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01/20/2009

- 1 **AN ACT** *to create* 48.21 (3) (f), 48.21 (5) (e) and 48.981 (7) (a) 4m. of the statutes;
2 **relating to:** requiring notice to relatives when a child is taken into custody.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill draft was prepared for the Special Committee on Strengthening Wisconsin Families.

Under the Children's Code, a child may be placed with a relative when the child is taken into temporary custody, as a disposition, or as a permanent placement. In addition, in a child's dispositional order for a child in need of protection or services (CHIPS) proceeding, if there is no less drastic alternative for a child than transferring custody from the parent, the judge must consider transferring custody to a relative whenever possible. The agency preparing a permanency plan for a child must also include in the plan a statement as to the availability of a safe and appropriate placement with a fit and willing relative of the child and, if a decision is made not to place the child with an available relative, a statement as to why placement with the relative is not safe or appropriate. Finally, before the department of children and families (DCF), a county department, or a child welfare agency may place a child for adoption, that agency must consider the availability of an adoptive placement with a relative of the child who is identified in the permanency plan or otherwise known by that agency.

Federal law 42 USC s. 671 (a) (29), effective October 7, 2008, requires that within 30 days after the removal of a child from the custody of the parent or parents of the child, the state must exercise due diligence to identify and provide notice to all adult grandparents and other adult relatives of the child (including any other adult relatives suggested by the parents), subject to exceptions due to family or domestic violence, that does all of the following:

- Specifies that the child has been or is being removed from the custody of the parent or parents of the child.
- Explains the options the relative has under federal, state, and local law to participate in the care and placement of the child, including any options that may be lost by failing to respond to the notice.

- Describes the requirements to become a foster family home and the additional services and supports that are available for children placed in such a home.
- If the state has elected the option to make kinship guardianship assistance payments, describes how the relative guardian of the child may subsequently enter into an agreement with the state to receive the payments. Wisconsin does not currently provide kinship guardianship assistance payments.

This draft modifies current law relating to temporary custody hearings under the Children's Code. Under the draft, the juvenile court must order the county department or, in Milwaukee County, DCF to conduct a diligent search in order to identify and provide notice to all adult relatives of the child within 30 days after the temporary custody hearing. The draft, for purposes of notification, defines "adult relative" as the child's grandparent, great-grandparent, aunt, uncle, or sibling who has attained 18 years of age. The draft also requires the county department or DCF to additionally notify any adult who is related to the child but is not an "adult relative", as defined in the draft, if that adult is recommended as a placement option by the parent. The county department or DCF may not provide notice to an adult relative if the county department or DCF has reason to believe that it would be dangerous to the child or to the parent if the child were placed with that adult relative.

The draft requires the notice to include all of the following:

- A statement that the child has been removed from the custody of the child's parent.
- A statement that the child may need a temporary or permanent placement outside of his or her home and an explanation of how the relative may request having the child placed with him or her.
- An explanation of the programs and services available to the relative if the child is placed with him or her as a foster care, kinship care, or other type of placement.
- An explanation of how to receive notice of future proceedings relating to the child if the relative provides contact information to the county department or DCF within the time specified in the notice.

The draft also provides that, at the temporary custody hearing, if the parent is present, he or she must be requested to provide the names of 3 relatives who are adults that the parent would like the court to consider as placement options for the child. If the parent is not present at the

hearing, the county department or DCF must make a reasonable effort to request that information from each parent.

Finally, the draft creates an exception to the confidentiality of child abuse and neglect records so that the county department or DCF may disclose information to an adult relative only to the extent necessary to facilitate placement of the child with the relative.

1 **SECTION 1.** 48.21 (3) (f) of the statutes is created to read:

2 48.21 (3) (f) If present at the hearing, the parent shall be requested to provide the names
3 and other identifying information of 3 relatives of the child who have attained 18 years of age
4 and whom the parent requests the court consider as placements for the child. If the parent does
5 not provide this information at the hearing, the county department or, in a county having a
6 population of 500,000 or more, the department shall make a reasonable effort to provide each
7 parent with the opportunity to provide this information.

NOTE: Provides that if a parent is present at a temporary custody hearing, the parent must be requested to provide the names and other identifying information of 3 relatives of the child who have attained 18 years of age and whom the parent requests the court to consider as placements for the child. If the parent does not provide this information at the hearing, the county department or, in Milwaukee County, DCF must make a reasonable effort to provide each parent with the opportunity to provide this information.

8 **SECTION 2.** 48.21 (5) (e) of the statutes is created to read:

9 48.21 (5) (e) 1. In this paragraph, “adult relative” means a child’s grandparent,
10 great-grandparent, aunt, uncle, or sibling, whether by blood, marriage, or legal adoption, who
11 has attained 18 years of age.

12 2. The court shall order the county department or, in a county having a population of
13 500,000 or more, the department to conduct a diligent search in order to identify and provide
14 notice to any adult relative of the child and any relative of the child who is an adult and who
15 is recommended by the child’s parent as a placement option within 30 days after the date of

1 the hearing. The county department or department may not provide notice to any relative if
2 the county department or DCF has reason to believe that it would be dangerous to the child
3 or to the parent if the child were placed with that adult relative. The notice shall include all
4 of the following:

5 a. A statement that the child has been removed from the custody of the child's parent.

6 b. A statement that the child may need a temporary or permanent placement outside of
7 his or her home and an explanation of how the relative may request having the child placed
8 with him or her.

9 c. An explanation of the programs and services available to the relative if the child is
10 placed with him or her as a foster care, kinship care, or other type of placement.

11 d. An explanation of how to receive notice of future proceedings relating to the child
12 if the relative provides contact information to the county department or the department.

NOTE: Provides that when the court orders a child to be continued in custody at the temporary custody hearing, the court must order the county department or DCF to conduct a diligent search in order to identify and provide notice to any adult relative of the child and any relative of the child who is an adult and who is recommended by the child's parent as a placement option within 30 days after the hearing. The county department or DCF may not provide notice to any relative if the county department or DCF has reason to believe that it would be dangerous to the child or to the parent if the child were placed with that adult relative. The notice must state that the child has been taken into custody and may need a temporary or permanent placement and explain various placement options for the relative and how to be contacted if the relative would like to have placement of the child.

COMMENT: 1. The draft creates a definition of "relative" that is narrower than the general definition under the Children's Code. The general definition of "relative" is a parent, stepparent, brother, sister, stepbrother, stepsister, half brother, half sister, brother-in-law, sister-in-law, first cousin, 2nd cousin, nephew, niece, uncle, aunt, stepuncle, stepaunt, or any person of a preceding generation as denoted by the prefix of grand, great, or great-great, whether by blood, marriage,

or legal adoption, or the spouse of any person named in this definition, even if the marriage is terminated by death or divorce.

Although the federal law requires the identification of “any adult relative”, it is not clear what definition of “relative” is contemplated by the federal legislation and whether the federal legislation permits the state to define “relative” for this purpose.

2. The draft requires relatives to be identified and notified within 30 days after the court orders that a child who has been taken into custody will be continued in custody. This finding is made at the temporary custody hearing which is held within 48 hours after the child is taken into custody, excluding Saturdays, Sundays, and legal holidays. The federal law requires identification and notification within 30 days after the child is taken into custody. The draft could be modified to count the 30 days from the date of the actual removal from the child’s home instead of from the hearing date.

1 **SECTION 3.** 48.981 (7) (a) 4m. of the statutes is created to read:

2 48.981 (7) (a) 4m. A child’s adult relative, as defined in s. 48.21 (5) (e) 1., only to the
3 extent necessary to facilitate placement with the relative.

NOTE: Creates an exception to the confidentiality of child abuse and neglect records to permit disclosure to adult relatives only to the extent necessary to facilitate placement with the relative.

COMMENT: Should this exception include disclosure to more relatives than “adult relatives”, as defined in the notification portion of the draft?

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(END)