

1 **AN ACT** *to create* 48.21 (4m) of the statutes; **relating to:** an order of a physical,
2 psychological, mental, or developmental examination or an alcohol and other drug
3 abuse assessment at the ch. 48 hearing for a child in 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 Joint Legislative Council's Special Committee on Permanency for Young Children in the Child Welfare System.

Background

Under current statutes, if a child has been removed from his or her home, taken into custody, and not released, a hearing must be held to determine whether the child should continue to be held in custody. The continued custody hearing (commonly referred to as a temporary custody hearing) must be conducted by a judge or circuit court commissioner assigned to exercise jurisdiction under the Children's Code (juvenile court). The continued custody hearing must be held within 48 hours of the time the decision to hold the child in custody was made, excluding Saturdays, Sundays, and legal holidays.

In most cases, by the time the continued custody hearing is conducted, a petition alleging that the child is in need of protection or services (CHIPS) must be filed. If a petition has not been filed, in certain circumstances, the child may be held in custody for an additional 72 hours from the time of the continued custody hearing, excluding Saturdays, Sundays, and legal holidays. For example, the child may be held in custody for an additional 72 hours if, as a result of the facts brought forth at the hearing, the juvenile court determines that probable cause exists to believe that the parent, guardian, or legal custodian of the child or other responsible adult is neglecting, refusing, unable, or unavailable to provide adequate supervision and care.

Also, under current law, a juvenile court may order a physical, psychological, mental, or developmental examination or an alcohol and other drug abuse (AODA) assessment of a child that conforms to the criteria specified under Wisconsin law. The court may also order an examination or assessment of a parent, guardian, or legal custodian whose ability to care for a child is at issue before the juvenile court, or of

an expectant mother whose ability to control her use of alcohol beverages, controlled substances, or controlled substance analogs is at issue before the juvenile court.

An examination or assessment may be ordered by the juvenile court after the filing of a CHIPS petition, and upon a finding by the juvenile court that reasonable cause exists to warrant such an examination or assessment. Before the court may order the examination or assessment, the court must also hear any objections made by the child or the child's parents, guardian, or legal custodian to the request for such an examination or assessment.

The Bill Draft

This draft directs that when a juvenile court orders that a child should continue in custody and not return to the child's home, the juvenile court may order a physical, psychological, mental, or developmental examination, or an AODA assessment of the parent, guardian, or legal custodian whose ability to care for the child is at issue before the court.

1 **SECTION 1.** 48.21 (4m) of the statutes is created to read:

2 48.21 **(4m)** PHYSICAL, PSYCHOLOGICAL, MENTAL, OR DEVELOPMENTAL EXAMINATION. An
3 order to hold a child in custody may include an order for an examination or assessment under
4 s. 48.295 of a parent, guardian, or legal custodian whose ability to care for the child is at issue
5 before the court.

NOTE: This SECTION specifies that a juvenile court has the authority to order a physical, psychological, mental, or developmental examination, or an AODA assessment that conforms to the criteria specified under current law, of a parent, guardian, or legal custodian at the continued custody hearing to determine whether a child should continue to be placed in out-of-home care.

COMMENT: Should this SECTION limit how the assessment or examination may be used in further proceedings? For example, the draft could specify that the assessment or examination may only be used for purposes of providing services or treatment and may not be used as evidence against the parent at the CHIPS fact-finding hearing.

Should the juvenile court be required to make a finding that reasonable cause exists to warrant a physical, psychological, mental, or developmental examination or AODA? For example, Minnesota's continued custody hearing procedures authorize a juvenile court to order

a chemical dependency evaluation, mental health evaluation, medical examination, and parenting assessment for the parent and does not specifically require the court to make a reasonable cause finding.

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(END)