



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2011 Wisconsin Act 181
[2011 Senate Bill 502]

**Permanency Planning for Children
in Out-of-Home Care**

BACKGROUND

Under current law, for each child living in an out-of-home placement, the agency that placed the child or arranged the placement of the child, or the agency assigned primary responsibility for providing services to the child (collectively “agency”) must prepare a permanency plan for the child. A permanency plan is a plan designed to ensure that a child is reunified with his or her family whenever appropriate or that the child quickly attains a placement or home providing long-term stability.

2011 WISCONSIN ACT 181

2011 Wisconsin Act 181 (Act 181) makes changes relating to permanency planning for children placed in out-of-home care, including changes relating to: (1) concurrent planning; (2) trial reunifications; and (3) planned permanent living arrangements, for those children, as described below.

Concurrent Planning

Under prior law, at the same time as the agency was making reasonable efforts to prevent the removal of a child from his or her home, or to make it possible for the child to return home, the agency was authorized to work with an adoption agency in making appropriate efforts to place the child for adoption, with a guardian, with a fit and willing relative, or in some other alternative permanent placement. This was referred to as “concurrent reasonable efforts.” If an agency was making concurrent reasonable efforts, towards both goals, the child’s permanency plan was required to include both of the goals of the permanency plan.

Act 181 eliminates the authority of an agency to make concurrent reasonable efforts and instead permits an agency to engage in “concurrent planning,” which is defined as appropriate efforts to work simultaneously towards achieving more than one permanency goal for a child who is placed in out-of-home care and for whom a permanency plan is required.

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature’s Web site at: <http://www.legis.state.wi.us/>.

Under Act 181, an agency must determine, in accordance with concurrent planning standards established by the Department of Children and Families (DCF), whether to engage in concurrent planning. If, under those standards, concurrent planning is required, the agency must engage in concurrent planning unless the court or a permanency review panel appointed by the juvenile court determines that concurrent planning is inappropriate. If an agency engages in concurrent planning, the child's permanency plan must include the rationale for concurrent planning and a description of the concurrent plan and the permanency and concurrent permanency goals of the concurrent plan.

The juvenile court review panel, in reviewing a child's permanency plan, must determine the continuing appropriateness, according to the concurrent planning standards, of the permanency goal and any concurrent permanency goals for the child. If the juvenile court or panel does not approve of any of those goals, or if the juvenile court or panel determines that a concurrent permanency goal is appropriate, that court or panel must determine the permanency goal and, if appropriate, any concurrent permanency goal for the child.

Trial Reunifications

Procedure Created

Act 181 establishes a procedure under which the juvenile court may order a "trial reunification," which is a period of seven consecutive days or longer, but not exceeding 150 days, during which a child who is placed in an out-of-home placement resides in the home of the relative of the child from which the child was removed, or in the home of either of the child's parents. This home is referred to as the "trial reunification home." The purpose of a trial reunification is to determine the appropriateness of changing the placement of the child to the trial reunification home.

Under Act 181, the juvenile court may order a trial reunification only on the request of the person or agency primarily responsible for implementing the dispositional order that placed the child outside the home. Notice of the proposed trial reunification must be provided to the child, the parent, guardian, and legal custodian of the child, any foster parent or other physical custodian of the child, the child's court-appointed special advocate, all parties who are bound by the dispositional order, and, in the case of an Indian child, the Indian child's Indian custodian and tribe. The notice must also contain a statement describing why the trial reunification is in the best interests of the child and a statement describing how the trial reunification satisfies the objectives of the child's permanency plan. The juvenile court may order the trial reunification without a hearing, unless a party receiving the notice files an objection.

If the juvenile court finds that the trial reunification is in the best interests of the child and that the trial reunification satisfies the objectives of the child's permanency plan, the juvenile court must grant an order authorizing the trial reunification. A trial reunification terminates 90 days after the date of the order, unless the juvenile court specifies a shorter period in the order, extends the trial reunification, or revokes the trial reunification.

Act 181 does not permit an emergency trial reunification. Rather, if an emergency condition necessitates an immediate removal of the child from his or her out-of-home placement, the agency must make an emergency change in placement as provided under current law.

Extension of a Trial Reunification

Act 181 permits the agency to request an extension of a trial reunification. The request must contain a statement describing how the trial reunification continues to be in the best interests of the child, and the same notice and hearing requirements that apply to an original request for a trial reunification also apply to a request for an extension of a trial reunification.

If the juvenile court finds that the trial reunification continues to be in the best interests of the child, the juvenile court must grant an order extending the trial reunification for a period specified by the juvenile court. Any number of extensions may be granted, but the total period for a trial reunification may not exceed 150 days.

Removal of Child From Trial Reunification Home Prior to Expiration of Court Order

Act 181 permits the agency to remove the child from the trial reunification home and place the child in the child's previous out-of-home placement or in a new out-of-home placement, without a prior juvenile court order, if the agency determines, based on current circumstances, that the trial reunification is no longer in the best interests of the child.

If the agency removes the child from the trial reunification home and places the child in the child's *previous* out-of-home placement, within three days after that removal, the agency must submit a request for revocation of the trial reunification to the juvenile court that ordered the trial reunification. The agency must also cause notice of the request to be provided to all persons who are entitled to receive notice of the original trial reunification. The same notice and hearing requirements that apply to an original request for a trial reunification also apply to a request for a revocation of a trial reunification. If the juvenile court finds that the trial reunification is no longer in the best interests of the child, the juvenile court must grant an order revoking the trial reunification and approving that placement.

If the agency removes the child from the trial reunification home and places the child in a *new* out-of-home placement, within three days after that removal the agency must request a change in placement as provided under current law, and the procedures provided for a change in placement under current law apply. If the juvenile court grants a change in placement order, the trial reunification is revoked.

Expiration of Court Order for Trial Reunification

Act 181 provides that at the end of the time period specified in the court order for trial reunification, the agency must do one of the following:

- Return the child to his or her previous out-of-home placement. This may be done without further order of the court; however, within five days the agency must provide notice of the date of return and the address of the placement to all persons who are entitled to receive notice of the request for trial reunification.
- Request a change in placement to place the child in a new out-of-home placement.
- Request a change in placement to place the child in the trial reunification home.

Other Planned Permanent Living Arrangement

Under prior law, if a goal of a child’s permanency plan was an alternative permanent placement, the permanency plan was required to document a compelling reason why it would not be in the best interests of the child to pursue the safe return of the child to his or her home or placement of the child for adoption, with a guardian, or with a fit and willing relative.

Under prior law, an alternative permanent placement could include sustaining care, independent living, or long-term foster care.

Act 181 changes the term “alternative permanent placement” to “other planned permanent living arrangement,” requires the arrangement to include an appropriate, enduring relationship between the child and an adult, and eliminates independent living as a planned permanent living arrangement option. Under Act 181, long-term foster care and sustaining care continue to be options for a planned permanent living arrangement.

Act 181 also permits a child’s permanency plan to include the permanency goal of placement of the child in a planned permanent living arrangement only if the agency determines that there is a compelling reason why it currently would not be in the best interests of the child to pursue the safe return of the child to his or her home or placement of the child for adoption, with a guardian, or with a fit and willing relative as the permanency goal for the child. If an agency makes that determination, the child’s permanency plan must include a statement of that compelling reason and, notwithstanding that compelling reason, must include a concurrent plan towards achieving both the goal of: (a) safely returning the child to his or her home or placing the child for adoption, with a guardian, or with a fit and willing relative; and (b) the goal of placing the child in some other planned permanent living arrangement.

Effective date: Act 181 takes effect on November 1, 2012.

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