



## WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 8

TO: MEMBERS OF THE SPECIAL COMMITTEE ON PERMANENCY FOR YOUNG CHILDREN IN THE CHILD WELFARE SYSTEM

FROM: Melissa Schmidt, Staff Attorney

RE: Relative Searches in Wisconsin and Minnesota

DATE: November 8, 2012

At the July 24 and September 11, 2012 meetings of the Special Committee on Permanency for Young Children in the Child Welfare System, the committee discussed the process of locating family members in child welfare cases, commonly referred to as “family finding” or “relative searches.” At the September 11 meeting, committee members requested information regarding the relative search process required under Minnesota law. This Memo provides a brief overview of Wisconsin and Minnesota law regarding relative searches.

### **RELATIVE SEARCHES UNDER WISCONSIN LAW**

#### **When Relative Searches are Conducted**

Under current law, if a child is removed from the home, taken into custody, and is not released, the court authorized to exercise jurisdiction under the Children’s Code (juvenile court) must hold a temporary custody hearing, generally within 48 hours of the time the decision to hold the child in custody was made to determine whether the child should continue to be held in custody. [s. 48.21 (1) (a), Stats.]

Current law specifies that if the court orders the child to remain in custody, then it must also order the county department, the Department of Children and Families (DCF), or the agency primarily responsible for providing services to the child under the custody order (hereinafter, “agency”) to conduct a diligent search for relatives within 30 days after the child is removed from the custody of the child’s parent unless the child is returned to his or her home within that period. The purpose of the search is to

locate relatives and provide notice to them.<sup>1</sup> In its dispositional order or change of placement order, the court must also order that the agency conduct a relative search within 30 days of the child's removal, unless it has already been conducted. However, the agency may not provide notice to a relative at any time if the agency has reason to believe that it would be dangerous to the child or to the parent if the child were placed with that relative. [ss. 48.21 (5) (e) 2., 48.355 (2) (cm) and 48.357 (2v) (d), Stats.]

### **Which Adult Relatives are Included in the Search**

Wisconsin statutes direct that the search must be to find all of the following persons:

- All "adult relatives" of the child, defined as a grandparent, great-grandparent, aunt, uncle, brother, sister, half brother, or half sister of a child, whether by blood, marriage, or legal adoption, who has attained the age of 18 years of age.
- Relatives of the child 18 years of age or over named by the parent whose homes the parent requests the court to consider as placement options for the child. (The juvenile court may also order a diligent search for other individuals 18 years of age or over named by the parent as placement options for court consideration.)

[s. 48.21 (5) (e) 1. and 2., Stats.]

### **Notice Given to Adult Relatives During the Relative Search**

Notice that must be given to adult relatives during the relative search process includes all of the following information:

- A statement that the child has been removed from the custody of the child's parent.
- A statement that explains the options that the relative has under state or federal 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.
- A description of the requirements to obtain a foster home license or to receive kinship care or long-term kinship care payments and of the additional services and supports that are available for a child placed in a foster home or in the home of a person receiving those payments.
- A statement advising the relative that he or she may incur additional expenses if the child is placed in his or her home and that reimbursement for some of those expenses may be available.

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<sup>1</sup> Under Wisconsin law, a parent who is taken into custody is asked for names of adult relatives and other adults the court could consider for placement of the child. This Memo does not discuss agency contact with adults who are not relatives.

- The name and contact information of the agency that removed the child from the custody of the child's parent.

[s. 48.21 (5) (e) 2., Stats.]

### **Disclosure of Information to Relatives**

For purposes of conducting a relative search, Wisconsin authorizes an agency to disclose information, including reports, records, and notices to an Indian tribal agent related to child abuse or neglect to a relative, but only the extent necessary to facilitate the establishment of a relationship between the child and the relative or a placement of the child with the relative. [ss. 48.78 (2) (j) and 48.981 (7) (a) 4m., Stats.]

### **Notice to Relatives for Purposes of Permanent Placement or Termination of Parental Rights Proceedings**

Wisconsin statutes require that notice be given of a permanency hearing to the relative with whom the child is living. Also, a relative guardian is required to receive notice of termination of parental rights (TPR) proceedings. [ss. 48.38 (5m) (b) and 48.42 (2g), Stats.]

### **RELATIVE SEARCHES UNDER MINNESOTA LAW**

#### **When Relative Searches are Conducted**

Unlike Wisconsin, Minnesota statutes do not require the juvenile court to order that a relative search be conducted. Instead, the Minnesota statutes specify that the agency must “exercise due diligence to identify and notify adult relatives prior to placement or within 30 days after the child’s removal from the parent ... and shall be comprehensive in scope.” The statutes do, however, expressly state that a juvenile court may order the agency to reopen its search for relatives when it is in the child’s best interest to do so. The statutes specify that an agency may use any reasonable means of identifying and locating relatives including the Internet or other electronic means of conducting a search. Also, the relative searches must comply with the Indian Child Welfare Act (ICWA) to prevent the break-up of the Indian family. [s. 260C.221 (a) (intro) and (b), Minn. Stat.]

#### **Which Adult Relatives are Included in the Search**

While Wisconsin requires the relative search to be for adult relatives of the child, Minnesota specifies that the relative search must include both maternal relatives and paternal relatives of the child. Minnesota does not have a definition of “relative” that is specific to relative searches. The definition of who a relative is under Minnesota statute is similar to the general definition of “relative” in the Children’s Code and includes an Indian child’s extended family members. It is, therefore, broader than Wisconsin’s definition of an adult relative for purposes of a relative search:

A person who is related to the child by blood, marriage, or adoption, or an individual who is an important friend with whom the child has resided or had significant contact. For an Indian child, relative includes members of the extended family as defined by the law or custom of the Indian child’s

tribe or, in the absence of law or custom, nieces, nephews, or first or second cousins, as provided in the Indian Child Welfare Act of 1978, United States Code, title 25, section 1903 [ICWA]. [s. 260C.007, subd. 27, Minn. Stat.]

Specifically, the statutes provide that if a child's parent refuses to give the agency information "sufficient to identify the maternal and paternal relatives of the child," the agency must ask the juvenile court to order the parent to provide the necessary information. If a parent makes an explicit request that a specific relative not be contacted or considered for placement due to safety reasons, including past family or domestic violence, the agency must bring the parent's request to the attention of the juvenile court so that it can determine whether the parent's request is consistent with the best interests of the child. The agency must not contact the specific relative when the juvenile court finds that contacting the specific relative would endanger the parent, guardian, child, sibling, or any family member. [s. 260C.221 (b), Minn. Stat.]

Minnesota statutes also require the agency to obtain information from the child "in an age-appropriate manner" about whom the child considers to be family members and important friends with whom the child has resided or had significant contact.

#### **Notice Given to Adult Relatives During the Relative Search**

When an agency conducts a relative search, the adult relatives must be given notice regarding all of the following:

- The child's need for a foster home, the option to become a placement resource for the child, and the possibility of the need for a permanent placement for the child.
- The adult relative's responsibility to keep the agency and the court informed of their current address in order to receive notice in the event that a permanent placement is sought for the child and to receive notice of the permanency progress review hearing.<sup>2</sup>
- The relative's ability to participate in the care and planning for the child, including a statement that the opportunity for such participation may be lost by failing to respond to the notice.<sup>3</sup>

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<sup>2</sup> A relative who fails to provide a current address to the agency and the court forfeits the right to receive notice of the possibility of permanent placement and of the permanency progress review hearing. However, a decision by a relative not to be identified as a potential permanent placement resource or participate in planning for the child at the beginning of the case does not affect whether the relative is considered for placement of the child with that relative later. [s. 260C.221 (a) (2), Minn. Stat.]

<sup>3</sup> "Participate in the care and planning" includes participation in case planning for the parent and child, identifying the strengths and needs of the parent and child, supervising visits, providing respite and vacation visits for the child, providing transportation to appointments, suggesting other relatives who might be able to help support the case plan, and, to the extent possible, helping to maintain the child's familiar and regular activities and contact with friends and relatives. [s. 260C.221 (a) (3), Minn. Stat.]

- The family foster care licensing requirements and supports that are available for relatives and children who reside in a family foster home.
- The relatives' right to ask to be notified of any court proceedings regarding the child and to attend the hearings, and the relatives' right or opportunity to be heard by the.<sup>4</sup>

[s. 260C.221 (a) (1)-(5), Minn. Stat.]

### **Disclosure of Information to Relatives**

Under Minnesota law, the agency *may* disclose private data, as defined under Minnesota law, to relatives for the “purpose of locating and assessing a suitable placement.” Also, the agency *must* disclose data that is “necessary to facilitate possible placement with relatives and to ensure that the relative is informed of the needs of the child so the relative can participate in planning for the child and be supportive of services to the child and family.” [s. 260.221 (b), Minn. Stat.]

### **Court Review of Relative Searches and Agency Continued Responsibility**

Unlike Wisconsin, Minnesota statutes require the agency to report to the juvenile court about its relative search at “a regularly scheduled hearing” no later than three months after the child is placed in foster care. The agency’s report must include all of the following information:

- Its efforts to identify maternal and paternal relatives of the child and to engage the relatives in providing support for the child and family, and documentation that the relatives have been provided the notice required under current law.
- Its decision regarding placing the child with a relative, and asking relatives to visit or maintain contact with the child in order to support family connections for the child, when placement with a relative is not possible or appropriate.

[s. 260C.221 (c), Minn. Stat.]

The agency must also disclose data about particular relatives identified, searched for, and contacted for the purposes of the juvenile court’s review of the agency’s due diligence. When the juvenile court is satisfied that the agency has exercised due diligence to identify relatives and provide the required notice, the juvenile court may find that reasonable efforts have been made to conduct the relative search. However, if the court is not satisfied that the agency has exercised due diligence to identify relatives and provide the required notice, the court may order the agency to continue its search and notice efforts and to report back to the court. [s. 260C.221 (d) and (e), Minn. Stat.]

After the juvenile court has found that the agency has made reasonable efforts to conduct the relative search, the agency has the continuing responsibility to appropriately involve the relatives who have responded to the notice, in planning for the child. Unlike Wisconsin statutes, Minnesota

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<sup>4</sup> The right to be heard does not require that the relative become a party to a review or hearing solely on the basis of the notice and right to be heard. [s. 260C.152, subd. 5, Minn. Stat.]

specifically states that the agency also has the **continued responsibility** to consider relatives as a permanent placement option. [s. 260C.221 (a), Minn. Stat.]

**Notice to Relatives for Purposes of Permanent Placement or Termination of Parental Rights Proceedings**

In addition to notice given to relatives at the time of the relative search, additional notice must generally be given to relatives if the agency determines that it is necessary to prepare for out-of-home permanent placement determination proceedings, or anticipates that a TPR petition will be filed. Notice must also generally be given to any adult with whom the child is currently residing, any adult with whom the child has resided for one year or longer in the past, and any adult who has maintained a relationship or exercised visitation with the child as identified in the agency case plan. The notice must include all of the following information:

- That a permanent home is sought for the child and that the individual receiving the notice may indicate to the agency their interest in providing a permanent home.
- That within 30 days of receipt of the notice an individual receiving the notice must indicate to the agency the individual's interest in providing a permanent home for the child or that the individual may lose the opportunity to be considered for a permanent placement.

[s. 260C.221 (g), Minn. Stat.]

There are a couple of exceptions to the notice requirement regarding permanent placement proceedings or an anticipated TPR petition. Notice is not required if ICWA specifies otherwise. Also, Minnesota statutes allow the agency to ask the court to modify or completely relieve it of the duty to send notice. A juvenile court's decision to modify or relieve the agency of its duty to send notice must be "consistent with the best interests, safety, permanency, and welfare of the child." [s. 260C.221 (f), Minn. Stat.]

If you have any questions, please feel free to contact me directly at the Legislative Council staff offices.

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