

## 2005 ASSEMBLY BILL 660

September 15, 2005 – Introduced by Representatives FREESE, ALBERS, HAHN, HINES, KESTELL, LOTHIAN and VAN AKKEREN, cosponsored by Senator ROESSLER. Referred to Committee on Family Law.

1 **AN ACT to amend** 48.43 (7) and 48.485 of the statutes; **relating to:** legal custody  
2 of a child who was initially taken into custody under circumstances in which the  
3 child’s parent relinquished custody of the child and whose parents’ parental  
4 rights to the child have been terminated.

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### *Analysis by the Legislative Reference Bureau*

Under current law, a law enforcement officer, emergency medical technician, or hospital staff member may take into custody a child who is 72 hours old or younger under circumstances in which the child’s parent relinquished custody of the child to the officer, technician, or staff member and did not express an intent to return for the child. Current law also permits the court assigned to exercise jurisdiction under the Children’s Code (juvenile court) to grant an involuntary termination of parental rights (TPR) to a child who was taken into custody under those circumstances. Currently, if the parental rights of all living parents of a child are terminated or if a child has no living parents, the juvenile court may transfer guardianship of the child to the Department of Health and Family Services (DHFS), which is then responsible for securing the adoption of the child. If a permanent adoptive placement is not in progress two years after entry of the TPR order, DHFS may petition the juvenile court to transfer legal custody of such a child to a county department of human services or social services (county department), and the juvenile court must transfer the child’s legal custody to the county department specified in the petition.

This bill prohibits DHFS from petitioning the juvenile court to transfer to a county department legal custody of a child who was initially taken into custody

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under circumstances in which the child's parent relinquished custody of the child when the child was 72 hours old or younger and did not express an intent to return for the child.

Similarly, under current law, an American Indian tribal court in this state may appoint DHFS as the guardian or legal custodian of a child who has no parents, or whose parents' parental rights to the child have been terminated by the tribal court, for the purpose of making an adoptive placement for the child. If a permanent adoptive placement is not in progress two years after entry of the TPR order, DHFS may petition the tribal court to transfer legal custody or guardianship back to the tribe.

This bill prohibits DHFS from petitioning a tribal court to transfer back to a tribe legal custody or guardianship of a child who was initially taken into custody under circumstances in which the child's parent relinquished custody of the child when the child was 72 hours old or younger and did not express an intent to return for the child.

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

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

1           **SECTION 1.** 48.43 (7) of the statutes is amended to read:

2           48.43 (7) If the agency specified under sub. (1) (a) is the department and a  
3 permanent adoptive placement is not in progress 2 years after entry of the order, the  
4 department may petition the court to transfer legal custody of the child to a county  
5 department, except that the department may not petition the court to transfer to a  
6 county department legal custody of a child who was initially taken into custody  
7 under s. 48.195 (1). The court shall transfer the child's legal custody to the county  
8 department specified in the petition. The department shall remain the child's  
9 guardian.

10           **SECTION 2.** 48.485 of the statutes is amended to read:

11           **48.485 Transfer of tribal children to department for adoption.** If the  
12 department accepts guardianship or legal custody or both from an American Indian  
13 tribal court under s. 48.48 (3m), the department shall seek a permanent adoptive

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1 placement for the child. If a permanent adoptive placement is not in progress within  
2 2 years after entry of the termination of parental rights order by the tribal court, the  
3 department may petition the tribal court to transfer legal custody or guardianship  
4 of the child back to the tribe, except that the department may not petition the tribal  
5 court to transfer back to a tribe legal custody or guardianship of a child who was  
6 initially taken into custody under s. 48.195 (1).

7 **SECTION 3. Nonstatutory provisions.**

8 (1) LEGAL CUSTODY OF RELINQUISHED CHILD AFTER TERMINATION OF PARENTAL  
9 RIGHTS. This act first applies to petitions filed under section 48.43 (7) or 48.485 of the  
10 statutes, as affected by this act, on the effective date of this subsection.

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(END)