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# Wisconsin Legislative Council

## AMENDMENT MEMO

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**2023 Senate Bill 520**

**Senate Amendment 1**

## BACKGROUND

### Definition of a “Relative”

Under state law, a court with jurisdiction under ch. 48, Stats. (Children’s Code), or ch. 938, Stats. (Juvenile Justice Code), may place a child or juvenile respectively in out-of-home care (OHC) with someone other than a parent. One of the OHC placement options is with a relative who is not a parent.<sup>1</sup> A relative other than a parent is not generally required to be licensed in order for a child or juvenile to be placed in OHC with that relative. Current law defines a relative to mean any of the following persons:

A parent, stepparent, brother, sister, stepbrother, stepsister, half brother, half sister, brother-in-law, sister-in-law, first cousin, 2nd cousin, nephew, niece, uncle, aunt, stepuncle, stepaunt, or any person of a preceding generation as denoted by the prefix of grand, great, or great-great, whether by blood, marriage, or legal adoption, or the spouse of any person named in this subsection, even if the marriage is terminated by death or divorce. For purposes of the application of [the Wisconsin Indian Child Welfare Act (WICWA)] and the federal Indian Child Welfare Act, [a] “relative” includes an extended family member [as defined by WICWA], whether by blood, marriage, or adoption, including adoption under tribal law or custom. For purposes of placement of a child, “relative” also includes a parent of a sibling of the child who has legal custody of that sibling.

[[s. 48.02 \(15\), Stats.](#)]

### Definition of “Like-Kin” for Purposes of Permanency Planning

Very generally, the statutes currently contain a definition of “like-kin”<sup>2</sup> that is used in the Children’s Code and Juvenile Justice Code for the limited purpose of permanency planning<sup>3</sup> when a child is placed in OHC at a qualified residential treatment program. Specifically, if a child is placed in OHC at a qualified residential treatment program, the agency that placed the child in such care or is assigned primary responsibility for providing services to that child must invite specified persons close to the child, including all appropriate biological family members, relatives, and like-kin of the child, as

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<sup>1</sup> Other OHC placement options include a licensed foster home, group home, a residential care center, and a supervised independent living arrangement. [[ss. 48.345 \(3\) and 938.34 \(3\), Stats.](#)]

<sup>2</sup> This definition of “like-kin” may include the child’s current or former licensed foster parent, and means a person who has a significant emotional relationship with a child or the child’s family and to whom any of the following applies: (a) prior to the child’s placement in OHC, the person had an existing relationship with the child or the child’s family that is similar to a familial relationship; or (b) during the child’s placement in OHC, the person developed a relationship with the child or the child’s family that is similar to a familial relationship. [[s. 48.38 \(1\) \(ap\), Stats.](#)]

<sup>3</sup> Very generally, the permanency plan identifies goals, needs, and services needed by the child and the child’s family.

determined by the agency.<sup>4</sup> This definition of “like-kin” may include the child’s current or former licensed foster parent to participate in the permanency planning process when a child is placed in OHC at a qualified residential treatment center.

## **Relatives Who May Receive Kinship Care Payments**

A relative, as defined above, who is not a parent and is providing care and maintenance for a child may receive monthly kinship care payments from the Department of Children and Families (DCF) or a county department of health and human services. For purposes of receiving kinship care payments, this person is defined as a “kinship care relative.” Among other various requirements, in order to receive kinship care payments, the kinship care relative must obtain a foster care license if the child is placed in the home of the kinship care relative under a court order. Under current law, a person who is a “first cousin once removed” or who is like-kin to the child or family do not fall under this definition and are therefore not eligible for receiving kinship care payments.

## **2023 SENATE BILL 520**

The bill creates a new OHC placement option with a person who is “like-kin” in the Children’s Code and Juvenile Justice Code. Specifically, under the bill, a court may place a child or juvenile in OHC with a person who is “like-kin,” defined by the bill to mean the following persons:

- An individual who: (1) has a significant emotional relationship with a child or the child’s family that is similar to a familial relationship; and (2) is not and has not been the child’s licensed foster parent.
- For an Indian child, an individual who is identified by the child’s tribe as kin or like-kin according to tribal tradition, custom or resolution, code, or law.

The bill makes other related changes to the Children’s Code and Juvenile Justice Code, as follows:

- Maintains the ability for a current or former foster parent to participate in the permanency planning process when a child is placed in OHC at a qualified residential treatment program.
- Amends the definition of a “relative” to include a “first cousin once removed.” This allows a first cousin once removed to also be considered as an OHC placement option similar to other relatives under current law.
- Authorizes a person who falls under the definition of “like-kin” to be eligible for kinship care payments. In doing so, the bill replaces the definition of “kinship care relative” with the term “kinship care provider.”
- Requires DCF to submit a notice to the Legislative Reference Bureau (LRB) for publication in the Wisconsin Administrative Register, specifying the date DCF determines that there is sufficient funding allocated to fund the expansion of kinship care and long-term kinship care programs under the bill, if DCF makes this determination prior to July 1, 2024.

The bill takes effect on the date specified in DCF’s published notice, described above, or on July 1, 2025, whichever is earlier.

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<sup>4</sup> The agency must also invite appropriate professionals who serve as a resource for the family of the child, such as teachers, medical or mental health providers who have treated the child, or clergy; and others identified by a child over the age of 14 as provided under current law. [[s. 48.38 \(3m\), Stats.](#)]

## **SENATE AMENDMENT 1**

Senate Amendment 1 makes the following two changes to the bill:

- Repeals the current statutory definition of “like-kin” that applies for the limited purpose of permanency planning when a child is placed in OHC at a qualified residential treatment program . This change renders applicable the bill’s new chapter-wide definition of “like-kin,” while also maintaining provisions in the bill that allow foster parents to remain an invited participant for permanency planning.
- Requires DCF to submit to LRB for publication in the Wisconsin Administrative Register a notice specifying the date DCF determines that there is sufficient funding allocated to fund the expansion of kinship care and long-term kinship care programs under the bill, if DCF makes this determination prior to July 1, 2025, rather than 2024 as provided under the bill, for consistency with the effective date of the bill.

## **BILL HISTORY**

Senator Ballweg offered Senate Amendment 1 on November 7, 2023. On that same day, the Senate Committee on Mental Health, Substance Abuse Prevention, Children and Families voted to recommend adoption of the amendment, and passage of the bill, as amended, on votes of Ayes, 5; Noes, 0.

For a full history of the bill, visit the Legislature’s [bill history page](#).

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