

1 **AN ACT** *to amend* 48.295 (1); and *to create* 48.21 (5m) of the statutes; **relating to:** an
2 order of a physical, psychological, mental, or developmental examination or an
3 alcohol and other drug 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 temporary 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 temporary 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 temporary 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.

Bill Draft

This draft authorizes a juvenile court to order a physical, psychological, mental, or developmental examination, or an AODA assessment that conforms to the criteria of current law, of a parent, guardian, or legal custodian at the temporary custody hearing regardless of whether a CHIPS petition has been filed. The juvenile court must base its decision upon a finding that reasonable cause exists to warrant such an examination or assessment. The order for an examination or assessment at the temporary custody hearing, or the results of such an examination or assessment, or both may not be introduced as evidence at a CHIPS fact-finding hearing if the parent, guardian, or legal custodian objects to this evidence being introduced.

1 **SECTION 1.** 48.21 (5m) of the statutes is created to read:

2 48.21 **(5m)** PHYSICAL, PSYCHOLOGICAL, MENTAL, OR DEVELOPMENTAL EXAMINATION.

3 Upon a finding by a judge or circuit court commissioner that reasonable cause exists to warrant
4 an examination or assessment under s. 48.295 of a parent, guardian, or legal custodian whose
5 ability to care for the child is at issue before the court, the judge or circuit court commissioner
6 may order such an examination or assessment regardless of whether a petition has been filed
7 at the time of the hearing. The order for an examination or assessment under this subsection,
8 or the results of such an examination or assessment, or both may not be introduced as evidence
9 in a hearing under s. 48.31, if the parent, guardian, or legal custodian objects to the order or
10 results or both being introduced at the hearing under s. 48.31.

11 **SECTION 2.** 48.295 (1) of the statutes is amended to read:

1 48.295 (1) ~~After~~ Except as provided in s. 48.21 (5m), after the filing of a petition and
2 upon a finding by the court that reasonable cause exists to warrant a physical, psychological,
3 mental, or developmental examination or an alcohol and other drug abuse assessment that
4 conforms to the criteria specified under s. 48.547 (4), the court may order any child coming
5 within its jurisdiction to be examined as an outpatient by personnel in an approved treatment
6 facility for alcohol and other drug abuse, by a physician, psychiatrist or licensed psychologist,
7 or by another expert appointed by the court holding at least a master's degree in social work
8 or another related field of child development, in order that the child's physical, psychological,
9 alcohol or other drug dependency, mental, or developmental condition may be considered.
10 The court may also order a physical, psychological, mental, or developmental examination or
11 an alcohol and other drug abuse assessment that conforms to the criteria specified under s.
12 48.547 (4) of a parent, guardian, or legal custodian whose ability to care for a child is at issue
13 before the court or of an expectant mother whose ability to control her use of alcohol
14 beverages, controlled substances, or controlled substance analogs is at issue before the court.
15 The court shall hear any objections by the child or the child's parents, guardian, or legal
16 custodian to the request for such an examination or assessment before ordering the
17 examination or assessment. The expenses of an examination, if approved by the court, shall
18 be paid by the county of the court ordering the examination in a county having a population
19 of less than 500,000 or by the department in a county having a population of 500,000 or more.
20 The payment for an alcohol and other drug abuse assessment shall be in accordance with s.
21 48.361.

NOTE: SECTIONS 1 and 2 authorize a juvenile court to order a physical, psychological, mental, or developmental examination, or an AODA assessment that conforms to the criteria of current law, of a parent, guardian, or legal custodian at the temporary custody hearing regardless of whether a CHIPS petition has been filed. The juvenile court must

base its decision upon a finding that reasonable cause exists to warrant such an examination or assessment. The order for an examination or assessment that is ordered at the temporary custody hearing, or the results of such an examination or assessment, or both may not be introduced as evidence at a CHIPS fact-finding hearing if the parent, guardian, or legal custodian objects to this evidence being introduced.

COMMENT: This draft does not limit how the order or results of an examination or assessment that is ordered under s. 48.295 may be used. Does the committee want to amend s. 48.295 to be consistent with the evidentiary limitation placed upon the order or results of the examination or assessment ordered at the temporary custody hearing? If so, s. 48.295 also allows the juvenile court to order an examination or assessment of a child. Does the committee want the evidentiary limitation to also apply to a child?

1 **SECTION 3. Initial applicability.**

2 (1) This act first applies to a hearing conducted under section 48.21 of the statutes on
3 the effective date of this subsection.

NOTE: This SECTION specifies that the provisions of this draft first apply to new temporary custody hearings held under s. 48.21, stats., on the effective date of this draft.

4 (END)