



## WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 5

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

FROM: Anne Sappenfield, Senior Staff Attorney

RE: Definition of “Relative” Following a Termination of Parental Rights

DATE: October 4, 2004

This Memo discusses the definition of “relative” under the Children’s Code [ch. 48, Stats.] following a termination of parental rights (TPR) and options for clarifying the definition.

### **BACKGROUND**

In the Children’s Code, “relative” is defined as a parent, grandparent, great-grandparent, stepparent, brother, sister, first cousin, nephew, niece, uncle, or aunt. This relationship may be by blood, marriage, or adoption. [s. 48.02 (15), Stats.]

It is clear in the statutes that adoption severs a child’s relationship with all relatives in his or her birth family. [See s. 48.92 (1), Stats.] The effect of TPR is not clear from the statutes. The Wisconsin Supreme Court has held that TPR severs these relationships as well. [*In re the Termination of Parental Rights to Darryl T.-H. and Durrell T.-H.*, 234 Wis. 2d 606, 610 N.W.2d 475, 480 (2000).] In an earlier case, however, the Wisconsin Supreme Court held that parents whose rights have been terminated do not inherit from a child, but that the child’s siblings, whether parental rights to them have been terminated or not, are the child’s heirs. [*Estate of Pamanet*, 46 Wis. 2d 514, 175 N.W.2d 234 (1970).]

### **DISCUSSION**

The statute defining “relative” in the Children’s Code could be amended to clarify either that relatives, other than parents, continue to be a child’s relative following a TPR or to clarify that a child’s relationship to all relatives is severed by a TPR. In addition, exceptions to the definition could be drafted into the Children’s Code. For example, the general definition could provide that a relative does not include a child’s birth relatives once there has been a TPR, but the section governing the kinship

care program could provide that, for purposes of that section, “relative” does include a birth relative following a TPR.

The statutory sections in the Children’s Code that would be affected by amending the general definition of “relative” are the following\*:

- Sections 48.235 (2) and 48.236 (2), Stats., which provide that a relative of an interested party in a proceeding may not be appointed guardian ad litem or court-appointed special advocate in that proceeding.
- Section 48.25 (1), Stats., under which a relative may file a petition under s. 48.13 (child in need of protection or services (CHIPS) proceedings), or 48.14, Stats. (other matters relating to children such as appointment and removal of a guardian, adoption, and mental health proceedings).
- Section 48.255 (1) (b), Stats., which requires that a petition initiating proceedings under the Children’s Code must contain the name and address of the nearest relative if the child’s parent, guardian, legal custodian, or spouse, if any, cannot be identified.
- Section 48.34 (3) (a), Stats., under which a child may be placed with a relative as a CHIPS disposition.
- Section 48.34 (4) (a), Stats., under which legal custody of a child may be transferred to a relative as a CHIPS disposition.
- Section 48.38, Stats., under which the goal of a child’s permanency plan may be placement with a fit and willing relative.
- Sections 48.40 (1m) and 48.57 (3m) and (3p), Stats., under which a kinship care relative may receive monthly payments for the care of a child who is CHIPS or at risk of becoming CHIPS and is living with the relative. A child may also be placed in sustaining care with a kinship care relative following a TPR under s. 48.428, Stats.
- Section 48.417 (2) (a), Stats., which provides an exception to the requirement that a TPR petition be filed under specified conditions if the child is being cared for by a fit and willing relative.
- Section 48.427 (3m) (a) 5., Stats., which allows the court to transfer guardianship and custody of a child pending adoption to a relative with whom the child resides, if the relative has filed a petition to adopt the child or if the relative is a kinship care relative, as a TPR disposition.

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\* This is not a list of every statute that mentions relatives but is a list of the statutes that it appears may be affected by definition change.

- Section 48.427 (3m) (b), Stats., which allows the court to transfer guardianship to an agency and custody to a relative as a TPR disposition.
- Sections 48.60 (2) (a), 48.62 (2) and 48.65 (2) (a), Stats., which provide that a relative who provides care for a child is not required to be licensed to operate a child welfare agency, foster home, or day care center.
- Section 48.831 (1m), Stats., which allows a relative of a child with no living parent to file a petition alleging that the child is CHIPS.
- Sections 48.833 and 48.835, Stats., under which the Department of Health and Family Services or a parent may place a child with a relative for adoption.
- Section 48.925, Stats., under which the court may grant visitation to relatives under specified conditions.
- Section 48.977, Stats., which allows a relative of a child to be appointed the child's guardian.

AS:tlu