



**WISCONSIN LEGISLATIVE COUNCIL
STAFF MEMORANDUM**

Memo No. 3

TO: MEMBERS OF THE SPECIAL COMMITTEE ON ADOPTION AND TERMINATION OF PARENTAL RIGHTS LAW

FROM: Laura Rose, Deputy Director

RE: Legislation Introduced by the 1996 Joint Legislative Council Special Committee on Adoption Laws

DATE: September 7, 2004

In 1996, the Joint Legislative Council appointed the Special Committee on Adoption Laws. The committee recommended three bills that were subsequently introduced into the 1997-98 Legislative Session: 1997 Assembly Bills 600, 601, and 602. The three bills are described in the attached Report No. 4 to the 1997 Legislature entitled "*Legislation on Adoption Laws, Adoption Assistance and Long-Term Kinship Care*," dated December 3, 1997.

Assembly Bills 600, 601, and 602 were passed by the Legislature and enacted into law as 1997 Wisconsin Acts 104, 308, and 105, respectively. The Legislature adopted amendments to each of the bills. However, *no major provisions of the bills were removed by the amendments adopted by the Legislature.*

The changes made to each of the three bills during legislative deliberation are as follows:

1997 Assembly Bill 600: Assembly Bill 600 relates to various aspects on the laws on adoption and placement of children. *Assembly Amendment 1* to 1997 Assembly Bill 600 amends the definition of "relative" in the Children's Code. Assembly Amendment 1 lists the *same persons as those who are listed under current law* as meaning a "relative," that is, a parent, grandparent, great-grandparent, stepparent, brother, sister, first cousin, nephew, niece, uncle, or aunt, and specifies that that relationship *must be by blood, marriage, or adoption*. Thus, for example, under Assembly Amendment 1, all of the following would be a "relative": a brother by blood, a brother-in-law, and a brother by adoption.

Assembly Amendment 1 also amends current law to specify that the exception in s. 48.90 (1) (a), Stats., allowing a relative of the child by blood to file an adoption petition at any time, *also applies to a relative of the child by adoption*. Thus, Assembly Amendment 1 would permit the child's maternal

grandparents by adoption, as well as the child's paternal grandparents by blood, to file a petition to adopt the child at any time.

1997 Assembly Bill 601: One significant feature of Assembly Bill 601 is that it allows an adoptive or proposed adoptive parent to request an increase in adoption assistance monthly maintenance payments (monthly maintenance payments) if there has been a "substantial change in circumstances" as defined by an administrative rule. If the Department of Health and Family Services (DHFS) receives such a request, and if DHFS determines that there has been a substantial change in circumstances, DHFS must offer to increase monthly maintenance payments based on criteria established by administrative rule.

Assembly Amendment 1 to Assembly Bill 601 provides that if DHFS receives a request for an increase in adoption assistance for a child based on a substantial change in circumstances, then, in addition to determining whether there has been a substantial change in circumstances, ***DHFS also must determine whether there has been a substantiated report of abuse or neglect of the child by the adoptive or proposed adoptive parents.*** The amendment provides that DHFS must offer to increase monthly maintenance payments if there has been a substantial change in circumstances ***and*** if there has been no substantiated report of abuse or neglect of the child by the adoptive or proposed adoptive parents.

Assembly Bill 601 does not provide for a subsequent decrease in monthly maintenance payments if the substantial change in circumstances later ceases to exist. The bill does provide that DHFS may propose that an adoption assistance agreement be amended, including an amendment to decrease monthly maintenance payments. The adjustment goes into effect ***only if agreed to by the adoptive or proposed adoptive parents.***

Assembly Amendment 1 to Assembly Bill 601 provides that ***if*** DHFS amends an adoption assistance agreement due to a substantial change in circumstances, DHFS must ***annually review*** the adoption assistance agreement to determine whether the substantial change in circumstances continues to exist. If DHFS determines that the substantial change in circumstances ***continues to exist***, the amended adoption assistance agreement remains in effect. However, if DHFS determines, at the time of the annual review, that the substantial change in circumstances ***no longer exists***, Assembly Amendment 1 provides that all of the following apply:

- DHFS must offer to decrease the amount of the monthly maintenance payment based on criteria established by administrative rule for determining the amount of the decrease to offer. Under the amendment, these criteria must provide that the amount of the decrease offered by DHFS after the annual review may ***not*** result in having the amount of the monthly maintenance payment be less than the amount of the monthly maintenance payment initially provided for the child under the first adoption assistance agreement.

- If the adoptive or proposed adoptive parents ***agree*** to the decreased amount of monthly maintenance payments offered by DHFS, DHFS must amend the amended adoption assistance agreement in writing to specify the decreased amount of monthly maintenance payments.

- If the adoptive or proposed adoptive parents *do not agree* to the decreased amount of monthly maintenance payments, the adoptive or proposed adoptive parents may appeal DHFS's decision regarding the decrease. DHFS must promulgate a rule on the appeal procedures.

1997 Assembly Bill 602: Assembly Bill 602 creates a long-term kinship care program which is similar to the kinship care program. Assembly Bill 602 was drafted before the enactment of 1997 Wisconsin Act 27, the Biennial Budget Act, which made numerous changes to the statutes relating to the kinship care program. *Assembly Amendment 1 makes certain changes which Act 27 made to the statutes relating to the kinship care program also applicable to the long-term kinship care program.* These changes include the following:

- Providing that, in Milwaukee County, DHFS is responsible for administering the long-term kinship care program, rather than the county department of human services. This is consistent with the takeover of child welfare services in Milwaukee County by DHFS.

- Providing that a person is ineligible for long-term kinship care payments for a child if the child is receiving Supplemental Security Income or state supplemental payments.

- Adding an administrative review provision to the long-term kinship care program which is almost identical to the administrative review provision which Act 27 created for the kinship care program.

LR:tlu

Attachment

ATTACHMENT

Sections 48.31 (2) and 48.422 (5), Stats.

48.31 (2) The hearing shall be to the court unless the child, the child's parent, guardian, or legal custodian, the unborn child by the unborn child's guardian ad litem, or the expectant mother of the unborn child exercises the right to a jury trial by demanding a jury trial at any time before or during the plea hearing. If a jury trial is demanded in a proceeding under s. 48.13 or 48.133, the jury shall consist of 6 persons. If a jury trial is demanded in a proceeding under s. 48.42, the jury shall consist of 12 persons unless the parties agree to a lesser number. Chapters 756 and 805 shall govern the selection of jurors. If the hearing involves a child victim or witness, as defined in s. 950.02, the court may order the taking and allow the use of a videotaped deposition under s. 967.04 (7) to (10) and, with the district attorney, shall comply with s. 971.105. At the conclusion of the hearing, the court or jury shall make a determination of the facts, except that in a case alleging a child or an unborn child to be in need of protection or services under s. 48.13 or 48.133, the court shall make the determination under s. 48.13 (intro.) or 48.133 relating to whether the child or unborn child is in need of protection or services that can be ordered by the court. If the court finds that the child or unborn child is not within the jurisdiction of the court or, in a case alleging a child or an unborn child to be in need of protection or services under s. 48.13 or 48.133, that the child or unborn child is not in need of protection or services that can be ordered by the court or if the court or jury finds that the facts alleged in the petition have not been proved, the court shall dismiss the petition with prejudice.

48.422 (5) Any nonpetitioning party, including the child, shall be granted a continuance of the hearing for the purpose of consulting with an attorney on the request for a jury trial or concerning a request for the substitution of a judge.