

MS:ksm;

11/03/2012

1 **AN ACT** *to amend* 48.207 (1) (b) and 48.38 (4) (fg) (intro.); and *to create* 48.02 (1dm),
 2 48.02 (13m) and 48.38 (4) (fk) of the statutes; **relating to:** requiring the permanency
 3 goal of permanent placement with a fit an willing relative if concurrent planning is
 4 conducted; creating a placement preference with an adult relative of a parental
 5 homicide victim; and creating definitions.

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.

This draft requires that when the department of children and families, a county human or social services department, or an agency primarily responsible for providing services under a court order (social services agency) engages in concurrent planning, that the concurrent plan always include the permanency goal of permanent placement with a fit and willing relative, unless the agency determines that there is a reason why this goal would not be in the best interests of the child. If the agency makes that determination, the concurrent plan shall include a statement of that reason.

The draft also creates a placement preference in cases where a child is the child of a parent who is the victim of a homicide for which the child’s other parent has been charged with or convicted of committing, aiding, or abetting in the commission of, soliciting, conspiring, or attempting to commit a homicide of the parent (parental homicide victim). Under the draft, if the child is the child of a parental homicide victim, the social services agency must give preference for placing the child with a fit and willing relative that is an adult relative of a parental homicide victim when the child is being held in temporary custody and when the social services agency is engaging in permanency planning.

6 **SECTION 1.** 48.02 (1dm) of the statutes is created to read:

7 48.02 (**1dm**) “Adult relative of a parental homicide victim” means grandparent,
 8 great–grandparent, aunt, uncle, brother, sister, half brother, or half sister of a parental

1 homicide victim, whether by blood, marriage, or legal adoption, who has attained 18 years of
2 age.

NOTE: This SECTION creates a definition of an “adult relative of a parental homicide victim”. An adult relative of a parental homicide victim is defined as a grandparent, great-grandparent, aunt, uncle, brother, sister, half brother, or half sister of a parental homicide victim, whether by blood, marriage, or legal adoption, who has attained 18 years of age.

3 **SECTION 2.** 48.02 (13m) of the statutes is created to read:

4 48.02 **(13m)** “Parental homicide victim” means a parent who is deceased and is the
5 homicide victim or alleged homicide victim in a case in which the child’s other parent has been
6 charged with or convicted of committing, aiding, or abetting in the commission of, or
7 soliciting, conspiring, or attempting to commit a violation of s. 940.01, 940.02, 940.05 940.06,
8 940.07, 940.08, 940.09, or 940.10 or under any comparable federal law or law of another state
9 of the parent’s homicide or alleged homicide.

NOTE: This SECTION creates a definition of “parental homicide victim”. A parental homicide victim is defined as a parent who is deceased and is either a victim or alleged victim in a criminal case in which the child’s other parent has been either criminally charged or convicted of the parent’s homicide or alleged homicide.

10 **SECTION 3.** 48.207 (1) (b) of the statutes is amended to read:

11 48.207 **(1)** (b) The home of a relative, except that a child may not be held in the home
12 of a relative if the relative has been convicted under s. 940.01 of the first-degree intentional
13 homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of a parent of the child,
14 and the conviction has not been reversed, set aside or vacated, unless the person making the
15 custody decision determines by clear and convincing evidence that the placement would be
16 in the best interests of the child. The person making the custody decision shall consider the
17 wishes of the child in making that determination. If the child has a parent who is a parental

1 homicide victim, the person making the decision shall give preference to a relative who is an
2 adult relative of a parental homicide victim unless that placement is not in the best interests
3 of the child.

NOTE: This SECTION requires that when a child has a parent who is a parental homicide victim and the child is being held in nonsecure custody, the person who is making the decision to hold a child in nonsecure custody must give preference to placing the child with a relative that is an adult relative of the parental homicide victim unless that placement is not in the best interests of the child. This placement preference also applies to a juvenile court when ordering that a child continue to be placed in out-of-home care at the temporary custody hearing.

4 **SECTION 4.** 48.38 (4) (fg) (intro.) of the statutes is amended to read:

5 48.38 (4) (fg) (intro.) The goal of the permanency plan or, if the agency is engaging in
6 concurrent planning, as defined in s. 48.355 (2b) (a), the permanency and concurrent
7 permanency goals of the permanency plan. If a goal of the permanency plan is to place the
8 child for adoption, with a guardian, or with a fit and willing relative, the permanency plan shall
9 include the rationale for deciding on that goal and the efforts made to achieve that goal,
10 including, if appropriate, through an out-of-state placement. If the goal of the permanency
11 plan is to place the child with a fit and willing relative and the child is the child of a parental
12 homicide victim, the agency shall give preference to a fit and willing relative who is an adult
13 relative of a parental homicide victim unless that placement is not in the best interests of the
14 child. Subject to par. (fk), the agency determines under s. 48.355 (2b) (b) to engage in
15 concurrent planning, the permanency plan shall include the rationale for that determination
16 and a description of the concurrent plan. The agency shall determine one or more of the
17 following goals to be the goal or goals of a child's permanency plan:

18 **SECTION 5.** 48.38 (4) (fk) of the statutes is created to read:

1 48.38 (4) (fk) If the agency engages in concurrent planning under par. (fg), the
2 permanency goal of permanent placement with a fit and willing relative, unless the agency
3 determines that this goal [currently] would not be in the best interests of the child. If the child
4 has a parent who is a parental homicide victim, the agency shall give preference to a fit and
5 willing relative that is an adult relative of a parental homicide victim unless that placement
6 is not in the best interests of the child. If the agency determines that placement with a fit and
7 willing relative is not in the child's best interests, the concurrent plan shall include a statement
8 of that reason.

NOTE: SECTIONS 4 and 5 require that when a child has a parent who is a parental homicide victim, and the goal is to place the child with a fit and willing relative, a social services agency must give preference in the permanency plan to placing the child with a fit and willing relative who is an adult relative of the parental homicide victim (grandparent, great-grandparent, aunt, uncle, brother sister half brother, or half sister of a parent, whether by blood marriage or legal adoption, who has attained 18 years of age).

These SECTIONS also require that when the social services agency engages in concurrent planning, the concurrent plan must include the permanency goal of permanent placement of the child with a fit and willing relative. The agency is not required to include this goal if it determines that there is a reason why this goal is not in the best interests of the child. If the agency makes that determination, the concurrent plan must include a statement of that reason.

COMMENT: If the agency determines that placement with a fit and willing relative is not in the best interests of the child, should this determination be based upon what is "currently" not in the best interests of the child? The use of the term "currently" is used, for example, when a social services agency determines that some other planned permanent living arrangement is the permanency goal for the child.

9 **SECTION 6. Initial applicability.**

10 (1) This act first applies to petitions filed under section 48.13 of the statutes on the
11 effective date of this subsection.

NOTE: This SECTION specifies that the provisions of this draft first apply to a new children in need of protection or services petition that is filed under s. 48.13, on the effective date of this draft.

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(END)