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October 19, 2005

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Assembly Bill 521: Adoption and Termination of Parental Rights

Assembly Bill 521 contains numerous changes to state law relating to the termination of parental rights (TPR) and adoption. The bill is based on the recommendations of the Legislative Council Special Committee on Adoption and Termination of Parental Rights. These changes relate to: (a) declarations of parental interest; (b) grounds for involuntary TPRs; (c) TPR and child in need of protection and services (CHIPS) determinations; (d) TPR proceedings; (e) adoption law; (f) fair hearings for the head of a foster home, treatment foster home, or group home; and (g) appeals in licensing decisions.

The Assembly Committee on Children and Families adopted three amendments to AB 521. Assembly Amendment 1: (a) deletes the provisions in the bill that specify that a parent who is incarcerated and involved in a CHIPS order would receive only the services ordered by the court that are available in the correctional facility; (b) provides that a person who is petitioning to terminate the parental rights of a father of a nonmarital child under the age of one whose mother is voluntarily terminating her parental rights to place the child for adoption, may, instead of shall, require the mother to complete an affidavit providing information about the alleged father who is identified to the court; (c) specifies that if an affidavit is not filed with the petition, notice shall be given to an alleged father; and (d) requires the Department of Health and Family Services (DHFS) to pay for preadoption training for prospective adoptive parents of children in the child welfare system.

In addition to some technical changes, Assembly Amendment 2 provides that a person who may be the father of a nonmarital child whose paternity has not been established may contest a petition to terminate his parental rights, present evidence relevant to the issue of disposition, and make alternative dispositional recommendations, if the person appears at the hearing, establishes paternity, and proves all of the following by a preponderance of the evidence: (a) that the person

resides and has resided in another state where the mother of the child resided or was located at the time of or after the conception of the child; (b) that the mother left that state without notifying or informing that person that she could be located in this state; (c) that the person attempted to locate the mother through every reasonable means, but did not know or have reason to know that the mother was residing or located in this state; and (d) that the person had complied with the requirements of the state where the mother previously resided or was located to protect and preserve his paternal interests in matters affecting the child.

Assembly Amendment 3 specifies that, in an involuntary TPR action, the court may find that grounds exist for involuntary TPR if the parent's parental rights to another child have been terminated and if the child has been adjudged CHIPS under the ground of being at risk of abuse or neglect, if it is found that the parent has failed to remedy the conditions responsible for court intervention and there is a substantial likelihood that the parent will not remedy those conditions within the following nine-month period.

On September 9, 2005, the Assembly Committee on Children and Families recommended passage of AB 521, as amended by AA 1, AA 2, and AA 3, by a vote of 4 to 2.

SUMMARY OF AMENDED BILL

This summary of AB 521, as amended, was jointly prepared by staff at the Legislative Council and the Legislative Fiscal Bureau.

Declarations of Paternal Interest

Current Law. Under current law, a man claiming to be the father of a nonmarital child who is not adopted and whose parents have not married may file a declaration of his interest in matters affecting the child with DHFS. The declaration may be filed at any time before the termination of the father's parental rights. The declaration must be in writing and must be signed by the person declaring the paternal interest.

DHFS maintains a file containing records of declarations of paternal interest. DHFS may not release these records except under a court order or to the Department of Workforce Development (DWD) or a county child support agency upon request by DWD or the child support agency for purposes of establishing paternity or enforcing child support or upon request by any other person with a direct and tangible interest in the record.

A person who files a declaration of paternal interest is entitled to receive notice of a proceeding to terminate his parental rights to the child. In addition, the following must receive notice of a TPR proceeding under current law: (a) a person or persons alleged to the court to be the father of the child or who may, based upon the statements of the mother or other information presented to the court, be the father of the child, unless that person has waived the right to notice; or

(b) a person who has lived in a familial relationship with the child and who may be the father of the child.

Notice is generally not required to be given, however, to a person who may be the father of a child conceived as a result of a sexual assault if a physician attests to his or her belief that a sexual assault has occurred or if the person who may be the father has been convicted of sexual assault for conduct which may have led to the child's conception. A person who is not given notice under this provision does not have standing to appear and contest the termination of his parental rights.

If a man who alleges that he is the father of the child appears at the TPR hearing and wishes to contest the termination of his parental rights, the court must set a date for a hearing on the issue of paternity or, if all parties agree, the court may immediately commence hearing testimony on the issue of paternity. The man must prove paternity by clear and convincing evidence.

If the child is being placed for adoption, before holding a hearing on the adoptive placement and TPR petitions, the court must ascertain whether the child's paternity has been established. If any person has filed a declaration of paternal interest, the court must determine the rights of that person. If the child's paternity has not been established and if no person has filed a declaration, the court must attempt to ascertain the paternity of the child. The court may not proceed with the hearing on a placement or TPR petition unless the parental rights of the nonpetitioning parent, whether known or unknown, have been terminated.

At the final adoption hearing, the court must establish whether the rights of any persons who have filed declarations of paternal interest have been determined or whether the child's paternity has been established. If the court finds that no such determination has been made, the court must proceed to ascertain the paternity of the child and the rights of any person who has filed a declaration before it may take any action on the petition for adoption.

AB 521. Under the bill, a declaration of paternal interest must be filed before the child's birth or within 14 days after the child's birth unless an affidavit, as described below has been filed, and a declaration may be revoked at any time. The bill also requires a declaration or revocation to be verified upon oath or affirmation and, in the case of a minor, to be signed by the parent or guardian of the minor.

DHFS is required to publicize information about declarations of paternal interest in a manner calculated to provide maximum notice to all persons who might claim to be the father of a nonmarital child. This information must include: (a) that a person claiming to be the father of a nonmarital child may affirmatively protect his parental rights by filing a declaration of interest; (b) the procedures for filing a declaration of interest; and (c) the consequences of filing or not filing a declaration. The bill allows DHFS to publicize this information by posting the information on the Internet, by creating a pamphlet for use by schools and health care providers, and by requiring agencies that provide services under contract with DHFS to provide the information to clients.

DHFS is required to keep confidential and may not open to public inspection or disclose the contents of any declaration, revocation of a declaration, or response to a declaration, except: (a) by order of the court for good case shown; (b) a copy of a declaration filed with DHFS must be sent to the mother at her last-known address, as required under current law; and (c) a court in a CHIPS, juveniles in need of protection or services (JIPS), TPR, or adoption proceeding (or under a substantially similar law of another state) or a person authorized to file a TPR, adoption, or JIPS petition (or under a substantially similar law in another state) may request DHFS to search its files to determine whether a person who may be the father of the child who is the subject of the proceeding has filed a declaration and if he has, DHFS must issue a copy of the declaration to the requester and if he has not, DHFS must issue a statement that no declaration could be located. The bill permits DHFS to require that a person who requests a search for a declaration to pay a reasonable fee that is sufficient to defray the costs to DHFS of maintaining its file of declarations and publicizing information relating to declarations of paternal interests. The bill specifies that any person who obtains any information about the declaration may use or disclose the information only for the purposes of a CHIPS, JIPS, TPR, or adoption proceeding or under a substantially similar law in another state.

A person who makes a false statement in a declaration, revocation of a declaration, or response to a declaration that the person does not believe is true is subject to prosecution for false swearing. False swearing is a Class A misdemeanor punishable by a fine not to exceed $10,000 or imprisonment not to exceed nine months, or both. Also, a person who intentionally obtains, uses, or discloses information relating to a declaration that is confidential may be fined up to $1,000 or imprisoned for up to 90 days, or both.

The bill also creates a new provision under which the petitioner for an involuntary TPR of an alleged father of a nonmarital child who is under one year of age may file, with the petition, an affidavit signed by the birth mother if the mother has voluntarily consented to or seeks to voluntarily consent to the termination of her parental right to the child. The affidavit must include all of the following: (a) a statement that the mother has voluntarily consented to, or seeks to voluntarily consent to, the termination of her parental rights to the child; (b) a statement acknowledging that the mother has been asked to identify the father of the child; (c) a statement that the mother knows and is identifying the father or that she does not know the identity of the father; (d) a statement identifying any man who has lived in a familial relationship with the child and who may be the father of the child; (e) if the mother states that she knows the identity of the father and is identifying the father, the father's name, age, and last-known mailing address of the father and the father's employer; (f) if the mother states that she does not know the identity of the father, an explanation of why she is unable to identify him and physical description of the father; (g) a statement that the mother has been informed and understands that if she misidentifies the father, she is permanently barred from attacking the TPR on the basis that the father was not correctly identified; (h) a statement that the mother understands that she may be prosecuted for false swearing if she makes a false statement that she does not believe is true; and (i) a statement that the mother has reviewed and understands the affidavit, the name of the person who explained the

affidavit and the consequences of signing it, and a statement that she is signing the affidavit voluntarily.

The petitioner is required to notify any man alleged to be the father in the affidavit that he may file a declaration of paternal interest within 21 days after the date on which the notification was mailed. The mailing must include a form to file a declaration and explain the consequence of filing or not filing a declaration.

If the mother cannot, with reasonable diligence, be found, the petitioner must attach to the TPR petition a statement of efforts made to locate the mother. If an affidavit is not filed with the petition, notice of a TPR proceeding must be provided to alleged fathers who have filed a declaration of paternal interest or who have lived in a familial relationship with the child.

The bill creates alternative TPR notice requirements for a person who may be the father of a nonmarital child who is under one year of age at the time the TPR petition is filed whose paternity has not been established in a TPR proceeding concerning the child, if an affidavit signed by the birth mother or a statement that the birth mother cannot be found, as described above, is filed with the petition. In these cases, the bill requires notice to be provided to the following: (a) a person who has filed an unrevoked declaration of paternal interest, within 14 days after the birth of the child or within 21 days after the notice of his right to file a declaration is mailed, whichever is later; and (b) a person who has lived in a familial relationship with the child and who may be the father of the child.

The bill, as amended, specifies that a person who may be the father of a nonmarital child whose paternity has not been established may contest a petition to terminate his parental rights, present evidence relevant to the issue of disposition, and make alternative dispositional recommendations, if the person appears at the hearing, establishes paternity, and proves all of the following by a preponderance of the evidence: (a) that the person resides and has resided in another state where the mother of the child resided or was located at the time of or after the conception of the child; (b) that the mother left that state without notifying or informing that person that she could be located in this state; (c) that the person attempted to locate the mother through every reasonable means, but did not know or have reason to know that the mother was residing or located in this state; and (d) that the person had complied with the requirements of the state where the mother previously resided or was located to protect and preserve his paternal interests in matters affecting the child.

The bill specifies that a person who is not entitled to actual notice of a TPR proceeding under the bill does not have standing to appear and contest the petition, present evidence relevant to the issue of disposition, or make alternative dispositional recommendations.

Finally, the bill prohibits a mother who has completed an affidavit relating to the identity of the child's father from attacking a TPR judgment on the basis that the father was not identified correctly.

These provisions take effect on the first day of the third month beginning after publication of the bill.

Grounds for TPR

The bill provides that the grounds for involuntary TPR apply to parents and to persons who may be the parent of a child. In addition, the bill modifies the grounds in current law for TPR, as follows:

Failure to Assume Parental Responsibility: Substantial Parental Relationship

Current Law. Under current law, the ground of failure to assume parental responsibility is established by proving by clear and convincing evidence that the parent has never had a substantial parental relationship with the child. "Substantial parental relationship" is defined as the acceptance and exercise of significant responsibility for the daily supervision, education, protection, and care of the child.

In evaluating whether the person has had a substantial parental relationship with the child, the court may consider whether the person has ever expressed concern for or interest in the child's support, care, or well-being; whether the person has neglected or refused to provide care or support; and whether, with respect to the father, the parent has ever expressed concern for or interest in the mother's support, care, or well-being during her pregnancy.

AB 521. Under the bill, this ground is established by proving by clear and convincing evidence that the parent has not had, versus never had, a substantial parental relationship with the child.

Prior Involuntary TPR to Another Child

Current Law. Under current law, the ground of involuntary TPR to another child may be established by proving both of the following: (a) the child who is the subject of the petition has been adjudged to be in continuing need of protection or services (CHIPS) because he or she has been abandoned or has been the victim of abuse or because his or her parent neglects, refuses, or is unable for reasons other than poverty to provide the necessary care, clothing, medical or dental care, or shelter so as to seriously endanger the physical health of the child; and (b) within three years of the CHIPS adjudication, a court has ordered the involuntary TPR with respect to another child of the person.

AB 521. The bill modifies the ground that requires a showing of prior involuntary TPR to another child so that it may also apply to a child who is found to be CHIPS because he or she is at risk of being abused or neglected and that the parent has failed to remedy the conditions responsible for court intervention and there is a substantial likelihood that the parent will not remedy those conditions with the following nine-month period.

This first applies to court orders required to contain the notice of grounds of TPR on the effective date of the bill, but does not preclude consideration of prior orders of a court terminating parental right with respect to a child who is not the subject of the petition in determining whether to terminate, or to find grounds to terminate, the parental rights of a person under this ground.

Continuing Need for Protection and Services

Current Law. Under current law, the ground of continuing CHIPS may be established by proving all of the following: (a) the child has been adjudged to be CHIPS and placed outside of his or her home by a court; (b) the agency that is responsible for the care of the child and the family has made a reasonable effort to provide the services ordered by the court; and (c) the child has been outside the home for a cumulative period of six months or longer pursuant to court orders and the parent has failed to meet the conditions established for the safe return of the child to the home and there is a substantial likelihood that the parent will not meet these conditions within the 12-month period following the TPR fact-finding hearing.

AB 521. This ground is modified under the bill so that the court must determine if the parent is likely to meet the conditions set forth in the CHIPS order within the upcoming nine months instead of the upcoming 12 months.

TPR Procedures

Penalty for False Statement in TPR Proceeding

Current Law. Under current law, a person may be convicted of perjury for orally making a false statement under oath or affirmation. Perjury is a Class H felony, punishable by a fine not to exceed $10,000 or imprisonment not to exceed six years, or both. In addition, a person who makes or subscribes to a false statement under oath or affirmation may be convicted of false swearing. False swearing is a Class H felony if the statement is required or authorized by law or required by a public officer or governmental agency as a prerequisite to official action. Otherwise, it is a Class A misdemeanor punishable by a fine not to exceed $10,000 or imprisonment not to exceed nine months, or both. There is no general penalty for making a false statement if it is not made under oath or affirmation, although some statutes contain penalties for making a false statement under specified conditions.

AB 521. The bill creates a penalty for making a false statement or representation of material fact in the course of a TPR proceeding with the intent to prevent a person who is entitled to receive notice of the TPR proceeding from receiving notice.

Voluntary Consent to TPR by Telephone or Audiovisual Means

Current Law. A person may give voluntary consent to the termination of his or her parental rights. If the court finds that it would be difficult or impossible for the parent to appear in person at

the hearing, the court may accept the written consent of the parent given before an embassy or consul official, a military judge, or a judge of any court of record in another country or state of a foreign jurisdiction. This written consent must be accompanied by the signed findings of the embassy or consul official or judge who accepted the consent. The findings must recite that the embassy or consul official or judge, or an attorney who represents any of the parties, has questioned the parent and found that the consent was informed and voluntary before the embassy or consul official or judge accepted the consent of the parent.

AB 521. The bill permits a parent who is unable to appear in person at the hearing to provide testimony by telephone or through live audiovisual means, upon request of the parent, unless good cause is shown. The telephone and audiovisual proceedings must comply with s. 807.13 of the statutes.

Notice in Cases in Which a Child is Relinquished as a Newborn

Current Law. Current law prohibits the state from seeking identifying information about the parents of a newborn whose custody was relinquished under the "safe haven law." However, there is no provision in the notice portion of the CHIPS or TPR statute that exempts the state from providing notice by personal service to the parents of these proceedings. Because there is no publishing requirement in the CHIPS portion of the statute, there is no notice option readily available, unless the parent has chosen to provide their identity to the person to whom they relinquished the baby.

In addition, parents who relinquish their newborns are guaranteed anonymity. In order to notice them of the TPR and CHIPS proceedings, the statute requires sending them notice by certified mail or have them personally served with a summons and a copy of the TPR and CHIPS petition. This may present considerable problems for the relinquishing parent, who may be under the impression that she or he would have no further contact regarding the child.

AB 521. The bill provides that notice of a TPR proceeding may be given to the parents of a child whose custody was relinquished when he or she was less than 72 hours old by publication in a newspaper instead of by personal service.

Guardian ad Litem (GAL) for Parent in TPR Proceeding

Current Law. Current law sets out the appointment procedure of a GAL and the duties and responsibilities of a GAL in various types of proceedings. Current statute and case law authorize, but do not require, courts to appoint GALs for parents who are not competent to participate in TPR cases.

AB 521. Under the bill, the court would be required to appoint a GAL for a parent who is not competent to assist counsel or the court in protecting the parent's rights in the proceeding. The bill also directs a GAL of such a parent, who is contesting the termination of his or her parental

rights in a proceeding that involves a child in need of protection or services, to provide information to the court relating to the parent's competency to participate in the proceeding, and to also provide assistance to the court and to the parent's defense counsel in protecting the parent's rights.

Admissibility of Results of Examination of Parent in TPR Proceedings

Current Law. Current law provides for mental, physical, psychological, or developmental examinations, and alcohol and other drug abuse assessments of various parties during the course of proceeding under Chapter 48 of the statutes, including TPR proceedings. In addition, a court in a CHIPS proceeding may order a physical, psychological, mental, developmental, or alcohol and other drug abuse evaluation of any parent or child and establishes procedures for doing so. Current law is unclear regarding the admissibility of these evaluations as evidence in CHIPS and TPR proceedings, or whether the client-patient privilege applies to these reports.

AB 521. The bill specifies that statements made by a parent and the results of any tests conducted and any diagnosis made in the course of an examination or assessment are not privileged. The bill requires the judge to inform a party of this provision at the time the judge orders the party to undergo an examination or assessment.

Appeals in TPR Proceedings

AB 521 makes several changes relating to appeals in TPR proceedings.

Time for Filing of Notice of Appeal

Current Law. Current law provides that if the judgment or order that is being appealed was entered after the notice of appeal was filed, the notice of appeal is treated as if it were filed after the judgment or order was entered. An appeal of a TPR judgment is initiated by the filing of a notice of intent to appeal. Currently, in a few cases each year, the notice of intent to appeal is filed before the TPR judgment is entered and is found to be filed too early in violation of current law.

AB 521. Under the bill, if the record discloses that the judgment or order appealed from was entered after the notice of appeal or the notice of intent to appeal was filed, the notice is treated as filed after such entry and on the day thereof. This first applies to judgments or orders granted on the effective date of the bill.

Notification That Appeal Will Not Be Filed

Current Law. In a TPR case, a person has 30 days from the date of the entry of judgment to file a notice of appeal. Within 15 days after filing this notice, the person must request the transcript and court record. The clerk of circuit court must serve a copy of the case record on the person filing the notice of intent to appeal within 30 days after the court record is requested. Within 30 days after service of the transcript, the person filing a notice of intent to appeal must file a notice of appeal,

and serve a copy of the notice on the required persons. Current law places no obligation on that appellate counsel to notify the parties that the appeal will not be filed.

AB 521. The bill requires a person who decides not to file a notice of appeal to notify the persons who would have been required to be served with the notice of appeal that the appeal will not be pursued. This first applies to judgments or orders granted on the effective date of the bill.

State Public Defender Indigency Determinations in TPR appeals

Current Law. A representative of the state public defender must determine indigency for all referrals made under s. 809.30 of the statutes [appeals in criminal, chapters 48, 51, 55, and 938 cases], s. 974.06 (3) (b) [postconvinction proceedings], and s. 974.07 (11) [motions for deoxyribonucleic acid (DNA) testing of certain evidence], except for a referral of a child who is entitled to be represented by counsel under the children's or juvenile justice code. For these referrals, the representative of the state public defender may, unless a request for redetermination of indigency has been filed, or the defendant's request for representation states that his or her financial circumstances have materially improved, rely upon a determination of indigency made for purposes of trial representation under this section.

AB 521. The bill permits the state public defender representative to rely upon a determination of indigency made for purposes of trial representation for referrals made under s. 809.107 of the statutes, relating to appeals in proceedings relating to TPR, unless a request for a redetermination is filed or the person's request for representation states that his or her financial circumstances have materially improved.

Continuing Representation in TPR Appeals

Current Law. Currently, continuing representation of a person in a TPR proceeding during the appeal process is not automatic.

AB 521. Under the bill, an attorney who represents a person in a TPR proceeding continues representation of that person during the appeal process by filing a notice of intent to appeal under s. 809.107 (2), unless the attorney has been previously discharged during the proceeding by the person or by the trial court.

Written Notification of Time Limits for TPR Appeals

Current Law. Current law provides that TPR judgments are final and appealable. However, current law does not require notice of the applicable appeal time limits be given to a person whose parental rights were terminated.

AB 521. Under the bill, the court that orders the termination of a person's parental rights is required to provide written notification to the person, if present in court when the order is entered,

of the time limits for appeal of the judgment. The person must sign the written notification, indicating that he or she has been notified of the time limits for filing an appeal under s. 808.04 (7m) and s. 809.107 of the statutes. The person's counsel must file a copy of the signed, written notification with the court on the date the judgment is entered. This first applies to judgments or orders granted on the effective date of the bill.

Enlargement of Time for Filing Notice of Appeal

Current Law. Under current law, relating to appellate procedure, the time for filing a notice of appeal or cross-appeal of a final judgment or order, other than in a criminal, Children's Code [Chapter 48], Mental Health Act [Chapter 51], Protective Services System [Chapter 55], or Juvenile Justice Code [Chapter 938] case or a no merit order, may not be enlarged. In Gloria A. v. State, 195 Wis. 2d 268, 536 N.W.2d 396 (1995), the court of appeals held that the rule for enlargement of time in which to file notice of appeal does not apply to TPR cases.

AB 521. The bill provides that the time in which to file notice of appeal in a TPR case may be enlarged if the judgment or order was entered as a result of a TPR petition that was filed by a district attorney, corporation counsel, or other representative of the public. This first applies to judgments or orders granted on the effective date of the bill.

Time Limit for Collateral Attack of TPR Judgment

Current Law. Under current law, a person whose parental rights have been terminated may petition for a rehearing on the grounds that new evidence has been discovered affecting the advisability of the court's adjudication no later than one year after the date on which the TPR judgment was entered. However, a parent who has consented to the TPR or who did not contest the TPR petition may move for relief from the judgment no later than 30 days after entry of the TPR judgment.

AB 521. The bill prohibits any person, for any reason, from collaterally attacking a TPR judgment more than one year after the date on which the time limit for filing an appeal from the judgment has expired, or more than one year after the date on which all appeals from the judgment, if any were filed, have been decided.

Adoption Provisions

Adoption Expenses

Current Law. Under current law, the proposed adoptive parents of a child, or a person acting on behalf of the proposed adoptive parents, may pay the actual cost of any of the following: (a) pre-adoptive counseling for a birth parent of the child or an alleged or presumed father of the child; (b) post-adoptive counseling for a birth parent of the child or an alleged or presumed father of the child; (c) maternity clothes for the child's birth mother, not to exceed a reasonable amount; (d)

local transportation expenses of a birth parent of the child that are related to the pregnancy or adoption; (d) services provided by a licensed child welfare agency in connection with the adoption; (e) medical and hospital care received by the child's birth mother in connection with the pregnancy or birth of the child, not including lost wages or living expenses; (f) medical and hospital care received by the child; (g) legal and other services received by a birth parent of the child, an alleged or presumed father of the child or the child in connection with the adoption; (h) living expenses of the child's birth mother, in an amount not to exceed $1,000, if payment of the expenses by the proposed adoptive parents or a person acting on their behalf is necessary to protect the health and welfare of the birth mother or fetus; (i) any investigation of the proposed adoptive placement, according to a fee schedule established by DHFS based on ability to pay; (j) if the adoption is completed, the cost of any care provided for the child in a placement preceding placement with the adoptive parents; (k) birthing classes; or (l) a gift to the child's birth mother from the proposed adoptive parents, of no greater than $50 in value.

AB 521. The bill establishes a $300 cap on the amount that proposed adoptive parents may pay for the cost of maternity clothes for the birth mother and increases the amount proposed adoptive parents may pay for living expenses for the birth mother from $1,000 to $5,000 and the amount they may pay for a gift to the birth mother from $50 to $100. This first applies to the payment of expenses that are incurred on the effective date of the bill.

Pre-Adoptive Placement With Out-Of-State Petitioners

Current Law. Current law provides that a parent having custody of a child and the proposed adoptive parent or parents of the child may petition the court for placement of the child for adoption in the home of a nonrelative of the child if the home is licensed as a foster home or treatment foster home. This is sometimes referred to as a "legal risk" placement, because at the point the child is placed in the pre-adoptive placement with the proposed adoptive parent, the TPR has not been finalized.

AB 521. This bill provides that, notwithstanding the provisions of the interstate compact on the placement of children, if the proposed adoptive parent or parents of the child live out-of-state, they may petition the court for the pre-adoptive placement of the child in their home, if their home meets the criteria established by the laws of their state of residence for accepting a child for a pre-adoptive placement by nonrelatives.

Adoption Advertising

Current Law. Under current law, no person may advertise for the purpose of finding a child to adopt or that the person will find an adoptive home for a child or arrange for or assist in the adoption of a child or will place a child for adoption. This prohibition does not apply to DHFS, a county department, or a child welfare agency licensed by DHFS to place children for adoption.

AB 521. The bill prohibits publishing adoption advertisements that violate current law and first applies to advertisement published on the effective date of the bill.

Pre-Adoption Preparation for First-Time Adoptive Parents

Current Law. There is no requirement for pre-adoption preparation or training.

AB 521. The bill requires a court, in a proceeding for the adoption of a child by nonrelatives, to order the person or persons who are petitioning to adopt the child, if they have not already adopted other children, to obtain pre-adoption preparation on issues that may confront adoptive parents. The preparation may be provided by a licensed child welfare agency, a licensed private adoption agency, or a state-funded post-adoption resource center. DHFS is required to promulgate rules on the number of hours of required pre-adoption preparation, as well as topics to be covered in the training, including training on issues that may confront adoptive parents, in general, and that may confront adoptive parents of special needs children or foreign children. The proposed adoptive parents must pay for the training, unless the child is being adopted from the child welfare system, and then DHFS would be required to pay for the training. These same provisions apply to persons who are petitioning to adopt a foreign child. The rules must be submitted to the Legislative Council no later than the first day of the fourth month beginning after the effective date of the bill. This training requirement first applies to a child placed for adoption, a petition for adoptive placement of a child, or a child brought into this state for adoption on the first day of the 12th month after the publication of the bill. (This is the intent of the bill. However, an amendment to the bill is needed to meet the intent. This change is described under "Fiscal Effect.")

Continuation of Dispositional Orders

Current Law. Current law provides that, if a petition for the TPR is filed or an appeal from a judgment terminating or denying TPR is filed during the year in which a dispositional order or an extension order is in effect, the dispositional or extension order remains in effect until all proceedings relating to the petition or appeal are concluded. However, in some TPR cases, especially with newborn infants, there may be an issue as to whether a parent may contest for placement or visits while a TPR case is pending. In such cases, there may not be a dispositional or extension order, but there may be an existing voluntary placement agreement with an adoption agency, or a guardianship order with respect to the child.

AB 521. The bill provides that a voluntary agreement for the placement of the child, or a guardianship order for the child, also remains in effect until all proceedings relating to a TPR petition or appeal are concluded, as is allowed under current law with respect to dispositional or extension orders.

Foster Parent Provisions

Fair Hearings for Head of Home

Current Law. Under current law, any decision or order issued by DHFS, the Department of Corrections, a county department, or a licensed child welfare agency authorized to place children in foster homes, treatment foster homes, or group homes that affects the head of a foster, treatment foster, or group home or the children involved may be appealed to DHFS under fair hearing procedures. DHFS must, upon receipt of a request for an appeal, give the head of home notice and the opportunity for a fair hearing. At all appeal hearings under this provision, the head of home, or his or her representative, must have adequate opportunity to examine all documents and records to be used at the hearing.

Also under current law, the circuit court for the county where the child is placed has jurisdiction upon the petition of any interested party over a child who is placed in a foster home, treatment foster home, or group home. The circuit court may call a hearing for the purpose of reviewing any decision or order of the agency that placed the child that involves the placement and care of the child. The court must determine the case so as to promote the best interests of the child.

AB 521. The bill provides that the head of a foster, treatment foster, or group home who receives notice on or after the effective date of the bill of an appeal of a decision or order issued by an agency that affects the head of the home is a party to that proceeding and provides that the head of the home may examine documents and records that are relevant to the issue of the child's removal for purposes of such a proceeding.

The bill also provides that the county where the dispositional order was entered has jurisdiction to review an agency decision or order involving the placement of a child. Under the bill, the petitioner must show by clear and convincing evidence that the agency's decision or order is not in the best interests of the child.

Appeals of Licensing Decisions

Current Law. Section 48.75 of the statutes relates to licensing foster homes and treatment foster homes by public licensing agencies and child welfare agencies. The public licensing agency is the county department in a county other than Milwaukee County. For licensing Milwaukee County foster and treatment foster homes, DHFS, the Bureau of Milwaukee Child Welfare (BMCW), is the public licensing agency. Under s. 48.75 (2), any foster home or treatment foster home applicant or licensee of a public licensing agency or a child welfare agency may, if aggrieved by the failure to issue or renew its license or by revocation of its license, appeal as provided in s. 48.72. The statute further provides that judicial review of the department's decision may be had as provided in Chapter 227.

Section 48.72 sets forth the appeal procedure of licensing decisions. Under s. 48.72, any person aggrieved by the DHFS's refusal or failure to issue, renew, or continue a license has the right to an administrative hearing provided for contested cases in Chapter 227. Because this statute does not specify that the public licensing agency or child welfare agency also has a right to subsequent judicial review of the administrative law judge's decision on a licensing issue, the BMCW has taken the position that it does not have the right to challenge decisions of administrative law judges in circuit court.

AB 521. This bill amends current law to state that a judicial review of the department's decision may be had "by any party in the contested case," which allows BMCW the right to judicial review of the administrative law judge's decision, in cases where an administrative law judge has made a licensing decision that the BMCW disagrees with and wishes to appeal. This first applies to a decision made of action taken by DHFS on the effective date of the bill.

CHIPS/JIPS Provisions

Change in County of Residence of Child Welfare Services Clients

Current Law. Current law does not require notice to a new county of residence when a person who is receiving child welfare services moves to another county.

AB 521. The bill provides that as soon as practicable after learning that a person who is receiving child or juvenile welfare services has changed his or her county of residence, the county department or, in Milwaukee County, DHFS, must provide notice of that change to the county department of the person's new county of residence. Notice must be provided to DHFS if the person's new county of residence is Milwaukee County. This requirement first applies to a person who changes his or her county of residence on the effective date of the bill.

FISCAL EFFECT

AB 521 does not provide any funding or position authority, but permits DHFS to collect a reasonable fee as payment for conducting a search for a declaration of paternal interest, and to defray the costs to DHFS of maintaining its file of declaration and publicizing information relating to declaration of paternal interests. To allow DHFS to use the revenue from this fee, the bill could be amended to specify that this fee revenue would be deposited in s. 20.435(3)(jb), a current PR appropriation that collects fees for administrative purposes.

In its fiscal note to the bill, DHFS estimates one-time state costs of $103,000 ($45,800 GPR and $57,200 PR) and 1.0 FTE position and ongoing, annual costs of $45,400 PR and 1.0 FTE position. DHFS estimates that it would cost at least $50,000 to develop an Internet-based, secure birth parent registry database and $3,600 PR annually in hosting fees. This database would track the declarations of paternal interest. The 1.0 FTE position would maintain the database, search for

declarations of paternal interest, and issue certified copies and statements as requested. DHFS estimates that this position would cost $41,800 PR annually, with one-time costs of $7,200 PR.

The bill requires DHFS to promulgate rules on the number of hours of required preadoption preparation and the topics to be included in the training. DHFS estimates that it would contract with a consultant for six months to develop and draft these rules, with a one-time cost of $45,800 GPR. BMCW requires and provides preadoptive training for families who are adopting a child through the BMCW adoption program. The Department's fiscal note for the bill assumes that the BMCW program would be applied statewide. Therefore, since the guidelines and training is already established by the state for Milwaukee County, it would appear that DHFS could promulgate the rules, as required under the bill, without significant staff time.

In addition to these costs, DHFS indicated that county costs would increase under the provision in the bill requiring preadoption training. However, AA 2 specifies that DHFS would pay to provide preadoption training. Based on DHFS' estimates, the annual cost for non-Milwaukee counties would equal $110,600, of which $55,300 would be available under Title IV-E matching funds. This training is already required for prospective adoptive parents in Milwaukee County and funded through the Bureau of Milwaukee Child Welfare.

Technical Corrections. Two technical changes should be made to the bill. On page 50, line 21, there should be a reference to Section 72 (1), instead of Section 72 (10), since Section 72 (1) deals with declaration of paternal interest which that section of the bill is relating. In addition, on page 50, line 24, the bill should refer to Section 72 (10), instead of Section 72 (1), since 72 (10) relates to preadoption preparation.

Finally, the bill should be amended on page 14, line 9, to include a person authorized to issue a CHIPS petition, in addition to a JIPS, TPR, or adoption petition as stated in the bill. The note of page 15 includes the references to a CHIPS petitioner, but the cross reference should be added in section 9 of the bill.

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