

2019 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB559)

For: **Barbara Dittrich (608) 266-8551** Drafter: **ewheeler**
 By: **Meagan** Secondary Drafters:
 Date: **11/5/2019** May Contact:

Same as LRB:

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Pre Topic:

No specific pre topic given

Topic:

TPR grounds for drug-affected child; incarcerated parent; abandonment

Instructions:

Amend AB 559 to do all of the following:
 Drug affected child: Add a definition of basic needs based on s. 48.01 (1) (ag); define substance abuse treatment or recovery program, including drug treatment court. Keep CHIPS grounds, but limit to CHIPS petitions filed within 18 months of birth for the first part of the definition, and limit TPR grounds to only children who are drug affected under the second part of the definition.
 TPR grounds; Abandonment/failure to assume parental duty should be removed from the bill.
 For incarcerated parent, clarify that the parent must be incarcerated at the TPR fact-finding hearing, not the CHIPS hearing, and clarify that CHIPS case must be ongoing during the parent's incarceration.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	ewheeler 11/5/2019				

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1		ccarmich 11/6/2019	wjackson 11/5/2019		
/P2		ccarmich 11/18/2019	dwalker 11/6/2019		
/P3	ewheeler 12/2/2019	wjackson 12/2/2019	lparisi 11/18/2019		
/P4	ewheeler 12/5/2019	ccarmich 12/5/2019	lparisi 12/2/2019		
/1	ewheeler 12/6/2019	wjackson 12/6/2019	mbarman 12/5/2019	mbarman 12/5/2019	
/2			dwalker 12/6/2019	dwalker 12/6/2019	

FE Sent For:

<END>

Deu Weds

AB 559:

DRUG-AFFECTED CHILD: THE BILL ESTABLISHES A GROUNDS FOR A CHIPS ORDER BASED ON THE CHILD BEING DRUG-AFFECTED. DRUG-AFFECTED MEANS THAT THE CHILD SUFFERED PRENATAL EXPOSURE TO A CONTROLLED SUBSTANCE, OR THAT HIS OR HER BASIC NEEDS ARE NOT BEING MET DUE TO THE PARENT'S CHRONIC AND SEVERE SUBSTANCE USE. ADDITIONALLY, THE BILL CREATES GROUNDS FOR TPR BASED ON THE CHILD HAVING BEEN FOUND TO BE DRUG-AFFECTED UNDER A CHIPS ORDER. GROUNDS DO NOT EXIST IF THE PARENT ENROLLS IN DRUG TREATMENT WITHIN 90 DAYS.

For the purposes of these sections, the bill will be amended as follows:

- Add a definition of basic needs based on wis. stat. 48.01 (1) (ag) – “basic needs include adequate food, clothing, and shelter; the need to be free from sexual or emotional injury or exploitation; the need to develop physically, mentally and emotionally to their potential; and the need for a safe and permanent family.
- Define substance abuse treatment or recovery program, including drug treatment court.

Questions to be discussed:

How do we want to address parents' efforts to obtain drug treatment? Should they be required to be on a waitlist? Make reasonable efforts to obtain treatment? A parent could be subject to TPR based on these grounds if they failed, without reasonable cause, to obtain drug treatment? Situations of relapse?

Pertaining to prenatal exposure to substances, should there be a required finding of abuse or neglect? Or should the legislation be drafted to be more specific to only address situations where substance abuse counseling is needed (i.e. chronic substance use)?

MODIFICATIONS TO TPR GROUNDS: THE BILL ALSO MODIFIES SEVERAL EXISTING GROUNDS FOR TPR. IT ESTABLISHES FAILURE TO PAY CHILD SUPPORT AS ABANDONMENT FOR THE PURPOSES OF TPR. IT ALSO ESTABLISHES THAT THE FATHER MUST PROVIDE CARE OR SUPPORT FOR THE MOTHER, RATHER THAN JUST EXPRESSING CONCERN FOR OR INTEREST IN PROVIDING CARE. LIKEWISE, IT STATES THAT EITHER PARENT MUST PROVIDE CARE OR SUPPORT FOR THE CHILD, NOT MERELY EXPRESS CONCERN FOR OR INTEREST IN PROVIDING CARE OR SUPPORT.

THE LEGISLATION ALSO ADJUSTS GROUNDS FOR TPR BASED ON CONTINUING CHIPS OR DENIAL OF PHYSICAL PLACEMENT. IN EACH OF THESE GROUNDS, THE UNDERLYING SITUATION MUST BE ESTABLISHED TO BE CONTINUING FOR 6 MONTHS (CHIPS) OR 1-YEAR (DENIAL OF PLACEMENT). THE CURRENT “CLOCK” BEGINS AT THE TIME OF THE CHIPS ORDER, NOT REMOVAL FROM HOME. THIS BILL WOULD AMEND THESE GROUNDS TO BEGIN THE CLOCK AT THE TIME OF REMOVAL.

The bill will be amended to do the following:

- ✓ • Remove language pertaining to failure to pay child support; whether the father provided care or support for the mother during pregnancy; and whether the parent has provided care or support for the child (vs expressing concern for or interest in)

Questions to be addressed:

Do we want to keep language about beginning the clock for continuing CHIPS or denial of physical placement beginning at time of removal (vs CHIPS order)? Move to AB 560, which already modifies CHIPS grounds? A potential challenge to consider is how to give parents fair notice of potential TPR at the time of removal, along with conditions for return.

INCARCERATED GROUNDS: THE LEGISLATION ALSO CREATES GROUNDS FOR TPR BASED ON THE PARENT BEING INCARCERATED. THE PARENT MUST BE INCARCERATED, THE CHILD MUST BE UNDER A CHIPS ORDER, AND THE INCARCERATION MUST BE LIKELY TO CONTINUE FOR A SUBSTANTIAL PERIOD OF THE CHILD'S YOUTH.

In this section we will:

- Clarify that the parent must be incarcerated at the TPR fact-finding hearing (not CHIPS fact-finding hearing). ✓
- Clarify that the CHIPS petition must be opening *during* the parent's incarceration. ✓
ongoing

Question to be discussed:

Do we want to include history of repeated incarceration in grounds for TPR based on parental incarceration?

AB 560: ✓

THIS LEGISLATION CREATES GROUNDS FOR TPR BASED ON THE CHILD BEING PLACED OUT OF THE HOME FOR 15 OUT OF THE PAST 22 MONTHS, WITHOUT MEETING OTHER GROUNDS FOR TPR.

The bill will be amended as follows:

- Include unlicensed relatives in types of out of home placements
- Require that a CHIPS finding is made to use this grounds for TPR (this is in the LRB analysis, not the bill)
- Require that 15/22 months begins at removal, not CHIPS order.
- Require that there was **not** a finding by the permanency review panel or judge that the agency failed to make reasonable efforts to provide services during the 15/22 month period.

WISCONSIN LEGISLATIVE REFERENCE BUREAU

Information Services 608-266-0341 — Legal Services 608-266-3561



11/5/19 *New Substitute amendment - include 48.02/48.02*

CHIPS initiated

AB 559: - CHIPS at birth (or w/in 8 months of birth)

① TPR, limit to kids who are affected by drug use
↳ 48.02 (5E) (b)

parent not likely to meet requirements w/in timeframe
- Use Continuing CHIPS

② Abandonment / Failure to assume - going away

③ Timeline for continuing CHIPS / denial of placement

- Providing notice earlier?
or warning

↳ modify warning at TPC and consent decree

keep current law for timing of elements (for 6 months / 1 yr)

but 15 months begins at removal

- modify warning - no need for conditions for return

④ Incarcerated parent

- previous incarcerations → ~~previous incarcerations~~

Leave as in the bill

~~48.02~~

48.21(4), 48.32

48.38

938.21(4)

938.32

938.38



State of Wisconsin
2019 - 2020 LEGISLATURE

LRBs01577

EAW:...

OP
WLF

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
ASSEMBLY SUBSTITUTE AMENDMENT ,
TO ASSEMBLY BILL 559**

1 AN ACT^{9c}...; **relating to:** grounds for finding a child in need of protection or services
2 or for terminating parental rights, right to a jury trial in a termination of
3 parental rights proceeding, and permanency plan reviews.

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

4 **SECTION 1.** 48.02 (5e) of the statutes is created to read:

5 48.02 (5e) "Drug-affected child" means any of the following:

6 (a) A child who suffered prenatal exposure to a controlled substance or alcohol,
7 used by the mother for a nonmedical purpose, as evidenced by withdrawal symptoms
8 in the child at birth, a positive result from a toxicology test of the mother or child at
9 the time of the child's birth, or developmental delays or other symptoms during the
10 child's first year of life that have been diagnosed as a fetal alcohol spectrum disorder
11 or as caused by prenatal exposure to a controlled substance.

1 (b) A child whose basic needs, as described in s. 48.01 (1) (ag), and safety have
2 been adversely affected by a parent’s or guardian’s chronic and severe use of alcohol
3 or a controlled substance.

4 SECTION 2. 48.13 (15) of the statutes is created to read:

5 48.13 (15) ^(a) 1. The child is a drug-affected child as defined in s. 48.02 (5e) (a) STAT
6 and the petition is filed within 18 months of the child’s birth.

7 ^(b) 2. The child is a drug-affected child, as defined in s. 48.02 (5e) (b).

8 SECTION 3. 48.31 (2) of the statutes is amended to read:

9 48.31 (2) The ~~A~~ hearing on a termination of parental rights petition shall be
10 to the court. A hearing on a petition under s. 48.13 or 48.133 shall be to the court
11 unless the child, the child’s parent, guardian, or legal custodian, the unborn child’s
12 guardian ad litem, or the expectant mother of the unborn child exercises the right
13 to a jury trial by demanding a jury trial at any time before or during the plea hearing.
14 If a jury trial is demanded in a proceeding under s. 48.13 or 48.133, the jury shall
15 consist of 6 persons. ~~If a jury trial is demanded in a proceeding under s. 48.42, the~~
16 ~~jury shall consist of 12 persons unless the parties agree to a lesser number.~~ Chapters
17 756 and 805 shall govern the selection of jurors. If the hearing involves a child victim
18 or witness, as defined in s. 950.02, the court may order that a deposition be taken by
19 audiovisual means and allow the use of a recorded deposition under s. 967.04 (7) to
20 (10) and, with the district attorney, shall comply with s. 971.105. At the conclusion
21 of ~~the a~~ hearing on a termination of parental rights petition, the court shall make a
22 determination of the facts. At the conclusion of a hearing on a petition under s. 48.13
23 or 48.133, the court or jury shall make a determination of the facts, except that in a
24 case alleging a child or an unborn child to be in need of protection or services under
25 s. 48.13 or 48.133, the court shall make the determination under s. 48.13 (intro.) or

1 48.133 relating to whether the child or unborn child is in need of protection or
2 services that can be ordered by the court. If the court finds that the child or unborn
3 child is not within the jurisdiction of the court or, in a case alleging a child or an
4 unborn child to be in need of protection or services under s. 48.13 or 48.133, that the
5 child or unborn child is not in need of protection or services that can be ordered by
6 the court, or if the court or jury finds that the facts alleged in the petition have not
7 been proved, the court shall dismiss the petition with prejudice.

8 **SECTION 4.** 48.31 (4) of the statutes is amended to read:

9 48.31 (4) The court shall make findings of fact and conclusions of law relating
10 to the allegations of a petition filed under s. 48.42. The court or jury shall make
11 findings of fact and the court shall make conclusions of law relating to the allegations
12 of a petition filed under s. 48.13, or 48.133 or 48.42, except that the court shall make
13 findings of fact relating to whether the child or unborn child is in need of protection
14 or services which that can be ordered by the court. In cases alleging a child to be in
15 need of protection or services under s. 48.13 (11), the court may not find that the child
16 is suffering emotional damage unless a licensed physician specializing in psychiatry
17 or a licensed psychologist appointed by the court to examine the child has testified
18 at the hearing that in his or her opinion the condition exists, and adequate
19 opportunity for the cross-examination of the physician or psychologist has been
20 afforded. The judge may use the written reports if the right to have testimony
21 presented is voluntarily, knowingly, and intelligently waived by the guardian ad
22 litem or legal counsel for the child and the parent or guardian. In cases alleging a
23 child to be in need of protection or services under s. 48.13 (11m) or an unborn child
24 to be in need of protection or services under s. 48.133, the court may not find that the
25 child or the expectant mother of the unborn child is in need of treatment and

1 education for needs and problems related to the use or abuse of alcohol beverages,
2 controlled substances, or controlled substance analogs and its medical, personal,
3 family, or social effects unless an assessment for alcohol and other drug abuse that
4 conforms to the criteria specified under s. 48.547 (4) has been conducted by an
5 approved treatment facility.

6 **SECTION 5.** 48.356 (1m) of the statutes is created to read:

7 48.356 (1m) Whenever the court orders a child or expectant mother of an
8 unborn child to be placed outside his or her home or denies a parent visitation in an
9 order under s. 48.21 (4) or 48.32[✓], the court shall orally inform the parent or parents
10 who appear in court or the expectant mother who appears in court of any grounds for
11 termination of parental rights under s. 48.415 ^{a. that} which may be applicable.

12 **SECTION 6.** 48.38 (5) (a) of the statutes is amended to read:

13 48.38 (5) (a) Except as provided in s. 48.63 (5) (d), the court or a panel appointed
14 under par. (ag) shall review the permanency plan for each child for whom a
15 permanency plan is required under sub. (2) in the manner provided in this subsection
16 not later than 6 months after the date ~~on which the child was first removed from his~~
17 ~~or her home of a hearing held under sub. (5m)~~ and every 6 months after a previous
18 review under this subsection for as long as the child is placed outside the home,
19 except that for the review ~~that is required to be conducted not later than 12 months~~
20 ~~after the child was first removed from his or her home and the reviews that are~~
21 ~~required to be conducted every 12 months after that review~~ the initial hearing under
22 sub. (5m), the court shall hold a hearing under sub. (5m) to review the permanency
23 plan, ~~which.~~ The hearing may be instead of or in addition to the review under this
24 subsection. The 6-month and 12-month periods referred to in this paragraph
25 include trial reunifications under s. 48.358.

1 **SECTION 7.** 48.38 (5m) (a) of the statutes is amended to read:

2 48.38 **(5m)** (a) The court shall hold a hearing to review the permanency plan
3 and to make the determinations specified in sub. (5) (c) for each child for whom a
4 permanency plan is required under sub. (2) no later than ~~12~~ 6 months after the date
5 on which the child was first removed from the home and every 12 months after a
6 previous hearing under this subsection for as long as the child is placed outside the
7 home. The 6-month and 12-month periods referred to in this paragraph include
8 trial reunifications under s. 48.358.

9 **SECTION 8.** 48.415 (intro.) of the statutes is amended to read:

10 **48.415 Grounds for involuntary termination of parental rights.** (intro.)
11 At the fact-finding hearing the court ~~or jury~~ shall determine whether grounds exist
12 for the termination of parental rights. If the child is an Indian child, the court ~~or jury~~
13 shall also determine at the fact-finding hearing whether continued custody of the
14 Indian child by the Indian child's parent or Indian custodian is likely to result in
15 serious emotional or physical damage to the Indian child under s. 48.028 (4) (e) 1. and
16 whether active efforts under s. 48.028 (4) (e) 2. have been made to prevent the
17 breakup of the Indian child's family and whether those efforts have proved
18 unsuccessful, unless partial summary judgment on the grounds for termination of
19 parental rights is granted, in which case the court shall make those determinations
20 at the dispositional hearing. Grounds for termination of parental rights shall be one
21 of the following:

22 **SECTION 9.** 48.415 (3m) of the statutes is created to read:

23 48.415 **(3m)** PARENTAL INCARCERATION. Parental incarceration, which shall be
24 established by proving all of the following:

1 (a) That the child has been adjudged to be in need of protection or services and,
2 while the parent is incarcerated, has been placed, or continued in a placement,
3 outside his or her home pursuant to one or more court orders under s. 48.345, 48.357,
4 48.363, or 48.365 containing the notice required under s. 48.356 (2).

5 (b) That the parent is incarcerated at the time of the fact-finding hearing under
6 s. 48.424.

7 (c) That the parent is likely to continue to be incarcerated for a substantial
8 period of the child's minority. In determining whether the parent is likely to continue
9 to be incarcerated for a substantial period of the child's minority, the court may
10 consider whether the parent has a history of repeated incarceration.

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

12 48.415 (4) (a) That the parent has been denied periods of physical placement
13 by court order in an action affecting the family or has been denied visitation under
14 an order under s. 48.21 (4), 48.32, 48.345, 48.355 (3), 48.363, 48.365, 48.38, 938.21
15 (4), 938.32, 938.345, 938.363 or, 938.365, or 938.38 containing the notice required by
16 s. 48.356 (2) or 938.356 (2).

17 **SECTION 11.** 48.415 (11) of the statutes is created to read:

18 48.415 (11) DRUG-AFFECTED CHILD. The child is a drug-affected child, which
19 shall be established by proving that the child has been adjudged to be a child in need
20 of protection or services under s. 48.13 (15) (b), unless the parent proves all of the
21 following by a preponderance of the evidence:

22 (a) That the parent has made reasonable efforts to enroll in a substance use
23 disorder treatment or recovery program within 90 days of the placement of the child
24 outside of the home pursuant to a dispositional order under s. 48.345 or that the
25 parent is participating in a drug court program as described in s. 165.955 (1).

1 (b) That the parent continues to maintain substantial compliance with a
2 substance abuse treatment or recovery program.

3 **SECTION 12.** 48.422 (1) of the statutes is amended to read:

4 48.422 (1) Except as provided in s. 48.42 (2g) (ag), the hearing on the petition
5 to terminate parental rights shall be held within 30 days after the petition is filed.
6 At the hearing on the petition to terminate parental rights the court shall determine
7 whether any party wishes to contest the petition and inform the parties of their
8 rights under sub. (4) and s. 48.423.

9 **SECTION 13.** 48.422 (4) of the statutes is repealed.

10 **SECTION 14.** 48.422 (5) of the statutes is amended to read:

11 48.422 (5) Any nonpetitioning party, including the child, shall be granted a
12 continuance of the hearing for the purpose of consulting with an attorney ~~on the~~
13 ~~request for a jury trial or concerning a request for the substitution of a judge.~~

14 **SECTION 15.** 48.424 (3) of the statutes is amended to read:

15 48.424 (3) ~~If the facts are determined by a jury, the jury may only~~ The court
16 shall decide whether any grounds for the termination of parental rights have been
17 proved ~~and~~, whether the allegations specified in s. 48.42 (1) (e) have been proved in
18 cases involving the involuntary termination of parental rights to an Indian child.
19 ~~The court shall decide, and~~ what disposition is in the best interest of the child.

20 **SECTION 16.** 48.424 (4) (intro.) of the statutes is amended to read:

21 48.424 (4) (intro.) If the court finds grounds for the termination of parental
22 rights ~~are found by the court or jury~~, the court shall find the parent unfit. A finding
23 of unfitness shall not preclude a dismissal of a petition under s. 48.427 (2). Except
24 as provided in s. 48.23 (2) (b) 3., the court shall then proceed immediately to hear
25 evidence and motions related to the dispositions enumerated in s. 48.427. Except as

1 provided in s. 48.42 (2g) (ag), the court may delay making the disposition and set a
2 date for a dispositional hearing no later than 45 days after the fact-finding hearing
3 if any of the following apply:

4 **SECTION 17.** 938.356 (1m) of the statutes is created to read:

5 938.356 (1m) Whenever the court orders a juvenile to be placed outside his or
6 her home or denies a parent visitation in an order under s. 938.21 (4) or 938.32, the
7 court shall orally inform the parent or parents who appear in court of any grounds
8 for termination of parental rights under s. 48.415 ^{e that} which may be applicable.

9 **SECTION 18.** 938.38 (5) (a) of the statutes is amended to read:

10 938.38 (5) (a) Except as provided in s. 48.63 (5) (d), the court or a panel
11 appointed under par. (ag) shall review the permanency plan for each juvenile for
12 whom a permanency plan is required under sub. (2) in the manner provided in this
13 subsection not later than 6 months after the date ~~on which the juvenile was first~~
14 ~~removed from his or her home~~ [✓] of a hearing held under sub. (5m) [✓] and every 6 months
15 after a previous review under this subsection for as long as the juvenile is placed
16 outside the home, except that for the review ~~that is required to be conducted not later~~
17 ~~than 12 months after the juvenile was first removed from his or her home and the~~
18 [✓] reviews that are required to be conducted every 12 months after ~~that review~~ the
19 initial hearing under sub. (5m), the court shall hold a hearing under sub. (5m) to
20 review the permanency plan. The hearing may be instead of or in addition to the
21 review under this subsection. The 6-month and 12-month periods referred to in this
22 paragraph include trial reunifications under s. 938.358. [✓]

23 **SECTION 19.** 938.38 (5m) (a) of the statutes is amended to read:

24 938.38 (5m) (a) The court shall hold a hearing to review the permanency plan
25 and to make the determinations specified in sub. (5) (c) for each juvenile for whom

1 a permanency plan is required under sub. (2) no later than ~~12~~ 6 months after the date
2 on which the juvenile was first removed from the home and every 12 months after
3 a previous hearing under this subsection for as long as the juvenile is placed outside
4 the home. The 6-month and 12-month periods referred to in this paragraph include
5 trial reunifications under s. 938.358.

6 **SECTION 20. Nonstatutory provisions.**

7 A.R. (1) PARENTAL INCARCERATION. A court assigned to exercise jurisdiction under ch.
8 48 may terminate parental rights to a child who was ordered to be placed outside the
9 home before the effective date of this subsection on the grounds specified under s.
10 48.415 (3m) notwithstanding that the parent was not notified of those grounds under
11 s. 48.356 (2) or 938.356 (2) when that placement was ordered so long as the parent
12 is notified of those grounds under s. 48.356 (2) or 938.356 (2) before the filing of the
13 termination of parental rights petition.

14 **SECTION 21. Initial applicability.**

15 (1) RIGHT TO A JURY TRIAL. The treatment of ss. 48.31 (2) and (4), 48.415 (intro.),
16 48.422 (1), (4), and (5), and 48.424 (3) and (4) (intro.) first applies to a termination
17 of parental rights proceeding for which the petition is filed on the effective date of this
18 subsection.

19 (2) CHILD IN NEED OF PROTECTION OR SERVICES GROUND. The treatment of s. 48.13
20 (15) first applies to a petition filed under s. 48.13 on the effective date of this
21 subsection.

22 (3) WARNINGS FOR GROUNDS OF AN INVOLUNTARY TERMINATION OF PARENTAL RIGHTS.
23 The treatment of s. (s.) 48.415 (4) (a) and (11) first applies to a court order required to
24 contain the notice under s. 48.356 (2) or 938.356 (2) granted on the effective date of
25 this subsection.

1 (4) PERMANENCY PLAN REVIEWS. The treatment of ss. 48.38 (5) (a) and (5m) (a)
2 and 938.38 (5) (a) and (5m) (a) first applies to a permanency plan that is filed with
3 the court under s. 48.38 (3) or 938.38 (3) on the effective date of this subsection.

4 (5) PARENTAL INCARCERATION. The treatment of s. 48.415 (3m) and SECTION 24
5 (1) of this act first *apply* to a petition for termination of parental rights filed on the
6 effective date of this subsection.

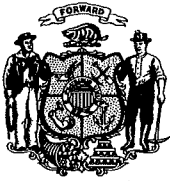
7 (END)

A.R.

A.R.

apply

24



State of Wisconsin
2019 - 2020 LEGISLATURE

P2
LRBs0157/P1
EAW:wlj+cdc

in 11/6
due now

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
ASSEMBLY SUBSTITUTE AMENDMENT ,
TO ASSEMBLY BILL 559

regen

1 **AN ACT to repeal** 48.422 (4); **to amend** 48.31 (2), 48.31 (4), 48.38 (5) (a), 48.38
2 (5m) (a), 48.415 (intro.), 48.415 (4) (a), 48.422 (1), 48.422 (5), 48.424 (3), 48.424
3 (4) (intro.), 938.38 (5) (a) and 938.38 (5m) (a); and **to create** 48.02 (5e), 48.13
4 (15), 48.356 (1m), 48.415 (3m), 48.415 (11) and 938.356 (1m) of the statutes;
5 **relating to:** grounds for finding a child in need of protection or services or for
6 terminating parental rights, right to a jury trial in a termination of parental
7 rights proceeding, and permanency plan reviews.

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

8 **SECTION 1.** 48.02 (5e) of the statutes is created to read:
9 48.02 (5e) "Drug-affected child" means any of the following:
10 (a) A child who suffered prenatal exposure to a controlled substance or alcohol,
11 used by the mother for a nonmedical purpose, as evidenced by withdrawal symptoms

1 in the child at birth, a positive result from a toxicology test of the mother or child at
2 the time of the child's birth, or developmental delays or other symptoms during the
3 child's first year of life that have been diagnosed as a fetal alcohol spectrum disorder
4 or as caused by prenatal exposure to a controlled substance.

5 (b) A child whose basic needs, as described in s. 48.01 (1) (ag), and safety have
6 been adversely affected by a parent's or guardian's chronic and severe use of alcohol
7 or a controlled substance.

8 **SECTION 2.** 48.13 (15) of the statutes is created to read:

9 48.13 (15) (a) The child is a drug-affected child, as defined in s. 48.02 (5e) (a),
10 and the petition is filed within 18 months of the child's birth.

11 (b) The child is a drug-affected child, as defined in s. 48.02 (5e) (b).

12 **SECTION 3.** 48.31 (2) of the statutes is amended to read:

13 48.31 (2) The A hearing on a termination of parental rights petition shall be
14 to the court. A hearing on a petition under s. 48.13 or 48.133 shall be to the court
15 unless the child, the child's parent, guardian, or legal custodian, the unborn child's
16 guardian ad litem, or the expectant mother of the unborn child exercises the right
17 to a jury trial by demanding a jury trial at any time before or during the plea hearing.
18 If a jury trial is demanded in a proceeding under s. 48.13 or 48.133, the jury shall
19 consist of 6 persons. ~~If a jury trial is demanded in a proceeding under s. 48.42, the~~
20 ~~jury shall consist of 12 persons unless the parties agree to a lesser number.~~ Chapters
21 756 and 805 shall govern the selection of jurors. If the hearing involves a child victim
22 or witness, as defined in s. 950.02, the court may order that a deposition be taken by
23 audiovisual means and allow the use of a recorded deposition under s. 967.04 (7) to
24 (10) and, with the district attorney, shall comply with s. 971.105. At the conclusion
25 of the a hearing on a termination of parental rights petition, the court shall make a

1 determination of the facts. At the conclusion of a hearing on a petition under s. 48.13
2 or 48.133, the court or jury shall make a determination of the facts, except that in a
3 case alleging a child or an unborn child to be in need of protection or services under
4 s. 48.13 or 48.133, the court shall make the determination under s. 48.13 (intro.) or
5 48.133 relating to whether the child or unborn child is in need of protection or
6 services that can be ordered by the court. If the court finds that the child or unborn
7 child is not within the jurisdiction of the court or, in a case alleging a child or an
8 unborn child to be in need of protection or services under s. 48.13 or 48.133, that the
9 child or unborn child is not in need of protection or services that can be ordered by
10 the court, or if the court or jury finds that the facts alleged in the petition have not
11 been proved, the court shall dismiss the petition with prejudice.

12 **SECTION 4.** 48.31 (4) of the statutes is amended to read:

13 48.31 (4) The court shall make findings of fact and conclusions of law relating
14 to the allegations of a petition filed under s. 48.42. The court or jury shall make
15 findings of fact and the court shall make conclusions of law relating to the allegations
16 of a petition filed under s. 48.13, or 48.133 or 48.42, except that the court shall make
17 findings of fact relating to whether the child or unborn child is in need of protection
18 or services ~~which~~ that can be ordered by the court. In cases alleging a child to be in
19 need of protection or services under s. 48.13 (11), the court may not find that the child
20 is suffering emotional damage unless a licensed physician specializing in psychiatry
21 or a licensed psychologist appointed by the court to examine the child has testified
22 at the hearing that in his or her opinion the condition exists, and adequate
23 opportunity for the cross-examination of the physician or psychologist has been
24 afforded. The judge may use the written reports if the right to have testimony
25 presented is voluntarily, knowingly, and intelligently waived by the guardian ad

1 litem or legal counsel for the child and the parent or guardian. In cases alleging a
2 child to be in need of protection or services under s. 48.13 (11m) or an unborn child
3 to be in need of protection or services under s. 48.133, the court may not find that the
4 child or the expectant mother of the unborn child is in need of treatment and
5 education for needs and problems related to the use or abuse of alcohol beverages,
6 controlled substances, or controlled substance analogs and its medical, personal,
7 family, or social effects unless an assessment for alcohol and other drug abuse that
8 conforms to the criteria specified under s. 48.547 (4) has been conducted by an
9 approved treatment facility.

10 **SECTION 5.** 48.356 (1m) of the statutes is created to read:

11 48.356 (1m) Whenever the court orders a child or expectant mother of an
12 unborn child to be placed outside his or her home or denies a parent visitation in an
13 order under s. 48.21 (4) or 48.32, the court shall orally inform the parent or parents
14 who appear in court or the expectant mother who appears in court of any grounds for
15 termination of parental rights under s. 48.415 that may be applicable.

16 **SECTION 6.** 48.38 (5) (a) of the statutes is amended to read:

17 48.38 (5) (a) Except as provided in s. 48.63 (5) (d), the court or a panel appointed
18 under par. (ag) shall review the permanency plan for each child for whom a
19 permanency plan is required under sub. (2) in the manner provided in this subsection
20 not later than 6 months after the date on which the child was first removed from his
21 or her home of a hearing held under sub. (5m) and every 6 months after a previous
22 review under this subsection for as long as the child is placed outside the home,
23 except that for the review ~~that is required to be conducted not later than 12 months~~
24 ~~after the child was first removed from his or her home and the reviews that are~~
25 required to be conducted every 12 months after that review the initial hearing under

1 sub. (5m), the court shall hold a hearing under sub. (5m) to review the permanency
2 plan, ~~which.~~ The hearing may be instead of or in addition to the review under this
3 subsection. The 6-month and 12-month periods referred to in this paragraph
4 include trial reunifications under s. 48.358.

5 **SECTION 7.** 48.38 (5m) (a) of the statutes is amended to read:

6 48.38 **(5m)** (a) The court shall hold a hearing to review the permanency plan
7 and to make the determinations specified in sub. (5) (c) for each child for whom a
8 permanency plan is required under sub. (2) no later than ~~12~~ 6 months after the date
9 on which the child was first removed from the home and every 12 months after a
10 previous hearing under this subsection for as long as the child is placed outside the
11 home. The 6-month and 12-month periods referred to in this paragraph include
12 trial reunifications under s. 48.358.

13 **SECTION 8.** 48.415 (intro.) of the statutes is amended to read:

14 **48.415 Grounds for involuntary termination of parental rights.** (intro.)
15 At the fact-finding hearing the court ~~or jury~~ shall determine whether grounds exist
16 for the termination of parental rights. If the child is an Indian child, the court ~~or jury~~
17 shall also determine at the fact-finding hearing whether continued custody of the
18 Indian child by the Indian child's parent or Indian custodian is likely to result in
19 serious emotional or physical damage to the Indian child under s. 48.028 (4) (e) 1. and
20 whether active efforts under s. 48.028 (4) (e) 2. have been made to prevent the
21 breakup of the Indian child's family and whether those efforts have proved
22 unsuccessful, unless partial summary judgment on the grounds for termination of
23 parental rights is granted, in which case the court shall make those determinations
24 at the dispositional hearing. Grounds for termination of parental rights shall be one
25 of the following:

1 SECTION 9. 48.415 (3m) of the statutes is created to read:

2 48.415 (3m) PARENTAL INCARCERATION. Parental incarceration, which shall be
3 established by proving all of the following:

4 (a) That the child has been adjudged to be in need of protection or services and,
5 while the parent is incarcerated, has been placed, or continued in a placement,
6 outside his or her home pursuant to one or more court orders under s. 48.345, 48.357,
7 48.363, or 48.365 containing the notice required under s. 48.356 (2).

8 (b) That the parent is incarcerated at the time of the fact-finding hearing under
9 s. 48.424.

10 (c) That the parent is likely to continue to be incarcerated for a substantial
11 period of the child's minority. In determining whether the parent is likely to continue
12 to be incarcerated for a substantial period of the child's minority, the court may
13 consider whether the parent has a history of repeated incarceration.

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

15 48.415 (4) (a) That the parent has been denied periods of physical placement
16 by court order in an action affecting the family or has been denied visitation under
17 an order under s. 48.21 (4), 48.32, 48.345, 48.355 (3), 48.363, 48.365, 48.38, 938.21
18 (4), 938.32, 938.345, 938.363 or, 938.365, or 938.38 containing the notice required by
19 s. 48.356 (2) or 938.356 (2).

20 SECTION 11. 48.415 (11) of the statutes is created to read:

21 48.415 (11) DRUG-AFFECTED CHILD. The child is a drug-affected child, which
22 shall be established by proving that the child has been adjudged to be a child in need
23 of protection or services under s. 48.13 (15) (b), (unless the parent proves) all of the
24 following by a preponderance of the evidence:

and placed outside the home pursuant to one or more court orders under
and the court finds
S. 48.345, 48.347, 48.357
48.363 or 48.365

1 (a) That the parent has ^{not} made reasonable efforts to enroll in a substance use
 2 disorder treatment or recovery program within 90 days of the placement of the child
 3 outside the home pursuant to a dispositional order under s. 48.345 ^e or that ^{(b) That} the parent
 4 is ^{not} participating in a drug court program as described in s. 165.955 (1).

5 ^{(c) (b)} That ^{there is a substantial likelihood that the parent will not meet the conditions for the} the parent continues to maintain substantial compliance with a ^{safe} a
 6 substance abuse treatment or recovery program ^{return of the child} to the home in the 6 months after
 7 the date of the hearing.

8 **SECTION 12.** 48.422 (1) of the statutes is amended to read:

9 48.422 (1) Except as provided in s. 48.42 (2g) (ag), the hearing on the petition
 10 to terminate parental rights shall be held within 30 days after the petition is filed.
 11 At the hearing on the petition to terminate parental rights the court shall determine
 12 whether any party wishes to contest the petition and inform the parties of their
 13 rights under sub. (4) and s. 48.423.

14 **SECTION 13.** 48.422 (4) of the statutes is repealed.

15 **SECTION 14.** 48.422 (5) of the statutes is amended to read:

16 48.422 (5) Any nonpetitioning party, including the child, shall be granted a
 17 continuance of the hearing for the purpose of consulting with an attorney on the
 18 request for a jury trial or concerning a request for the substitution of a judge.

19 **SECTION 15.** 48.424 (3) of the statutes is amended to read:

20 48.424 (3) If the facts are determined by a jury, the jury may only The court
 21 shall decide whether any grounds for the termination of parental rights have been
 22 proved and, whether the allegations specified in s. 48.42 (1) (e) have been proved in
 23 cases involving the involuntary termination of parental rights to an Indian child.
 24 The court shall decide, and what disposition is in the best interest of the child.

SECTION 16. 48.424 (4) (intro.) of the statutes is amended to read:

1 48.424 (4) (intro.) If the court finds grounds for the termination of parental
2 rights ~~are found by the court or jury~~, the court shall find the parent unfit. A finding
3 of unfitness shall not preclude a dismissal of a petition under s. 48.427 (2). Except
4 as provided in s. 48.23 (2) (b) 3., the court shall then proceed immediately to hear
5 evidence and motions related to the dispositions enumerated in s. 48.427. Except as
6 provided in s. 48.42 (2g) (ag), the court may delay making the disposition and set a
7 date for a dispositional hearing no later than 45 days after the fact-finding hearing
8 if any of the following apply:

9 **SECTION 17.** 938.356 (1m) of the statutes is created to read:

10 938.356 (1m) Whenever the court orders a juvenile to be placed outside his or
11 her home or denies a parent visitation in an order under s. 938.21 (4) or 938.32, the
12 court shall orally inform the parent or parents who appear in court of any grounds
13 for termination of parental rights under s. 48.415 that may be applicable.

14 **SECTION 18.** 938.38 (5) (a) of the statutes is amended to read:

15 938.38 (5) (a) Except as provided in s. 48.63 (5) (d), the court or a panel
16 appointed under par. (ag) shall review the permanency plan for each juvenile for
17 whom a permanency plan is required under sub. (2) in the manner provided in this
18 subsection not later than 6 months after the date ~~on which the juvenile was first~~
19 ~~removed from his or her home~~ of a hearing held under sub. (5m) and every 6 months
20 after a previous review under this subsection for as long as the juvenile is placed
21 outside the home, except that for the review ~~that is required to be conducted not later~~
22 ~~than 12 months after the juvenile was first removed from his or her home and the~~
23 reviews that are required to be conducted every 12 months after ~~that review~~ the
24 initial hearing under sub. (5m), the court shall hold a hearing under sub. (5m) to
25 review the permanency plan. The hearing may be instead of or in addition to the

1 review under this subsection. The 6-month and 12-month periods referred to in this
2 paragraph include trial reunifications under s. 938.358.

3 **SECTION 19.** 938.38 (5m) (a) of the statutes is amended to read:

4 938.38 (5m) (a) The court shall hold a hearing to review the permanency plan
5 and to make the determinations specified in sub. (5) (c) for each juvenile for whom
6 a permanency plan is required under sub. (2) no later than ~~12~~ 6 months after the date
7 on which the juvenile was first removed from the home and every 12 months after
8 a previous hearing under this subsection for as long as the juvenile is placed outside
9 the home. The 6-month and 12-month periods referred to in this paragraph include
10 trial reunifications under s. 938.358.

11 **SECTION 20. Nonstatutory provisions.**

12 (1) PARENTAL INCARCERATION. A court assigned to exercise jurisdiction under ch.
13 48 may terminate parental rights to a child who was ordered to be placed outside the
14 home before the effective date of this subsection on the grounds specified under s.
15 48.415 (3m) notwithstanding that the parent was not notified of those grounds under
16 s. 48.356 (2) or 938.356 (2) when that placement was ordered so long as the parent
17 is notified of those grounds under s. 48.356 (2) or 938.356 (2) before the filing of the
18 termination of parental rights petition.

19 **SECTION 21. Initial applicability.**

20 (1) RIGHT TO A JURY TRIAL. The treatment of ss. 48.31 (2) and (4), 48.415 (intro.),
21 48.422 (1), (4), and (5), and 48.424 (3) and (4) (intro.) first applies to a termination
22 of parental rights proceeding for which the petition is filed on the effective date of this
23 subsection.

1 (2) CHILD IN NEED OF PROTECTION OR SERVICES GROUND. The treatment of s. 48.13
2 (15) first applies to a petition filed under s. 48.13 on the effective date of this
3 subsection.

4 (3) WARNINGS FOR GROUNDS OF AN INVOLUNTARY TERMINATION OF PARENTAL RIGHTS.
5 The treatment of s. 48.415 (4) (a) and (11) first applies to a court order required to
6 contain the notice under s. 48.356 (2) or 938.356 (2) granted on the effective date of
7 this subsection.

8 (4) PERMANENCY PLAN REVIEWS. The treatment of ss. 48.38 (5) (a) and (5m) (a)
9 and 938.38 (5) (a) and (5m) (a) first applies to a permanency plan that is filed with
10 the court under s. 48.38 (3) or 938.38 (3) on the effective date of this subsection.

11 (5) PARENTAL INCARCERATION. The treatment of s. 48.415 (3m) and SECTION 20
12 (1) of this act first apply to a petition for termination of parental rights filed on the
13 effective date of this subsection.

14 (END)

Wheeler, Elizabeth

From: Sappenfield, Anne L.
Sent: Monday, November 18, 2019 2:18 PM
To: Wheeler, Elizabeth
Subject: RE: Adoption drafts notes

Hi Elizabeth!

You should go ahead and draft them. Please let me know, though, if you have any concerns. I think that we could still have some flexibility re: specific approach.

Thanks!
Anne

From: Wheeler, Elizabeth <Elizabeth.Wheeler@legis.wisconsin.gov>
Sent: Monday, November 18, 2019 1:50 PM
To: Sappenfield, Anne L. <Anne.Sappenfield@legis.wisconsin.gov>
Subject: RE: Adoption drafts notes

Thanks Anne,

For the notes that say "requested modification," should I put out a new /p draft with those changes now, or should I wait for further instructions?

Thanks,

Elizabeth Wheeler
Legislative Attorney
Wisconsin Legislative Reference Bureau
P.O. Box 2037
Madison, WI 53701-2037
Direct: 608-504-5880
Elizabeth.wheeler@legis.wisconsin.gov

From: Sappenfield, Anne L. <Anne.Sappenfield@legis.wisconsin.gov>
Sent: Friday, November 15, 2019 4:46 PM
To: Matthews, Meagan <Meagan.Matthews@legis.wisconsin.gov>; Linjer, Storm <Storm.Linjer@legis.wisconsin.gov>; Thiry, Moriah <Moriah.Thiry@legis.wisconsin.gov>
Cc: Snyder, Rachel <Rachel.Snyder@legis.wisconsin.gov>; Wheeler, Elizabeth <Elizabeth.Wheeler@legis.wisconsin.gov>
Subject: Adoption drafts notes

Hi all,

Based on our meeting yesterday, here are my notes for next steps:

AB 559 substitute amendment LRBs0157/P2

*Requested modification—P.7, l 1, element of the TPR ground for a drug-affected child requires a showing that there is a substantial likelihood that the parent will not meet the conditions for the safe return of the child to the home in the 6

months after the date of the hearing. Concern was raised about the ability of the court to look forward and predict the parent's behavior.

—Consensus to require a showing that there is a substantial likelihood that the parent will not meet the conditions for the safe return of the child to the home by the anticipated date that the child's permanence goal will be achieved, as specified in the child's permanency plan under s. 48.38.

Storm will reach out to a corp counsel regarding whether this ground would be useful as drafted and whether the TPR warning for the temporary placement and custody hearing and the consent decree is appropriate.