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**2005 ASSEMBLY BILL 521**

~~June 28, 2005~~ - Introduced by JOINT LEGISLATIVE COUNCIL. Referred to Committee on Family Law.

Regenerate

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), 48.43 (6) and 48.64 (4) (a); *to amend* 46.03  
3 (7) (bm), 48.025 (1), 48.27 (3) (b) 1. a., 48.27 (5), 48.295 (1), 48.368 (1), 48.415  
4 (2) (a) 3., 48.415 (6) (a) and (b), 48.415 (10) (a), 48.42 (1) (a), 48.42 (2) (b) (intro.),  
5 48.42 (2) (b) 1., 48.42 (3) (a), 48.42 (4) (a), 48.422 (6) (a), 48.423, 48.64 (4) (c),  
6 48.72, 48.78 (2) (a), 48.825 (5), 48.833, 48.837 (1), 48.837 (4) (c), 48.837 (4) (e),  
7 48.839 (2) (b), 48.839 (2) (c), 48.91 (2), 48.913 (1) (c), (i) and (m), 808.04 (7m),  
8 808.04 (8), 809.82 (2) (b), 938.27 (3) (b) 1. a., 938.27 (5), 938.78 (2) (a) and 977.07  
9 (1) (c); and *to create* 48.025 (2) (b), 48.025 (2) (d), 48.025 (3) (a), 48.025 (3) (c)  
10 and (d), 48.025 (5), 48.025 (6), 48.235 (1) (g), 48.235 (5m), 48.295 (2c), 48.355 (2)  
11 (b) 1. a. to d., 48.40 (1r), 48.41 (2) (b) 2., 48.42 (1g), 48.42 (2) (bm), 48.42 (2m)  
12 (b), 48.42 (4) (b) 1m., 48.42 (5), 48.43 (6) (b) and (c), 48.43 (6m), 48.48 (17) (bm),  
13 48.57 (2m), 48.825 (3m), 48.837 (1m), 48.837 (2) (d), 48.837 (4) (cm), 48.84,  
14 809.107 (5) (am) and 938.57 (2m) of the statutes; **relating to:** termination of

**ASSEMBLY BILL 521**

1 parental rights and adoption, granting rule-making authority, and providing  
2 a penalty.

***Analysis by the Legislative Reference Bureau***

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

Insert  
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Because this ~~bill~~ creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the ~~bill~~ is enacted.

~~For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.~~

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Special Committee on Adoption and Termination of Parental Rights Law. The bill 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, all of the following must receive notice of a termination of parental rights (TPR) proceeding under current law:

- A person or persons alleged to the court assigned to exercise jurisdiction under the Children's Code and Juvenile Justice Code (juvenile court) to be the father of the child or who may, based upon the statements of the mother or other information presented to the juvenile 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 that may have led to the child's conception.

**ASSEMBLY BILL 521**

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 juvenile court must set a date for a hearing on the issue of paternity or, if all parties agree, the juvenile 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 juvenile court must ascertain whether the child's paternity has been established. If any person has filed a declaration of paternal interest, the juvenile 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 juvenile court must attempt to ascertain the paternity of the child. The juvenile court may not proceed with the hearing on the adoptive 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 juvenile 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 juvenile court finds that no such determination has been made, the juvenile 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 modifies current law relating to declarations of paternal interest and notification to putative fathers of TPR and adoption proceedings.

The bill makes various changes relating to declarations of paternal interest. The bill 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 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 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 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 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 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 creates alternative TPR notice requirements for a person who may be the father of a nonmarital child 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 requires notice to be provided to all of the following:

**ASSEMBLY BILL 521**

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 specifies that a person who is not entitled to actual notice of a TPR proceeding under the bill 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 prohibits a mother who has completed an affidavit relating to the identity of the child's father from attacking a TPR judgment on the basis that the father was not identified correctly.

**Grounds for TPR**

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

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

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

In evaluating whether the person has had a substantial parental relationship with the child, the juvenile 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 changes this ground by providing that this ground is established by proving by clear and convincing evidence that the parent has *not* had a substantial parental relationship with the child.

- **Prior Involuntary TPR to Another Child**

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

- That the child who is the subject of the petition has been adjudged to be a child 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 has neglected, refused, or been 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.
- That within three years of the CHIPS adjudication, a juvenile court has ordered an involuntary TPR with respect to another child of the person.

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

- **Continuing Need for Protection and Services**

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

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

**ASSEMBLY BILL 521**

- That 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.
- That the child has been outside the home for a cumulative period of six months or longer pursuant to court orders; and that 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 bill modifies the ground that requires a showing that the child is in continuing need of protection or services so that the juvenile 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, which is punishable by a fine not to exceed \$10,000 or imprisonment not to exceed 6 years, or both. In addition, a person who makes or subscribes to a false statement under oath or affirmation may be convicted of false swearing. False swearing is a Class H felony if the statement is required or authorized by law or required by a public officer or governmental agency as a prerequisite to official action. Otherwise, it is a Class A misdemeanor, which is 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 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. 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.

**• 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 juvenile court finds that it would be difficult or impossible for the parent to appear in person at the hearing, the juvenile 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 county or state or 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 bill 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 child 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 such a child. Because there is no provision for notice by publication in the CHIPS portion of the statute,

**ASSEMBLY BILL 521**

there is no notice option readily available in the case of a child relinquished as a newborn, unless the parent has chosen to provide his or her identity to the person to whom the parent relinquished the baby.

In addition, parents who relinquish their newborns are guaranteed anonymity under the safe haven law, but the TPR and CHIPS notice provisions require parents to be provided with notice of those proceedings by certified mail or by personal service of a summons and a copy of the TPR and CHIPS petition. These notice provisions 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.

This bill 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 specifies when a juvenile court is required or permitted to appoint a GAL to advocate for the best interests of a party in a proceeding under the Children's Code, ch. 48, stats., and sets out the duties and responsibilities of a GAL in various types of proceedings. Current statutes and case law authorize, but do not require, juvenile courts to appoint GAL's for parents who are not competent to participate in TPR proceedings.

This bill requires a juvenile court to appoint a GAL for a parent who is not competent to participate in a TPR proceeding or to assist counsel or the juvenile court in protecting the parent's rights in a TPR proceeding. The bill 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 who has been found to be in need of protection or services, to provide information to the juvenile court relating to the parent's competency to participate in the proceeding and to provide assistance to the juvenile court and to the parent's adversary counsel in protecting the parent's rights.

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

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

Current law provides that a juvenile 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 bill 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 bill requires the juvenile court to inform a party of this provision at the time the juvenile court orders the party to undergo the examination or assessment.

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

The committee heard testimony regarding 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 a TPR if the child is adjudged 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 juvenile court; the child has been outside the home for six months or longer; and the parent has failed to meet the conditions established in the juvenile 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. Any parent who would be

**ASSEMBLY BILL 521**

incarcerated for more than 12 months after the TPR fact-finding hearing would be unable to complete the condition.

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 whom the agency may not have access to while incarcerated.

The bill provides that services under a CHIPS dispositional order for a parent who is serving a prison sentence must be limited during any period of incarceration to services that are available within the correctional institution and requires the agency primarily responsible for providing services to do all of the following:

- Advise the parent of services that may be available within the correctional institution.
- Advise the correctional institution of the mandated services to be provided under the juvenile court order and, if the child is placed outside the home, of the conditions contained in the juvenile court order for the safe return of the child to the home.
- Monitor the parent's participation and progress in relevant services made available to the parent within the correctional institution.
- 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 bill 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, however, is initiated not by the filing of a notice of appeal but rather 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 bill 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 the entry and on the day of the entry.

- **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 intent to appeal. Within 15 days after filing this notice, the person must request the transcript and juvenile 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 juvenile 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 a notice of appeal will not be filed.

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

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

Under current law, a representative of the State Public Defender must determine indigency for all referrals made under ss. 809.30 [appeals in criminal cases and cases under chs. 48, 51, 55, and 938, stats.], 974.06 (3) (b) [postconviction proceedings], and 974.07 (11) [motions for deoxyribonucleic acid (DNA) testing of certain evidence], except

**ASSEMBLY BILL 521**

for a referral of a child who is entitled to be represented by counsel under the Children's Code, ch. 48, stats., or Juvenile Justice Code, ch. 938, stats., without a determination of indigency. 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.

This bill 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 TPR proceedings, unless a request for a redetermination is filed or the person's request for representation states that his or her financial circumstances have materially improved.

- **Continuing Representation in TPR Appeals**

Currently, an attorney who represents a person in a TPR proceeding does not automatically continue to represent the person during the appeal process.

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

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

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

This bill requires the juvenile court that orders the termination of a person's parental rights to provide written notification to the person of the time limits for appeal of the judgment if the person is present in juvenile court when the order is granted. 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, stats. The person's counsel must file a copy of the signed, written notification with the court on the date on which the judgment is granted.

- **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 in a TPR proceeding may not be enlarged. In *Gloria A. v. State*, 195 Wis. 2d 268, 536 N.W.2d 396 (Ct. App. 1995), the court of appeals held that the certain rules of appellate procedure that permit an enlargement of time in which to file notice of appeal do not apply to TPR cases.

This bill 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 petition for an involuntary TPR that was filed by a district attorney, corporation counsel, or other representative of the public.

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

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

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



**ASSEMBLY BILL 521****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:

- Preadoptive 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.

This bill 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 that 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.

**• Preadoptive 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 juvenile 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 preadoptive placement with the proposed adoptive parent, the TPR has not been finalized.

This bill provides that, notwithstanding the provisions of the Interstate Compact on the Placement of Children, when the proposed adoptive parent or parents of the child reside out-of-state, they may petition the juvenile court for the preadoptive placement of the child in their home, if their home meets the criteria established by the laws of their state of residence for a preadoptive placement of a child in the home of a nonrelative.

**• 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 of human services or social services (county department), or a child welfare agency licensed by DHFS to place children for adoption.

The bill prohibits publishing by a public medium of adoption advertisements that violate current law relating to adoption advertising.

**ASSEMBLY BILL 521**

**• Preadoption Preparation for First-Time Adoptive Parents**

Under current law, preadoption preparation is not required.

This bill requires a juvenile 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 preadoption 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. DHFS is required to promulgate rules on the number of hours of preadoption preparation that is required, as well as the topics to be covered in the training. The proposed adoptive parents must pay for the training.

Under the bill, 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 CHIPS 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 visitation while a TPR case is pending. In such cases, there may not be a CHIPS dispositional or extension order in effect, but there may be in effect an existing voluntary placement agreement with an adoption agency or a guardianship order with respect to the child.

This bill 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 CHIPS dispositional or extension orders.

**Foster Parent Provisions**

**• Fair Hearings for Head of Home**

~~Under current law, any decision or order issued by DHES, 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 child involved may be appealed to DHFS under fair hearing procedures. DHFS must, upon receipt of a request for an appeal, give the head of home notice and the opportunity for a fair hearing. At all appeal hearings under this provision, the head of home, or his or her representative, must have adequate opportunity to examine all documents and records to be used at the hearing.~~

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

~~This bill provides that the head of a foster, treatment foster, or group home who receives notice of intent to remove a child from the home and who appeals that determination under the DHFS fair hearing procedures is a party to the fair hearing 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 also provides that the circuit court for the county where the dispositional order placing a child in a foster, treatment foster, or group home was entered or a voluntary agreement so placing a child was made has jurisdiction to review an agency decision or order involving the placement of the child. Under the bill, the petitioner must~~

*This substitute amendment*

**ASSEMBLY BILL 521**

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., governs the licensing of foster homes and treatment foster homes by public licensing agencies and child welfare agencies. A "public licensing agency" is defined as the county department or, in Milwaukee County, DHFS. 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, stats. The statute further provides that judicial review of the department's decision may be had as provided in ch. 227, stats.

Section 48.72, stats., sets forth the appeal procedure of licensing decisions. Under s. 48.72, stats., any person aggrieved by 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, stats. 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 Bureau of Milwaukee Child Welfare (BMCW), which is the subunit of DHFS responsible for providing child welfare services in Milwaukee County, has taken the position that the BMCW does not have the right to challenge decisions of administrative law judges in circuit court.

This bill specifically grants the BMCW the right to judicial review of the administrative law judge's decision, in cases in which 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.

This bill 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  
7           concerning artificial inseminations for the purpose of compiling statistics and except  
8           that records relating to, declarations of paternal interest shall be released as  
9           provided in s. 48.025 (3) (b) and (c), and statements acknowledging paternity shall

## ASSEMBLY BILL 521

## SECTION 1

1 be released without a court order to the department of workforce development or a  
2 county child support agency under s. 59.53 (5) ~~without a court order~~ upon the request  
3 of the ~~that~~ department of workforce development or a or county child support agency  
4 under s. 59.53 (5) pursuant to the program responsibilities under s. 49.22 or by to any  
5 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) (b) and (c), stats., as created by the bill. Current law requires DHFS to release a declaration of paternal interest to 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 does not allow declarations to be released to DWD or a county child support agency.~~

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

7 48.025 (1) Any person claiming to be the father of a nonmarital child who is not  
8 adopted or whose parents do not subsequently intermarry under s. 767.60 and whose  
9 paternity has not been established may, in accordance with procedures under this  
10 section, file with the department a declaration of his interest in matters affecting  
11 such the child. The department may not charge a fee for filing a declaration under  
12 this section.

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

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

15 48.025 (2) (a) The A declaration ~~provided in~~ under sub. (1) may be filed at any  
16 time ~~except after~~ before a termination of the father's parental rights under subch.  
17 VIII. This paragraph does not apply to a declaration that is filed on or after the  
18 effective date of this paragraph .... [revisor inserts date].

19 (c) The declaration shall be in writing, shall be signed and verified upon oath  
20 or affirmation by the person filing the declaration, and shall contain the person's

**ASSEMBLY BILL 521**

1 name and address, the name and last-known address of the mother, the month and  
2 year of the birth or expected birth of the child, and a statement that he the person  
3 filing the declaration has reason to believe that he may be the father of the child. If  
4 the person filing the declaration is under 18 years of age, the declaration shall also  
5 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.~~

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

7 48.025 (2) (b) A declaration under sub. (1) may be filed at any time before the  
8 birth of the child or within 14 days after the birth of the child, except that a man who  
9 receives a notice under s. 48.42 (1g) (b) may file a declaration within 21 days after  
10 the date on which the notice was mailed. This paragraph does not apply to a  
11 declaration filed before the effective date of this paragraph .... [revisor inserts date].

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

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

13 48.025 (2) (d) A person who has filed a declaration under sub. (1) may revoke  
14 the declaration at any time by filing with the department a statement, signed and  
15 verified upon oath or affirmation, that the person, to the best of his knowledge and  
16 belief, is not the father of the child or that another person has been adjudicated as  
17 the father of the child. If the person filing the revocation is under 18 years of age,  
18 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.~~

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

**ASSEMBLY BILL 521**

**SECTION 7**

48.25,

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

2           48.025 (3) (a) The department shall keep confidential and may not open to  
3 public inspection or disclose the contents of any declaration, revocation of a  
4 declaration, or response to a declaration filed under this section, except as provided  
5 under pars. (b) and (c) or by order of the court for good cause shown.

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

7           48.025 (3) (c) A court in a proceeding under s. 48.13, 48.133, 48.14, or 938.13  
8 or under a substantially similar law of another state or a person authorized to file  
9 a petition under s. 48.42, 48.837, or 938.25 or under a substantially similar law of  
10 another state may request the department to search its files to determine whether  
11 a person who may be the father of the child who is the subject of the proceeding has  
12 filed a declaration under this section. If the department has on file a declaration of  
13 paternal interest in matters affecting the child, the department shall issue to the  
14 requester a copy of the declaration. If the department does not have on file a  
15 declaration of paternal interest in matters affecting the child, the department shall  
16 issue to the requester a statement that no declaration could be located. The  
17 department may require a person who requests a search under this paragraph to pay  
18 a reasonable fee that is sufficient to defray the costs to the department of  
19 maintaining its file of declarations and publicizing information relating to  
20 declarations of paternal interest under this section.

21           (d) Any person who obtains any information under this subsection may use or  
22 disclose that information only for the purposes of a proceeding under s. 48.13, 48.133,  
23 48.14, or 938.13 or under a substantially similar law of another state and may not  
24 use or disclose that information for any other purpose except by order of the court for  
25 good cause shown.

## ASSEMBLY BILL 521

~~NOTE: Requires DHFS to keep declarations of paternal interest confidential, except that DHFS must, on the request of a juvenile court in a CHIPS, a juvenile in need of protection or services (JIPS), a TPR, or an 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 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.~~

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

2           48.025 (5) (a) The department shall publicize, in a manner calculated to  
3 provide maximum notice to all persons who might claim to be the father of a  
4 nonmarital child, all of the following information:

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

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

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

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

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

~~NOTE: Requires DHFS to publicize information about declarations of paternal interest. Specifically, DHFS must publicize that a person who may be the father of a child may affirmatively protect his parental rights by filing a declaration, the procedures for and consequences of filing a declaration, and the consequences of not filing a declaration. DHFS may publicize this information on the Internet, through a pamphlet, and by requiring agencies that provide services under contract with DHFS to provide the information to clients.~~

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

**ASSEMBLY BILL 521****SECTION 10**

1           48.025 (6) (a) Any person who makes a false statement in a declaration,  
2 revocation of a declaration, or response to a declaration filed under this section that  
3 the person does not believe is true is subject to prosecution for false swearing under  
4 s. 946.32 (2).

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

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

9           48.235 (1) (g) The court shall appoint a guardian ad litem for a parent who is  
10 the subject of a termination of parental rights proceeding, if any assessment or  
11 examination of a parent that is ordered under s. 48.295 (1) shows that the parent is  
12 not competent to participate in the proceeding or to assist his or her counsel or the  
13 court in protecting the parent's rights in the proceeding.

NOTE: Requires a juvenile 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 participate in the proceeding or to assist his  
or her counsel or the juvenile court in protecting the parent's rights in the proceeding.

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

15           48.235 (5m) MATTERS INVOLVING CONTESTED TERMINATION OF PARENTAL RIGHTS  
16 PROCEEDINGS. (a) In any termination of parental rights proceeding involving a child  
17 who has been found to be in need of protection or services and whose parent is  
18 contesting the termination of his or her parental rights, a guardian ad litem for a  
19 parent who has been appointed under sub. (1) (g) shall provide information to the



**ASSEMBLY BILL 521**

1 court relating to the parent's competency to participate in the proceeding, and shall  
2 also provide assistance to the court and the parent's adversary counsel in protecting  
3 the parent's rights in the proceeding.

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

~~NOTE: Requires the GAL for a parent to provide information to the juvenile court relating to the parent's competency to participate in a contested TPR proceeding, and to also provide assistance to the juvenile court and to the parent's 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 counsel.~~

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

9 48.27 (3) (b) 1. a. A person who has filed a declaration of paternal interest under  
10 s. 48.025.

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

12 48.27 (5) Subject to sub. (3) (b), the court shall make every reasonable effort  
13 to identify and notify any person who has filed a declaration of paternal interest  
14 under s. 48.025, any person who has acknowledged paternity of the child under s.  
15 767.62 (1), and any person who has been adjudged to be the biological father of the  
16 child in a judicial proceeding unless the biological father's person's parental rights  
17 have been terminated.

~~NOTE: Under current law, the juvenile court must make every reasonable effort to identify any person who has filed a declaration of paternal interest 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 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.~~

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

**ASSEMBLY BILL 521****SECTION 15**

1           48.295 (1) After the filing of a petition and upon a finding by the court that  
2 reasonable cause exists to warrant an a physical, psychological, mental, or  
3 developmental examination or an alcohol and other drug abuse assessment that  
4 conforms to the criteria specified under s. 48.547 (4), the court may order any child  
5 coming within its jurisdiction to be examined as an outpatient by personnel in an  
6 approved treatment facility for alcohol and other drug abuse, by a physician,  
7 psychiatrist or licensed psychologist, or by another expert appointed by the court  
8 holding at least a master's degree in social work or another related field of child  
9 development, in order that the child's physical, psychological, alcohol or other drug  
10 dependency, mental, or developmental condition may be considered. The court may  
11 also order an a physical, psychological, mental, or developmental examination or an  
12 alcohol and other drug abuse assessment that conforms to the criteria specified  
13 under s. 48.547 (4) of a parent, guardian, or legal custodian whose ability to care for  
14 a child is at issue before the court or of an expectant mother whose ability to control  
15 her use of alcohol beverages, controlled substances, or controlled substance analogs  
16 is at issue before the court. The court shall hear any objections by the child, or the  
17 child's parents, guardian, or legal custodian to the request for such an examination  
18 or assessment before ordering the examination or assessment. ~~At the time an~~  
19 ~~examination of a parent, guardian, or legal custodian is ordered, the court shall~~  
20 ~~advise the subject of the examination of the provisions of sub. (2c).~~ The expenses of  
21 an examination, if approved by the court, shall be paid by the county of the court  
22 ordering the examination in a county having a population of less than 500,000 or by  
23 the department in a county having a population of 500,000 or more. The payment  
24 for an alcohol and other drug abuse assessment shall be in accordance with s. 48.361.

**ASSEMBLY BILL 521**

NOTE: Adds language to clarify that the "examination" referred to in s. 48.295 (1), stats., 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.

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

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

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

9        48.355 (2) (b) 1. (intro.) The specific services or continuum of services to be  
10       provided to the child and family, to the child expectant mother and family, or to the  
11       adult expectant mother, the identity of the agencies which are to be primarily  
12       responsible for the provision of the services ordered by the judge, the identity of the  
13       person or agency who will provide case management or coordination of services, if  
14       any, and, if custody of the child is to be transferred to effect the treatment plan, the  
15       identity of the legal custodian. Regardless of any other provision of an order under  
16       this section, during any period of incarceration of a parent serving a prison sentence,  
17       services for the parent shall be limited to services that are available within the  
18       correctional institution, and the agency primarily responsible for the provision of  
19       services ordered by the judge shall do all of the following:

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

**ASSEMBLY BILL 521****SECTION 18**

1           48.355 (2) (b) 1. a. Advise the parent of the services that may be available  
2 within the correctional institution.

3           b. Advise the correctional institution of the services to be provided under the  
4 court order and, if the child is placed outside the home, of the conditions contained  
5 in the court order for the safe return of the child to the home.

6           c. Monitor the parent's participation and progress in relevant services made  
7 available to the parent within the correctional institution.

8           d. Arrange for visitation between the parent and child if the court finds that  
9 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 during any period of incarceration to services that are available within the correctional institution and requires the agency primarily responsible for the provision of services to do all of the following:

- Advise the parent of services that may be available within the correctional institution.
- Advise the correctional institution of the services to be provided under the juvenile court order and, if the child is placed outside the home, of the conditions contained in the juvenile court order for the safe return of the child to the home.
- Monitor the parent's participation and progress in relevant services made available to the parent within the correctional institution.
- Arrange for visitation between the parent and child if the juvenile 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  
12 termination of parental rights is filed under s. 48.41 or 48.415 or an appeal from a  
13 judgment terminating or denying termination of parental rights is filed during the  
14 year in which a dispositional order under s. 48.355 or, an extension order under s.  
15 48.365, a voluntary agreement for placement of the child under s. 48.63, or a  
16 guardianship order under s. 48.977 or ch. 880 is in effect, the dispositional or  
17 extension order, voluntary agreement, or guardianship order shall remain in effect  
18 until all proceedings related to the filing of the petition or an appeal are concluded.

**ASSEMBLY BILL 521**

~~NOTE: 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 CHIPS dispositional order or 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.** 48.40 (1r) of the statutes is created to read:

2           48.40 (1r) "Parent" has the meaning given in s. 48.02 (13), except that for  
3 purposes of filing a petition seeking the involuntary termination of parental rights  
4 under s. 48.415 to a nonmarital child who is not adopted or whose parents do not  
5 subsequently intermarry under s. 767.60 and whose paternity has not been  
6 established, of finding grounds under s. 48.415 for the involuntary termination of  
7 parental rights to such a child, and of terminating the parental rights to such a child  
8 on a ground specified in s. 48.415, "parent" includes a person who may be the parent  
9 of such a child.

10           **SECTION 21.** 48.41 (2) (b) of the statutes is renumbered 48.41 (2) (b) (intro.) and  
11 amended to read:

12           48.41 (2) (b) (intro.) If the court finds that it would be difficult or impossible for  
13 the parent to appear in person at the hearing, the court may do any of the following:

14           1. Accept accept the written consent of the parent given before an embassy or  
15 consul official, a military judge, or a judge of any court of record in another county  
16 or state or a foreign jurisdiction. This written consent shall be accompanied by the  
17 signed findings of the embassy or consul official or judge who accepted the parent's  
18 consent. These findings shall recite that the embassy or consul official or judge or  
19 an attorney who represents any of the parties questioned the parent and found that  
20 the consent was informed and voluntary before the embassy or consul official or  
21 judge accepted the consent of the parent.

## ASSEMBLY BILL 521

1           **SECTION 22.** 48.41 (2) (b) 2. of the statutes is created to read:

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

~~NOTE: Permits a juvenile court to admit 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.~~

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

6           48.415 (2) (a) 3. That the child has been outside the home for a cumulative total  
7 period of 6 months or longer pursuant to such orders not including time spent outside  
8 the home as an unborn child; and that the parent has failed to meet the conditions  
9 established for the safe return of the child to the home and there is a substantial  
10 likelihood that the parent will not meet these conditions within the ~~12-month~~  
11 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 to the home in the 9-month, instead of 12-month, period following the TPR fact-finding hearing in order to terminate parental rights on the ground that the child is in continuing need of protection and services.~~

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

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

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

ASSEMBLY BILL 521

1 for or interest in the support, care or well-being of the child, whether the person has  
 2 neglected or refused to provide care or support for the child and whether, with respect  
 3 to a person who is or may be the father of the child, the person has ever expressed  
 4 concern for or interest in the support, care or well-being of the mother during her  
 5 pregnancy.

NOTE: ~~Modifies the involuntary TPR ground of failure 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.~~

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

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

NOTE: Under current law, parental rights may be involuntarily terminated on the grounds of prior involuntary TPR to another child by proving both of the following:

1. That the child who is the subject of the petition has been adjudged to be CHIPS because he or she has been abandoned or has been the victim of abuse or because his or her parent has neglected, refused, or been 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 juvenile court has ordered an 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.

Insert  
23-10

10 SECTION 26. 48.42 (1) (a) of the statutes is amended to read:

11 48.42 (1) (a) The name, birth date or anticipated birth date, and address of the  
 12 child.

13 SECTION 27. 48.42 (1g) of the statutes is created to read:

**ASSEMBLY BILL 521****SECTION 27**

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

11           1. A statement that the mother has voluntarily consented to or seeks to  
12 voluntarily consent to the termination of her parental rights to the child.

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

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

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

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

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



**ASSEMBLY BILL 521**

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 termination  
3 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  
6 s. 946.32 (2) for false swearing if she makes a false statement that she does not  
7 believe is true in the affidavit under this paragraph.

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

12           (b) The petitioner shall notify any man identified in the affidavit under par. (a)  
13 as an alleged father of his right to file a declaration of paternal interest under s.  
14 48.025 before the birth of the child, within 14 days after the birth of the child, or  
15 within 21 days after the date on which the notice is mailed, whichever is later; of the  
16 birth date or anticipated birth date of the child; and of the consequences of filing or  
17 not filing a declaration of paternal interest. The petitioner shall include with the  
18 notice a copy of the form required to file a declaration of paternal interest under s.  
19 48.025. The notice shall be sent by certified mail to the last-known address of the  
20 alleged father.

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

ASSEMBLY BILL 521

1 not subsequently identified herself as the child's mother or of the efforts the  
2 petitioner made to locate the mother instead of filing 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 consented to or seeks to voluntarily consent to the termination of her parental rights to the child. The affidavit must include all of the following:

1. A statement that the mother has voluntarily consented to or seeks to voluntarily consent to the termination of 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 knows and is identifying the father or that she does not know the identity of the father.
4. A statement identifying any man who has lived in a familial relationship with the child and who may be the father of the child.
5. If the mother states that she knows the identity of the father and is identifying the father, the father's name, age, and last-known mailing address and the last-known mailing address of the father's employer.
6. If the mother 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.
7. A statement that the mother has been informed and understands that if she misidentifies the father, she is permanently barred from attacking the TPR on the basis that the father was not correctly identified.
8. A statement that the mother understands that she may be prosecuted for false swearing if she makes a false statement that she does not believe is true.
9. A statement that the mother 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; of 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.

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

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

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

8 48.42 (2) (b) 1. A person who has filed a- an unrevoked declaration of paternal  
9 interest under s. 48.025 before the birth of the child or within 14 days after the birth  
10 of the child.

(c) If an affidavit under par. (a) is not filed with the petition, notice shall be given to an alleged father under sub. (2).

## ASSEMBLY BILL 521

NOTE: Amends the current notice requirements for alleged fathers to reflect the creation of s. 48.42 (2) (bm) and the new time limit for filing a declaration of paternal interest under s. 48.025 (2) (b) as created by the bill

1           **SECTION 30.** 48.42 (2) (bm) of the statutes is created to read:

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

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

10          2. A person who has lived in a familial relationship with the child and who may  
11          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.~~

~~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 s. 48.42 (1g), as created by the bill, 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 s. 48.42 (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.~~

12          **SECTION 31.** 48.42 (2m) of the statutes is renumbered 48.42 (2m) (a) and  
13          amended to read:

**ASSEMBLY BILL 521****SECTION 31**

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

15           **SECTION 32.** 48.42 (2m) (b) of the statutes is created to read:

16           48.42 (2m) (b) *Parent of nonmarital child.* A person who may be the father of  
17 a nonmarital child who is not adopted or whose parents do not subsequently  
18 intermarry under s. 767.60 and whose paternity has not been established, by virtue  
19 of the fact that he has engaged in sexual intercourse with the mother of the child, is  
20 considered to be on notice that a pregnancy and a termination of parental rights  
21 proceeding concerning the child may occur, and has the duty to protect his own rights  
22 and interests. He is therefore entitled to actual notice of such a proceeding only as  
23 provided in sub. (2) (b) or (bm). A person who is not entitled to notice under sub. (2)  
24 (b) or (bm) does not have standing to appear and contest a petition for the termination

## ASSEMBLY BILL 521

1 of his parental rights, present evidence relevant to the issue of disposition, or make  
2 alternative dispositional recommendations.

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

3 **SECTION 33.** 48.42 (3) (a) of the statutes is amended to read:

4 48.42 (3) (a) Contain the name and birth date or anticipated birth date of the  
5 child, and the nature, location, date and time of the initial hearing.

6 **SECTION 34.** 48.42 (4) (a) of the statutes is amended to read:

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

13 **SECTION 35.** 48.42 (4) (b) 1m. of the statutes is created to read:

14 48.42 (4) (b) 1m. If the child's custody was relinquished under s. 48.195, service  
15 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 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 juvenile 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.~~

Insert 30-7

ASSEMBLY BILL 521

~~This SECTION 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.~~

1 SECTION 36. 48.42 (5) of the statutes is created to read:

2 48.42 (5) PENALTY. Any person who knowingly and willfully makes or causes  
3 to be made any false statement or representation of a material fact in the course of  
4 a proceeding under this section with an intent to deceive or mislead the court for the  
5 purpose of preventing a person who is entitled to receive notice of a proceeding under  
6 this section from receiving notice may be fined not more than \$10,000 or imprisoned  
7 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 juvenile 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.~~

8 SECTION 37. 48.422 (6) (a) of the statutes is amended to read:

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

This SECTION requires the juvenile 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.

renumbered 48.423 (1) and

change component (1) →

SECTION 38. 48.423 of the statutes is amended to read:

- (2)
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- (11)
- 12

AG (1) (5) ~~48.423~~ 48.423 ~~Rights of persons alleging paternity.~~ If a man who alleges that he is the father of the child person appears at the hearing and wishes to contest the termination of his parental rights claims that he is the father of the child, the court shall set a date for a hearing on the issue of paternity or, if all parties agree, the court may immediately commence hearing testimony concerning the issue of paternity. The court shall inform the man person claiming to be the father of the child of any right to counsel under s. 48.23. The man person claiming to be the father of the child must prove paternity by clear and convincing evidence. A person who establishes his paternity of the child under this section may further participate in the termination of parental rights proceeding only if the person meets a condition specified in s. 48.42 (2) or (b) or (bm).

(2) meets the conditions specified in sub. (2) or

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) (b) or (bm).

insert 31-12 13 →

SECTION 39. 48.43 (6) of the statutes is renumbered 48.43 (6) (a) and amended to read:

- 14
- 15
- 16
- 17
- 18
- 19

48.43 (6) (a) Judgments under this subchapter terminating parental rights are final and are appealable under s. 808.03 (1) according to the procedure specified in s. 809.107 and are subject to a petition for rehearing or a motion for relief only as provided in s. 48.46 (1m) and (2). The attorney representing a person during a proceeding under this subchapter shall continue representation of that person by

**ASSEMBLY BILL 521****SECTION 39**

1 filing a notice of intent to appeal under s. 809.107 (2), unless the attorney has been  
2 previously discharged during the proceeding by the person or by the trial court.

3 **SECTION 40.** 48.43 (6) (b) and (c) of the statutes are created to read:

4 48.43 (6) (b) The mother of a child who completes an affidavit under s. 48.42  
5 (1g) may not collaterally attack a judgment terminating parental rights on the basis  
6 that the father of the child was not correctly identified.

7 (c) In no event may any person, for any reason, collaterally attack a judgment  
8 terminating parental rights more than one year after the date on which the time limit  
9 for filing an appeal from the judgment has expired, or more than one year after the  
10 date on which all appeals from the judgment, if any were filed, have been decided,  
11 whichever is later.

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 juvenile 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 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), stats., as created by the bill, relating to the identity of the child's father from attacking a TPR judgment on the basis that the father was not identified correctly.

12 **SECTION 41.** 48.43 (6m) of the statutes is created to read:

13 48.43 (6m) If a person whose parental rights are terminated is present in court  
14 when the court grants the order terminating those rights, the court shall provide  
15 written notification to the person of the time limits for appeal of the judgment. The



**ASSEMBLY BILL 521****SECTION 41**

1 person shall sign the written notification, indicating that he or she has been notified  
2 of the time limits for filing an appeal under ss. 808.04 (7m) and 809.107. The person's  
3 counsel shall file a copy of the signed, written notification with the court on the date  
4 on which the judgment is granted.

~~NOTE: Requires the juvenile court that orders the termination of a person's parental rights to provide written notification to the person of the time limits for appeal of the judgment if the person is present in juvenile court when the order is granted. 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, stats. The person's counsel shall file a copy of the signed, written notification with the juvenile court on the date on which the judgment is granted.~~

5 **SECTION 42.** 48.48 (17) (bm) of the statutes is created to read:

6 48.48 (17) (bm) As soon as practicable after learning that a person who is  
7 receiving child welfare services under par. (a) from the department has changed his  
8 or her county of residence, the department shall provide notice of that change to the  
9 county department of the person's new county of residence. The notice shall include  
10 a brief, written description of the services offered or provided to the person by the  
11 department and the name, telephone number, and address of a person to contact for  
12 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.~~

13 **SECTION 43.** 48.57 (2m) of the statutes is created to read:

14 48.57 (2m) A county department, as soon as practicable after learning that a  
15 person who is receiving child welfare services under sub. (1) from the county  
16 department has changed his or her county of residence, shall provide notice of that  
17 change to the county department of the person's new county of residence or, if that  
18 new county of residence is a county having a population of 500,000 or more, the

## ASSEMBLY BILL 521

## SECTION 43

1 department. The notice shall include a brief, written description of the services  
2 offered or provided to the person by the county department and the name, telephone  
3 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), as created by this bill.

4 ~~SECTION 44. 48.64 (4) (a) of the statutes is renumbered 48.64 (4) (a) 1. and~~  
5 amended to read:

6 ~~48.64 (4) (a) 1. Any decision or order issued by an agency that affects the head~~  
7 ~~of a foster, treatment foster, or group home or the children involved may be appealed~~  
8 ~~to the department under fair hearing procedures established under department~~  
9 ~~rules. The department shall, upon receipt of an appeal, give the head of the home~~  
10 ~~reasonable notice and opportunity for a fair hearing. The department may make~~  
11 ~~such additional investigation as the department considers necessary. The~~  
12 ~~department shall give notice of the hearing to the head of the home and to the~~  
13 ~~departmental subunit, county department, or child welfare agency that issued the~~  
14 ~~decision or order. Each person receiving notice of the hearing is entitled to be~~  
15 ~~represented at the hearing. The head of a home who receives notice of intent to~~  
16 ~~remove the child under sub. (1m) and who requests a hearing under this paragraph~~  
17 ~~is a party to the proceeding under this paragraph.~~

18 ~~2. At all hearings conducted under this subsection paragraph, the head of the~~  
19 ~~home, or a representative of the head of the home, shall have an adequate~~  
20 ~~opportunity, notwithstanding s. 48.78 (2) (a), to examine all documents and records~~  
21 ~~to be used at the hearing that are relevant to the issue of the child's removal at a~~  
22 ~~reasonable time before the date of the hearing as well as during the hearing, except~~  
23 ~~that the agency may redact information from documents and records to protect the~~

**ASSEMBLY BILL 521**

1 identity of an individual who provided information under s. 48.981 (2). The head of  
2 home, or a representative of the head of home, shall also have adequate opportunity  
3 to bring witnesses, to establish all pertinent facts and circumstances, and to question  
4 or refute any testimony or evidence, including opportunity to confront and  
5 cross-examine adverse witnesses. The department shall grant a continuance for a  
6 reasonable period of time when an issue is raised for the first time during a hearing.  
7 This requirement may be waived with the consent of the parties.

8       3. The decision of the department shall be based exclusively on evidence  
9 introduced at the hearing. A transcript of testimony and exhibits, or an official report  
10 containing the substance of what transpired at the hearing, together with all papers  
11 and requests filed in the proceeding, and the findings of the hearing examiner shall  
12 constitute the exclusive record for decision by the department. The department shall  
13 make the record available at any reasonable time and at an accessible place to the  
14 head of the home or his or her representative. Decisions by the department shall  
15 specify the reasons for the decision and identify the supporting evidence. No person  
16 participating in an agency action being appealed may participate in the final  
17 administrative decision on that action. The department shall render its decision as  
18 soon as possible after the hearing and shall send a certified copy of its decision to the  
19 head of the home and to the departmental subunit, county department, or child  
20 welfare agency that issued the decision or order. The decision shall be binding on all  
21 parties concerned.

NOTE: Provides that a head of a foster, treatment foster, or group home who receives notice of intent to remove the child from the home and who appeals that determination under fair hearing procedures established by DHFS by rule is a party to the fair hearing 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.