

AS:jal;

02/27/2009

1       **AN ACT** *to amend* 48.38 (4) (bm); and *to create* 48.21 (3) (f), 48.21 (5) (e), 48.78 (2)  
2           (i) and 48.981 (7) (a) 4m. of the statutes; **relating to:** requiring notice to relatives  
3           when a child is taken into custody and disclosure of information to relatives for the  
4           purpose of facilitating a relationship or placement.

*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.

Current Wisconsin law also requires that DCF, the county department, or the licensed child welfare agency (“agency”) that is assigned primary responsibility for providing services to a child placed outside the home prepare a written permanency plan for the child if certain conditions are met.

Finally, under current law, records maintained by an agency under the Children’s Code and child abuse and neglect records are confidential and may be disclosed only under exceptions set forth in current law.

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. Under the draft, the county department or DCF must also notify a family friend who is identified by the child’s parent as a placement option. The county department or DCF may not provide notice to an individual 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 individual.

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 individual may request having the child placed with him or her.
- An explanation of the programs and services that may be available to the individual if the child is placed with him or her including foster care payments, kinship care payments, assistance with health care needs, child care assistance, and nutrition assistance.
- A description of the types of expenses the individual may incur if the child is placed in his or her home and whether and when the individual may be reimbursed for those expenses.
- An explanation of how to receive notice of future proceedings relating to the child if the individual 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 or family friends 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.

The draft also requires a child's permanency plan to include a statement of what efforts were made to comply with the notification requirements in the draft and to notify relatives and adult family friends who have been identified by the child's parent or the child as potential placements for the child.

Finally, the draft creates an exception to the confidentiality of agency and child abuse and neglect records so that the county department or DCF may disclose information to a relative of a child who is placed outside his or her home only to the extent necessary to facilitate the establishment of a relationship between the child and the relative or 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 or family friends who have attained  
 4           18 years of age and whom the parent requests the court consider as placements for the child.  
 5           If the parent does not provide this information at the hearing, the county department or, in a

1 county having a population of 500,000 or more, the department shall make a reasonable effort  
2 to provide each 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 or family friends 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.

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

4 48.21 (5) (e) 1. In this paragraph, “adult relative” means a child’s grandparent,  
5 great-grandparent, aunt, uncle, or sibling, whether by blood, marriage, or legal adoption, who  
6 has attained 18 years of age.

7 2. The court shall order the county department or, in a county having a population of  
8 500,000 or more, the department to conduct a diligent search in order to identify and provide  
9 notice to any adult relative of the child and any individual who is an adult and who is  
10 recommended by the child’s parent as a placement option within 30 days after the date of the  
11 hearing. The county department or department may not provide notice to a relative or other  
12 individual if the county department or the department has reason to believe that it would be  
13 dangerous to the child or to the parent if the child were placed with that individual. The notice  
14 shall include all of the following:

- 15 a. A statement that the child has been removed from the custody of the child’s parent.  
16 b. A statement that the child may need a temporary or permanent placement outside of  
17 his or her home and an explanation of how the individual may request having the child placed  
18 with him or her.

1           c. An explanation of the programs and services that may be available to the individual  
2 if the child is placed with him or her including foster care payments, kinship care payments,  
3 assistance with health care needs, child care assistance, and nutrition assistance.

4           d. A description of the types of expenses the individual may incur if the child is placed  
5 in his or her home and whether and when the individual may be reimbursed for those expenses.

6           e. An explanation of how to receive notice of future proceedings relating to the child  
7 if the individual 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 or family friend 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 an individual 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 individual. The notice must state that the child has been taken into custody and may need a temporary or permanent placement, explain various programs and services that may be available to the individual, describe expenses that may be incurred if the child is placed with the individual, and explain how to be contacted if the individual 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.** 48.38 (4) (bm) of the statutes is amended to read:

2           48.38 (4) (bm) A statement as to the availability of a safe and appropriate placement  
3 with a fit and willing relative of the child and, if of what efforts were made to comply with  
4 an order under s. 48.21 (5) (e) and to notify relatives and adult family friends who have been  
5 identified by the child's parent or the child as potential placements for the child. If a decision  
6 is made not to place the child with an available relative or individual identified by the child's  
7 parent or the child, a statement as to why placement with the relative or other individual is not  
8 safe or appropriate.

**NOTE:** Modifies current law relating to permanency plans for children placed outside their home so that the plan must include a statement of what efforts were made to comply with an order to notify certain relatives and adult family friends of a child, under SECTION 2 of the draft, and to notify relatives and adult family friends who have been identified by the child's parent or the child as potential placements for the child.

9           **SECTION 4.** 48.78 (2) (i) of the statutes is created to read:

10          48.78 (2) (i) Paragraph (a) does not prohibit an agency from disclosing information to  
11 a relative, as defined in s. 48.02 (15), of a child placed outside of his or her home only to the  
12 extent necessary to facilitate the establishment of a relationship between the child and the  
13 relative or placement with the relative. [In this paragraph, "relative" includes a relative whose  
14 relationship is derived through a parent of the child whose parental rights are terminated.]

15          **SECTION 5.** 48.981 (7) (a) 4m. of the statutes is created to read:

1           48.981 (7) (a) 4m. A relative, as defined in s. 48.02 (15), of a child placed outside of his  
2 or her home only to the extent necessary to facilitate the establishment of a relationship  
3 between the child and the relative or placement with the relative. [In this subdivision,  
4 “relative” includes a relative whose relationship is derived through a parent of the child whose  
5 parental rights are terminated.]

**NOTE:** SECTIONS 4 and 5 create an exception to the confidentiality of social service agency records under the Children’s Code and child abuse and neglect records to permit disclosure to a relative of a child placed outside of his or her home only to the extent necessary to establish a relationship between the child and the relative or placement with the relative.

**COMMENT:** The bracketed language in SECTIONS 4 and 5 would permit an agency to disclose confidential information to a relative who is no longer the child’s legal relative due to termination of one or both of the child’s parents’ parental rights. Should the bracketed language be included?

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(END)