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# Wisconsin Legislative Council

## INFORMATION MEMORANDUM

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### **ADOPTION IN WISCONSIN**

This information memorandum provides an overview of adoption in Wisconsin, including the different types of adoption and the general procedure for domestic adoption. In general, although Wisconsin law provides for adoption of a child by a relative or a stepparent, this memorandum focuses on adoptions by nonrelatives.

A discussion of adoption necessarily requires mention of the Wisconsin child welfare system. Constitutional and federal law significantly influence the child welfare system, including proceedings for the termination of parental rights (TPR) and adoption. Because state law implements the system, this memorandum generally focuses on Wisconsin law and policy, with limited reference to federal law.<sup>1</sup>

### **BASIC STEPS OF AN ADOPTION**

Adoptions typically require the following events: (1) TPR; (2) placement of a child with prospective adoptive parents for a duration of time, known as “adoptive placement”; and (3) finalization of the adoption at a hearing before the court. While listed as being in order of succession, TPR proceedings and adoptive placement may, and often do, occur concurrently. Variations also exist in the timing and completion of each step, depending on the type of adoption and the particular circumstances. However, all adoptions require a court hearing to finalize the adoption, at which time the court enters an order that creates a parent-child relationship between the adoptive parents and the child.

### **TYPES OF ADOPTION**

In Wisconsin, children may be adopted in a private adoption through a licensed adoption agency or may be adopted through the child welfare system. This memorandum refers to agency adoptions as “private adoptions” and adoptions through the child welfare system as “public adoptions.” Current law authorizes the Department of Children and Families (DCF), county departments of human or social services, and licensed adoption agencies to accept guardianship of children and to place children for adoption. [s. 48.833, Stats.]

#### **Private Adoptions**

Private adoptions are facilitated by a licensed adoption agency, which may be run by a charitable or social service organization. DCF is the licensing authority for adoption agencies, which must be licensed as child welfare agencies. An adoption agency’s license as a child welfare agency is renewed every two years and specifically authorizes the agency to place children under its

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<sup>1</sup> Special provisions apply under the Indian Child Welfare Act of 1978 (ICWA) if the child at issue is deemed to be an “Indian child,” as defined by the act. This information memorandum discusses adoption generally, and does not address ICWA-specific provisions. In addition, this memorandum does not discuss the process for international adoptions.

guardianship for adoption. A licensed adoption agency may perform various services throughout the adoption process, such as providing preadoption preparation training and conducting a prospective adoptive family's home study, as discussed later in this memorandum. [ss. 48.60 and 48.61, Stats.]

## Public Adoptions

Children adopted through a public adoption are part of the child welfare system and are generally placed in foster care or similar out-of-home care. DCF or a county department of human or social services may place a child over whom it has guardianship for adoption in a licensed foster home with the prospective adoptive parents if they have completed certain training and home study requirements, as discussed later in this memorandum. [s. 48.833 (1), Stats.]

Public adoptions are often considered "special needs adoptions," which are eligible for federal adoption assistance payments. Federal law does not specifically define "special needs" and allows each state to specify how special needs is defined. However, under federal law, special needs factors are those factors that, if applicable to a child, make it reasonable to conclude that the child cannot be placed with adoptive parents without providing adoption assistance payments. [42 U.S.C. s. 673 (c) (1) (B).]

In Wisconsin, a child may be deemed to have special needs for purposes of eligibility for federal adoption assistance if any of the following are true at the time of adoptive placement:

- The child is seven years of age or older, if age is the only factor in determining eligibility.
- The child is a member of a sibling group of two or more children that must be placed together.
- The child exhibits a sufficient number of identified moderate or intensive special needs, including in the areas of adjustment to trauma, life functioning and social skills, functioning in a child care or school setting, behavioral and emotional needs, risk behaviors, and language.
- The child belongs to a minority race and children of that minority race cannot be readily placed due to a lack of appropriate placement resources.
- The child is an Indian child.
- The child does not have a documented special need, as described above, but is at high risk of developing a moderate or intensive level of special needs based on certain experiences in the child's life.

[s. DCF 50.09 (1) (b), Wis. Adm. Code.]

## TPR PROCEEDINGS

Before a child may be adopted, any existing legal relationship of parent and child must be severed in a TPR proceeding. A TPR may be involuntary or voluntary. The process for TPR is described in detail below.

An involuntary TPR generally involves three phases: (1) after a TPR petition is filed, the court holds a hearing on the petition; (2) the court conducts a fact-finding hearing, at which the court or a jury, if requested, determines whether any of the statutory grounds for involuntary TPR have been proved; and (3) if one or more of the grounds are met, the judge holds a dispositional hearing to determine whether TPR is in the child's best interest.

## Petition and Hearing on Petition

TPR proceedings are commenced by the child's parent, an agency, or a prosecutor, among others, filing a petition containing certain information, including whether the TPR is voluntary or involuntary by the parent. In certain child welfare cases, an agency or other official is required to file a TPR petition. For example, a TPR petition must be filed when a child has been placed in out-of-home care for 15 of the most recent 22 months, though exceptions to mandatory filing exist in the following circumstances:

- The child is being cared for by a fit and willing relative.
- The child's permanency plan<sup>2</sup> documents that TPR is not in the child's best interest.
- The agency primarily responsible for providing services to the family to make it possible for the child to return safely to the child's home has not provided such services in a manner consistent with the time period in the permanency plan.
- Grounds for involuntary TPR do not exist.

[ss. 48.417 (1) and (2) and 48.42 (1), Stats.]

If the TPR petition is filed by an agency, or if the court so orders, the agency must file a report with the court regarding the child's social history and medical record, a statement of facts supporting the need for TPR, historical information on any previous determination that the child was in need of protection or services, and the likelihood of adoption, among other information. The court must appoint a guardian ad litem (GAL) for any child who is the subject of a TPR proceeding, whether voluntary or involuntary. [ss. 48.235 (1) (c) and 48.425 Stats.]

The court must conduct an initial hearing on the TPR petition within 30 days after filing, but not before the child's birth. If the birth parent voluntarily consents to the TPR, the court may proceed immediately to disposition. If the petition is contested, the court must schedule a fact-finding hearing to be held within 45 days after the initial hearing on the petition, though the court may grant a continuance for good cause. [s. 48.422 (1) and (2), Stats.]

## Fact-Finding Hearing

At the fact-finding hearing, the court or a jury, if requested, determines whether any of the statutory grounds for involuntary TPR exist.<sup>3</sup> The petitioner must prove by clear and convincing evidence the grounds for involuntary TPR. Upon a determination that the TPR grounds are met and, accordingly, that the parent is unfit, the court immediately proceeds to hear evidence and motions for disposition, though the court may delay and set the dispositional hearing for no more than 45 days later in certain circumstances. [ss. 48.31, 48.422, and 48.424, Stats.]

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<sup>2</sup> 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. [s. 48.38(1) (b), Stats.]

<sup>3</sup> The statutes provide the following grounds for involuntary TPR: abandonment; relinquishment; continuing need of protection or services; continuing parental disability; continuing denial of periods of physical placement or visitation; child abuse; failure to assume parental responsibility; incestuous parenthood; homicide or solicitation to commit homicide of parent; parenthood as a result of sexual assault; commission of a serious felony against a child; or prior involuntary TPR to another child. [s. 48.415, Stats.]

## Dispositional Hearing

At the dispositional hearing, the court must determine whether to order TPR. In making this determination, the court must consider the best interests of the child as the prevailing factor, but also must consider any report submitted by the agency, as well as the following factors:

- The likelihood of the child's adoption after TPR.
- The age and health of the child, both at the time of the disposition and, if applicable, at the time the child was removed from the home.
- Whether the child has substantial relationships with the parent or other family members, and whether it would be harmful to the child to sever these relationships.
- The wishes of the child.
- The duration of the separation of the parent from the child.
- Whether the child will be able to enter into a more stable and permanent family relationship as a result of the termination, taking into account the conditions of the child's current placement, the likelihood of future placements, and the results of prior placements.

[s. 48.426 (3), Stats.]

If TPR is ordered, the court must select one of the dispositions authorized by statute, such as appointing a guardian, transferring guardianship and custody to an agency pending adoptive placement, or transferring custody to a relative. [s. 48.427 (3m), Stats.] Generally, a TPR order permanently severs all legal rights and duties between the parent and child. [s. 48.43 (2), Stats.]

In an action for voluntary TPR, once the parent's consent has been secured, the court does not conduct a fact-finding hearing. Instead, the court moves directly to the dispositional hearing to determine whether TPR is in the child's best interest. [s. 48.41, Stats.]

## ADOPTIVE PLACEMENTS

After or concurrent with the TPR proceeding, a child may be placed with the prospective adoptive parents, generally on the condition that the adoptive parents' home is a licensed foster home.<sup>4</sup> To satisfy this requirement, prospective adoptive parents are typically subject to a home study and training requirements prior to the adoptive placement, but certain exceptions exist, including an exception for adoptions by a relative.

The level of required court involvement at the adoptive placement stage differs depending on the type of adoption. Adoptive placement may occur without a court order if such placement is with a relative of the child, or if placement with proposed adoptive parents is made by one of the following, as the child's guardian: DCF; a county department; or a licensed adoption agency. However, if birth parents have selected adoptive parents without agency assistance, the court must conduct an adoptive placement hearing, at which the court approves the home selected by the birth parents for the child's placement. After this hearing, the adoptive parents are legally foster parents until the adoption is completed.

The following section discusses in greater detail these requirements for adoptive placement, as the process varies depending on the type of adoption.

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<sup>4</sup> Under ss. 48.63 (b) and 48.837 (1r), Stats., adoptive placement of a child may occur prior to finalizing the TPR if certain conditions are met.

## **General Requirements for Certain Adoptive Placements**

### **Licensed Foster Home**

Generally, the home in which the adoptive placement occurs must be licensed as a foster home.<sup>5</sup> To obtain a license, each foster parent must receive a favorable report following an investigation, commonly referred to as a home study. The home study's purpose is to determine whether the home is suitable for the child, using an assessment system that provides a reliable, comprehensive, and standardized qualitative evaluation of a person's personal characteristics, civil and criminal history, age, health, financial stability, and a ability to responsibly meet all of DCF's requirements. [ss. 48.75 (3), 48.833, 48.837, and 48.88 (2) (aj), Stats.]

DCF, a county department, or a licensed adoption agency may issue licenses to foster homes under administrative rules promulgated by DCF. Those rules set forth, in detail, the requirements for the licensing process, such as applying for a license, gathering detailed information regarding the potential foster parents' characteristics and background, determining the safety of the home's physical environment, and mandatory foster parent training. [s. 48.75, Stats., and ch. DCF 56, Wis. Adm. Code.]

### **Training**

In addition to being a licensed foster home, proposed adoptive parents who have not previously adopted a child must receive preadoption training before a child may be placed for adoption with them, except when a proposed adoptive parent is a stepparent of or, in certain circumstances, a relative of the child. Current law requires at least 25 hours of training covering the topics of attachment, trauma, neglect, and abuse, including sexual abuse. Rules promulgated by DCF govern the specific preadoption training requirements. [s. 48.84, Stats., and ch. DCF 51, Wis. Adm. Code.]

### **Agency Adoptive Placements**

When a child is placed by an agency in a licensed foster home for adoption, the agency making the placement must enter into a written agreement with the proposed adoptive parent. An agency may place a child for adoption in a licensed foster home without a court order if all of the following conditions are met:

- The agency is the child's guardian or is placing the child at the request of another agency that is the child's guardian.
- The investigation conducted when licensing the home as a foster home has been supplemented to evaluate whether the home is suitable for adoptive placement of the child.
- The proposed adoptive parents have completed the required preadoption preparation training, or the agency determines that the proposed adoptive parents are exempt from that requirement.

[s. 48.833, Stats.]

In child welfare cases, before placing a child for adoption, the agency must consider the availability of a placement for adoption with a relative of the child who is identified in the child's

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<sup>5</sup> While the term "foster home" is commonly associated with the state's child welfare system, the home of prospective adoptive parents, even in private adoptions, must be a licensed foster home. Thus, the term "foster home" should not be considered exclusive to the state's child welfare system.

permanency plan or is otherwise known by the agency. Moreover, if a child being placed for adoption by an agency has one or more siblings who have been adopted or placed for adoption, the agency must make reasonable efforts to place the child for adoption with an adoptive parent or proposed adoptive parent of such a sibling who is identified in the child's permanency plan or is otherwise known by the agency, unless the agency determines that a joint placement would be contrary to the safety or well-being of the child or any of those siblings. [s. 48.834, Stats.]

Finally, an agency may place a child for adoption in a licensed foster home prior to the finalization of the TPR proceedings, if requested by a parent having custody of a child and the proposed adoptive parents, provided that the home study investigation has been supplemented to evaluate whether the home is suitable for the child. Also, the agency making the placement and the proposed adoptive parents must enter into a written agreement that specifies who is financially responsible for the costs of providing care for the child prior to the finalization of the adoption and returning the child to the parent who has custody of the child if the adoption is not finalized. [ss. 48.63 (3) (b) and 48.833 (1) and (2), Stats.]

## **Independent Adoptive Placements**

Generally, birth parents may select prospective adoptive parents without the initial involvement of a licensed child welfare agency. In practice, these types of adoptions are referred to as "independent adoptions." While the selection of prospective adoptive parents may occur without agency involvement, current law requires all adoptions to eventually involve an agency. Once involved, the agency will conduct an investigation and file a recommendation pursuant to the final adoption hearing procedure described below. [ss. 48.427 (3m) and 48.837, Stats.]

An agency must also be involved to issue a foster home license to the proposed adoptive parents. Under current law, a parent having custody and the proposed adoptive parents may petition the court for placement of the child for adoption in the home of the proposed adoptive parents if the home is licensed as a foster home. Current law specifies certain types of information that must be included in the petition for adoptive placement. [ss. 48.835 and 48.837 (2), Stats.]

In the context of independent adoptive placements, a petition for voluntary consent to TPR must be filed concurrently with the petition for adoptive placement. Upon the filing of the petitions, the court must do the following:

- Hold a hearing on both petitions within 30 days of filing, except that the hearing may not be held before the birth of the child.
- Appoint counsel or a GAL, when required.
- Order DCF or the county department to investigate the proposed adoptive placement, interview each petitioner, provide counseling if requested, and report its recommendation to the court at least five days before the hearing on the petition, though the court may instead accept a report and recommendation from a licensed adoption agency that has already investigated the proposed adoptive placement and interviewed the petitioners.
- Ascertain, before the hearing, whether paternity of a nonmarital child has been acknowledged or determined by a court, as the court may not proceed with the hearing on the petitions unless the parental rights of any nonpetitioning parent, whether known or unknown, have been terminated.

[s. 48.837, Stats.]

At the hearing, the court must consider the petition for adoptive placement before the petition for voluntary consent to TPR. At the beginning of the hearing on the petition for adoptive placement, the court must review a report regarding transfers of anything of value made, or agreed to be made, by the proposed adoptive parents or by a person acting on their behalf to a birth parent of the child.<sup>6</sup> If the court makes a finding of coercion, the court must dismiss the petitions or amend the parties' agreement to delete any coerced conditions, if the parties agree to the amendment. [ss. 48.837 (6) (a) and (b) and 48.913 (6) and (7), Stats.]

After the hearing on the petition for adoptive placement, the court must make findings on the allegations of the petition, as well as the agency's report, and make a conclusion as to whether the placement is in the child's best interest. If the court approves the proposed placement, the court must proceed immediately to a hearing on the petition for voluntary consent to TPR. If the rights of the parent are terminated, the court must appoint an agency as the child's guardian. If the child had not already been placed with the proposed adoptive parents prior to the filing of the petitions, the court must order such placement. If the child had been placed with the proposed adoptive parents prior to the filing of the petitions, the court must order that placement to continue. [s. 48.837 (6) (c) and (d), Stats.]

## **FINALIZATION OF ADOPTION**

### **Filing of the Petition**

All adoptions must be finalized at a court hearing. To receive a hearing, a party must file a petition for adoption. Compliance with the statutory adoptive placement procedures set forth previously in this memorandum is a prerequisite to filing the petition for adoption. Generally, the child must be placed with the prospective adoptive parents for six months before a petition for adoption may be filed, though petitions for adoptions may be filed at any time if the petition is accompanied by the guardian's written approval. [s. 48.90, Stats.]

### **Investigation**

Upon the petition's filing, the court must order a home study investigation to determine whether the child is a proper subject for adoption and whether the prospective adoptive parents' home is suitable for the child. However, an investigation is not required if all of the following apply:

- The prospective adoptive parents are licensed to operate a foster home and the license is in effect at the time the adoption petition is filed.
- The prospective adoptive parents have never had their license to operate a foster home revoked or suspended.
- An investigation as to the suitability of the home was conducted for the purpose of licensing the home for foster care and the investigation has been supplemented to evaluate whether the home is suitable for the child who is the subject of the adoption.

[s. 48.88 (2) (ag) and (d), Stats.]

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<sup>6</sup> Financial arrangements in adoptions are strictly controlled under ch. 48, Stats., as well as Wisconsin's criminal laws. Section 48.913, Stats., lists the types of payments authorized by prospective adoptive parents. It is a Class H felony for birth parents to place, or for adoptive parents to receive, a child for adoption based on any payments exceeding that which are authorized under s. 48.913, Stats. [s. 948.24, Stats.]

If the investigation's report is unfavorable or discloses a situation which, in the court's opinion, raises a serious question as to the suitability of the proposed adoption, the court may appoint a GAL for the child. [s. 48.88 (3), Stats.]

## **Recommendation**

If the child has a guardian, the guardian must submit a written recommendation, favorable or unfavorable, at least 10 days before the adoption hearing, though if no recommendation is filed, the court may proceed as though the guardian filed a favorable recommendation.<sup>7</sup> When filing the recommendation, the child's guardian must include evidence of the guardian's authority to file, which generally consists of a copy of the TPR order in which the court appointed the guardian as part of its disposition. [ss. 48.841, 48.85, and 48.871, Stats.]

Current law presumes that the guardian's recommendation is in the child's best interest, unless the "fair preponderance of the credible evidence" is to the contrary. If the guardian's recommendation opposes the petition for adoption, the court must receive testimony at the hearing as to whether the proposed adoption is in the child's best interest. [s. 48.85 (2), Stats.]

## **Hearing**

The court must schedule a final adoption hearing within 90 days of the filing of the adoption petition. Notice of the hearing must be provided to the child's guardian, any agency making a recommendation, and the child, if 12 years of age or older. The hearing may be held in the court's chambers, unless an interested person objects. The petitioner and the child to be adopted, if 14 years of age or older, must attend unless the court orders otherwise. [ss. 48.88 (1m) and 48.91 (1), Stats.]

In general, the rights of the child's parents, including known or unknown nonpetitioning parents, must be terminated in order for the court to proceed with the hearing on the petition for adoption. If the adoption concerns a nonmarital child, the court must establish that paternity has been adjudicated, which usually occurs in the TPR order. [s. 48.91 (2), Stats.]

## **Order and Effect of Adoption**

The court must enter an order granting the adoption if, after receipt of any testimony at the hearing, review of the report from the investigation, and review of any filed recommendations, the court finds the adoption is in the child's best interest. After entry of the order, the parent-child relationship, and all the rights, duties, and responsibilities of that relationship, exist between the adoptive parents and the child. An adoptive parent, once granted adoption of a child, is prohibited from petitioning the court for rehearing, or otherwise seeking relief from the adoption order. [ss. 48.46 (3), 48.91 (3), and 48.92, Stats.]

This information memorandum was prepared by Amber Otis, Staff Attorney, on February 26, 2021.

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<sup>7</sup> In some circumstances, DCF is required to submit a recommendation. [s. 48.89, Stats.]