural persons and upon persons under a
6 disability shall be as prescribed in s. 801.11.

7 SECTION 33. 48.42 (4) (b) I. of the statutes is created to read:

8 48.42 (4) (b) I. If the child's custody was relinquished under s. 48.195, service
9 to the 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.

This SECTION

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

11 48.42 (5) PENALTY. Any person who knowingly and willfully makes or causes
12 to be made any false statement or representation of a material fact in the course of
13 a proceeding under this section with an intent to deceive or mislead the court for the
14 purpose of preventing a person who is entitled to receive notice of a proceeding under
15 this section from receiving notice may be fined not more than \$10,000 or imprisoned
16 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

intentionally