

1       **AN ACT** *to renumber* 48.025 (3); *to renumber and amend* 48.025 (2), 48.355 (2) (b)  
2           1., 48.41 (2) (b), 48.42 (2m) and 48.43 (6); *to amend* 46.03 (7) (bm), 48.025 (1),  
3           48.27 (3) (b) 1. a., 48.27 (5), 48.295 (1), 48.368 (1), 48.415 (intro.), 48.415 (2) (a) 3.,  
4           48.415 (6) (a) and (b), 48.415 (10) (a), 48.42 (2) (b) (intro.), 48.42 (2) (b) 1., 48.42  
5           (4) (a), 48.422 (6) (a), 48.423, 48.64 (4) (a), 48.64 (4) (c), 48.72, 48.78 (2) (a),  
6           48.825 (5), 48.837 (4) (c), 48.837 (4) (e), 48.91 (2), 48.913 (1) (c), (i) and (m),  
7           808.04 (7m), 808.04 (8), 809.82 (2) (b), 938.27 (3) (b) 1. a., 938.27 (5), 938.78 (2)  
8           (a) and 977.07 (1) (c); and *to create* 48.025 (2) (b), 48.025 (2) (d), 48.025 (3) (a),  
9           48.025 (3) (c) and (d), 48.025 (5), 48.025 (6), 48.235 (1) (g), 48.235 (5m), 48.295  
10          (2c), 48.355 (2) (b) 1. a., b., c., and d., 48.41 (2) (b) 2., 48.42 (1g), 48.42 (2) (am),  
11          48.42 (2m) (b), 48.42 (4) (b) 1., 48.42 (5), 48.43 (6) (b) and (c), 48.43 (6m), 48.48  
12          (17) (bm), 48.57 (2m), 48.825 (3m), 48.837 (1m), 48.837 (4) (cf), 48.8395, 809.107  
13          (5) (am) and 938.57 (2m) of the statutes; **relating to:** termination of parental rights  
14          and adoption.

*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 adoption and termination of parental rights law. The draft contains the following provisions:

**Declarations of Paternal Interest**

Under current law, a man claiming to be the father of a nonmarital child who is not adopted and whose parents have not married (“nonmarital child”) may file a declaration of his interest in matters affecting the child (“declaration of paternal interest”) with the department of health and family services (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 termination of parental rights (TPR) proceeding under current law:

- 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.
- 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.

The bill draft modifies current law relating to declarations of paternal interest and notification to putative fathers of TPR and adoption proceedings.

The bill draft makes various changes relating to declarations of paternal interest. The bill draft generally requires a declaration to be filed before the child's birth or within 14 days after the child's birth and permits a declaration to be revoked at any time. The bill draft also requires a declaration or revocation to be verified upon oath or affirmation and, in the case of a minor, to also be signed by the parent or guardian of the minor.

The bill draft requires DHFS 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.

The bill draft provides that 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 9 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 draft also creates a new provision under which the petitioner in a proceeding to terminate the parental rights of a person who may be the father of a nonmarital child who is under one year of age must file with the TPR petition an affidavit signed by the child's mother that identifies or describes the father. 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. 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.

The bill draft 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 draft requires notice to be provided to the following:

1. 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.
2. A person who has lived in a familial relationship with the child and who may be the father of the child.

The bill draft specifies that a person who is not entitled to actual notice of a TPR proceeding under the bill draft 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 draft 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.

### **Grounds for TPR**

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

#### **• Failure to Assume Parental Responsibility: Substantial Parental Relationship**

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.

The bill draft changes this ground by providing that this ground is established by proving by clear and convincing evidence that the parent has not had a substantial parental relationship with the child.

• **Prior Involuntary TPR to Another Child**

Under current law, the ground of involuntary TPR to another child may be established by proving both of the following:

- 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.
- Within three years of the CHIPS adjudication, a court has ordered the involuntary TPR with respect to another child of the person.

The draft 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.

• **Continuing Need for Protection and Services**

Under current law, the ground of continuing CHIPS may be established by proving all of the following:

- The child has been adjudged to be CHIPS and placed outside of his or her home by a court.
- 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.
- 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.

The draft modifies the ground that requires a showing that the child is in continuing need of protection or services 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**

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 6 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 9 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.

The bill draft 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**

Under 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.

This draft 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, stats.

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

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.

The bill draft 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 sets out the appointment procedure of a GAL under ch. 48, and sets out 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.

This draft requires the court 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. This draft 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 shall 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 provides for mental, physical, psychological or developmental examinations, and alcohol and other drug abuse assessments of various parties during the course of proceeding under ch. 48, including TPR proceedings.

Current law provides that 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.

This draft 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 draft requires the judge to inform a party of this provision at the time the judge orders the party to undergo an examination or assessment.

- **Services Under Dispositional Order for Incarcerated Parent**

The committee heard testimony regarding the difficulty of providing services to an incarcerated parent who is the subject of a dispositional order in a CHIPS case. In most of these cases, the only involuntary ground for TPR of these individuals is continuing CHIPS, under s. 48.415 (2), stats. This ground allows for a finding that grounds exist for termination if the parent is substantially unlikely to complete the court conditions detailed in the foster care order within 12 months of the trial. Any parent who would be incarcerated for more than 12 months after the trial would be unable to complete the condition.

However, this ground also requires that the court or jury find that “reasonable efforts” were made by the county or, in Milwaukee county, the bureau of Milwaukee county child welfare (BMCW) in DHFS, to assist the parent in completing their court conditions. The committee discussed the difficulty of determining what efforts are considered “reasonable” when the parent may be incarcerated for many years and would never be able to provide a home for their child. The committee also discussed the resources expended by agencies in working with parents who will never be able to be a placement option for their child and that the agency may not have access to a parent while incarcerated.

The draft provides that services under a dispositional order for a parent who is serving a prison sentence must be limited to the following during any period of incarceration:

- The agency responsible for the provision of services must advise the parent of services that may be available within the correctional facility.
- The agency must advise the correctional facility of the mandated services and conditions of return contained in the court order.
- The agency must monitor the parent’s participation and progress in relevant services made available to the parent within the correctional facility.



- The agency must arrange for visitation between the parent and child if the court finds that visitation is in the best interests of the child.

### **Appeals in TPR Proceedings**

This draft makes several changes relating to appeals in TPR proceedings:

- **Time for Filing of Notice of Appeal**

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.

This draft amends s. 808.04 (8), stats., to provide that 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 shall be treated as filed after such entry and on the day thereof.

- **Notification That Appeal Will Not Be Filed**

Under 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.

This draft 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.

- **State Public Defender Indigency Determinations in TPR appeals**

Under current law, a representative of the state public defender must determine indigency for all referrals made under ss. 809.30 [appeals in criminal, chs. 48, 51, 55, and 938 cases], 974.06 (3) (b) [postconviction proceedings], and 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.

This draft 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, stats., 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**

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

Under this draft, 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 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.

This draft requires the court that orders the termination of a person's parental rights 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 ss. 808.04 (7m) and 809.107. The person's counsel shall file a copy of the signed, written notification with the court on the date the judgment is entered.

- **Enlargement of Time for Filing Notice of Appeal**

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 [ch. 48], Mental Health Act [ch. 51], Protective Services System [ch. 55], or Juvenile Justice Code [ch. 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.

The bill draft 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.

- **Time Limit for Collateral Attack of TPR Judgment**

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.

This 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**

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:

- Pre-adoptive counseling for a birth parent of the child or an alleged or presumed father of the child.
- Post-adoptive counseling for a birth parent of the child or an alleged or presumed father of the child.
- Maternity clothes for the child's birth mother, not to exceed a reasonable amount.
- Local transportation expenses of a birth parent of the child that are related to the pregnancy or adoption.
- Services provided by a licensed child welfare agency in connection with the adoption.
- 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.
- Medical and hospital care received by the child.

- 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.
- 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.
- Any investigation of the proposed adoptive placement, according to a fee schedule established by DHFS based on ability to pay.
- If the adoption is completed, the cost of any care provided for the child in a placement preceding placement with the adoptive parents.
- Birthing classes.
- A gift to the child's birth mother from the proposed adoptive parents, of no greater than \$50 in value.

The bill draft places 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.

- **Pre-Adoptive Placement With Out-Of-State Petitioners**

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.

This draft 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**

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.

The bill draft prohibits publishing adoption advertisements that violate current law.

- **Pre-Adoption Preparation for First-Time Adoptive Parents**

Under current law, pre-adoption preparation is not required.

The draft 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 adopted any prior 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. The department 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. The proposed adoptive parents must pay for the training.

Under the draft, the same provisions apply to persons who are petitioning to adopt a foreign child.

- **Continuation of Dispositional Orders**

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.

This draft provides that a voluntary agreement for the placement of the child, or a guardianship order for the child, shall also remain 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**

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.

The bill draft provides that the head of a foster, treatment foster, or group home who receives notice 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 draft 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 draft, 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**

Under current law, s. 48.75, stats., relates to licensing of 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 of Milwaukee county foster and treatment foster homes, DHFS, 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 ch. 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 ch. 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 they do not have the right to challenge decisions of administrative law judges in circuit court.

This draft specifically grants the 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.

### **CHIPS Provisions**

- **Change in County of Residence of Child Welfare Services Clients**

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.

The bill draft provides that as soon as practicable after learning that a person who is receiving child 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.

1           **SECTION 1.** 46.03 (7) (bm) of the statutes is amended to read:  
 2           46.03 (7) (bm) Maintain a file containing records of artificial inseminations under s.  
 3           891.40 ~~and records of~~ declarations of paternal interest under s. 48.025~~, and of statements~~  
 4           acknowledging paternity under s. 69.15 (3) (b). The department ~~shall~~ may release ~~these~~ those  
 5           ~~records, declarations, and statements~~ only upon an order of the court except that the  
 6           department may use nonidentifying information concerning artificial inseminations for the  
 7           purpose of compiling statistics ~~and except that records relating to~~ declarations of paternal  
 8           interest shall be released as provided in s. 48.025 (3) (b) and (c), and statements  
 9           acknowledging paternity shall be released without a court order to the department of  
 10          workforce development or a county child support agency under s. 59.53 (5) ~~without a court~~  
 11          ~~order upon the request of the~~ that department of workforce development or a or county child

1 support agency ~~under s. 59.53 (5)~~ pursuant to the program responsibilities under s. 49.22 or  
2 by to any other person with a direct and tangible interest in the ~~record~~ statement.

**NOTE:** Permits DHFS to release declarations of paternal interest filed under s. 48.025, stats., upon court order and as provided in s. 48.025 (3) (c), stats. Current law requires DHFS to release a declaration of paternal interest to the department of workforce development (DWD) or a county child support agency upon request or to any other person with a direct and tangible interest in the declaration and permits DHFS to release a declaration to any other person only upon court order. The bill draft does not allow declarations to be released to DWD or a county child support agency.

3 **SECTION 2.** 48.025 (1) of the statutes is amended to read:

4 48.025 (1) Any person claiming to be the father of a nonmarital child who is not adopted  
5 or whose parents do not subsequently intermarry under s. 767.60 and whose paternity has not  
6 been established may, in accordance with procedures under this section, file with the  
7 department a declaration of his interest in matters affecting such the child. The department  
8 may not charge a fee for filing a declaration under this section.

**NOTE:** Provides that DHFS may not charge a fee for filing a declaration of paternal interest.

9 **SECTION 3.** 48.025 (2) of the statutes is renumbered 48.025 (2) (a) and amended to read:

10 48.025 (2) (a) The A declaration ~~provided in~~ under sub. (1) may be filed at any time  
11 ~~except after~~ before a termination of the father's parental rights under subch. VIII. This  
12 paragraph does not apply to a declaration that is filed on or after the effective date of this  
13 paragraph .... [revisor inserts date].

14 (c) The declaration shall be in writing, shall be signed and verified upon oath or  
15 affirmation by the person filing the declaration, and shall contain the person's name and  
16 address, the name and last-known address of the mother, the month and year of the birth or  
17 expected birth of the child, and a statement that he the person filing the declaration has reason



1 to believe that he may be the father of the child. If the person filing the declaration is under  
2 18 years of age, the declaration shall also be signed by a parent or guardian of the person.

**NOTE:** Requires that a declaration of paternal interest be signed and verified upon oath or affirmation. If the person filing the declaration is a minor, the declaration must also be signed by the person's parent or guardian.

3 **SECTION 4.** 48.025 (2) (b) of the statutes is created to read:

4 48.025 (2) (b) A declaration under sub. (1) may be filed at any time before the birth of  
5 the child or within 14 days after the birth of the child, except that a man who receives a notice  
6 under s. 48.42 (1g) (b) may file a declaration within 21 days of the date that the notice was  
7 mailed. This paragraph does not apply to a declaration filed before the effective date of this  
8 paragraph .... [revisor inserts date].

**NOTE:** Provides that a declaration of paternal interest may be filed at any time before the birth of the child or within 14 days after the birth, unless the man receives a notice as provided in s. 48.42 (1g) (b), stats. In that case, the man may file a declaration within 21 days of the mailing date of the notice.

9 **SECTION 5.** 48.025 (2) (d) of the statutes is created to read:

10 48.025 (2) (d) A person who has filed a declaration under sub. (1) may revoke the  
11 declaration at any time by filing with the department a statement, signed and verified upon  
12 oath or affirmation, that the person, to the best of his knowledge and belief, is not the father  
13 of the child or that another person has been adjudicated as the father of the child. If the person  
14 filing the revocation is under 18 years of age, the revocation shall also be signed by a parent  
15 or guardian of the person.

**NOTE:** Permits a person who has filed a declaration of paternal interest to revoke the declaration. If the person filing the revocation is a minor, the revocation must also be signed by the person's parent or guardian.

16 **SECTION 6.** 48.025 (3) of the statutes is renumbered 48.025 (3) (b).

1           **SECTION 7.** 48.025 (3) (a) of the statutes is created to read:

2           48.025 (3) (a) The department shall keep confidential and may not open to public  
3 inspection or disclose the contents of any declaration, revocation of a declaration, or response  
4 to a declaration filed under this section, except as provided under pars. (b) and (c) or by order  
5 of the court for good cause shown.

6           **SECTION 8.** 48.025 (3) (c) and (d) of the statutes are created to read:

7           48.025 (3) (c) A court in a proceeding under s. 48.13, 48.133, 48.14, or 938.13 or under  
8 a substantially similar law of another state or a person authorized to file a petition under s.  
9 48.42, 48.837, or 938.25 or under a substantially similar law of another state may request the  
10 department to search its files to determine whether a person who may be the father of the child  
11 who is the subject of the proceeding has filed a declaration under this section. If the  
12 department has on file a declaration of paternal interest in matters affecting the child, the  
13 department shall issue to the requester a copy of the declaration. If the department does not  
14 have on file a declaration of paternal interest in matters affecting the child, the department  
15 shall issue to the requester a statement that no declaration could be located. The department  
16 may require a person who requests a search under this paragraph to pay a reasonable fee that  
17 is sufficient to defray the costs to the department of maintaining its file of declarations and  
18 publicizing information relating to declarations of paternal interest under this section.

19           (d) Any person who obtains any information under this subsection may use or disclose  
20 that information only for the purposes of a proceeding under s. 48.13, 48.133, 48.14, or 938.13  
21 or under a substantially similar law of another state and may not use or disclose that  
22 information for any other purpose except by order of the court for good cause shown.

**NOTE:** Requires DHFS to keep declarations of paternal interest confidential, except that DHFS must, on the request of a court assigned to exercise jurisdiction under the Children's Code and the Juvenile

Justice Code (juvenile court) in a CHIPS, a juvenile in need of protection or services (JIPS), TPR, or adoption proceeding or of a person authorized to file a CHIPS, JIPS, TPR, or adoption petition, search its files to determine whether a person who may be the father of the child who is the subject of the proceeding or action has filed a declaration. If DHFS has a declaration on file, it must issue to the requester a copy of the declaration. If DHFS does not have a declaration on file, it must issue to the requester a statement that no declaration could be located. A TPR petitioner then must file with the juvenile court, prior to the plea hearing, the copy of the declaration or the statement that no declaration could be located.

1           **SECTION 9.** 48.025 (5) of the statutes is created to read:

2           48.025 (5) (a) The department shall publicize, in a manner calculated to provide  
3 maximum notice to all persons who might claim to be the father of a nonmarital child, all of  
4 the following information:

5           1. That a person claiming to be the father of a nonmarital child may affirmatively protect  
6 his parental rights by filing a declaration of interest under this section.

7           2. The procedures for filing a declaration of interest.

8           3. The consequences of filing a declaration of interest.

9           4. The consequences of not filing a declaration of interest.

10          (b) The department may publicize the information under par. (a) by posting the  
11 information on the Internet, creating a pamphlet for use by schools and health care providers,  
12 and by requiring agencies which provide services under contract with the department to  
13 provide the information to clients.

**NOTE:** Requires DHFS to publicize information about declarations of paternal interest. Specifically, DHFS must publicize that a person who may be the father of a child may affirmatively protect his parental rights by filing a declaration, the procedures for and consequences of filing a declaration, and the consequences of not filing a declaration.

DHFS may publicize this information on the Internet, through a brochure, and by requiring agencies that provide services under contract with DHFS to provide the information to clients.

1           **SECTION 10.** 48.025 (6) of the statutes is created to read:

2           48.025 (6) (a) Any person who makes a false statement in a declaration, revocation of  
3 a declaration, or response to a declaration filed under this section that the person does not  
4 believe is true is subject to prosecution for false swearing under s. 946.32 (2).

5           (b) Except as permitted under sub. (3), any person who intentionally obtains, uses, or  
6 discloses information that is confidential under this section may be fined not more than \$1,000  
7 or imprisoned for not more than 90 days or both.

**NOTE:** Provides that 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 9 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.

8           **SECTION 11.** 48.235 (1) (g) of the statutes is created to read:

9           48.235 (1) (g) The court shall appoint a guardian ad litem for a parent who is the subject  
10 of a termination of parental rights proceeding, if any assessment or examination of a parent  
11 that is ordered under s. 48.295 (1) shows that the parent is not competent to assist his or her  
12 counsel or the court in protecting the parent's rights in the proceeding.

**NOTE:** Requires a court, in a TPR proceeding, to appoint a GAL for a parent who is the subject of such a proceeding if any assessment or examination of the parent shows that the parent is not competent to assist his or her counsel of the court in protecting the parent's rights in the proceeding.

13           **SECTION 12.** 48.235 (5m) of the statutes is created to read:

14           48.235 (5m)   **MATTERS INVOLVING CONTESTED TERMINATION OF PARENTAL RIGHTS**  
15 **PROCEEDINGS.** (a) In any termination of parental rights proceeding involving a child who has  
16 been found to be in need of protection or services and whose parent is contesting the

1 termination of his or her parental rights, a guardian ad litem for a parent who has been  
2 appointed under sub. (1) (g) shall provide information to the court relating to the parent's  
3 competency to participate in the proceeding, and shall also provide assistance to the court and  
4 the parent's defense counsel in protecting the parent's rights in the proceeding.

5 (b) The guardian ad litem may not participate in the proceeding as a party, and may not  
6 call witnesses, provide opening statements or closing arguments, or participate in any activity  
7 at trial that is required to be performed by the parent's counsel.

**NOTE:** Requires the GAL for a parent to provide information to the court relating to the parent's competency to participate in a contested TPR proceeding, and to also provide assistance to the court and to the parent's defense counsel in protecting the parent's rights in the proceeding. This provision also specifies that the GAL may not participate in the proceeding as a party, and may not call witnesses, provide opening statements or closing arguments, or participate in any activity at trial that is required to be performed by the parent's counsel.

8 **SECTION 13.** 48.27 (3) (b) 1. a. of the statutes is amended to read:

9 48.27 (3) (b) 1. a. A person who has filed a declaration of paternal interest under s.  
10 48.025.

11 **SECTION 14.** 48.27 (5) of the statutes is amended to read:

12 48.27 (5) Subject to sub. (3) (b), the court shall make every reasonable effort to identify  
13 and notify any person who has filed a declaration of paternal interest under s. 48.025, any  
14 person who has acknowledged paternity of the child under s. 767.62 (1), and any person who  
15 has been adjudged to be the ~~biological~~ father of the child in a judicial proceeding unless the  
16 ~~biological father's~~ person's parental rights have been terminated.

**NOTE:** Under current law, the juvenile court must make every reasonable effort to identify any person who has filed a declaration and any person who has been adjudged to be the father of the child, if his parental rights have not been terminated, of a CHIPS or unborn CHIPS proceeding.

This SECTION also requires the court to make every reasonable effort to identify and notify a person who has acknowledged paternity of the child.

1           **SECTION 15.** 48.295 (1) of the statutes is amended to read:

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

1 population of 500,000 or more. The payment for an alcohol and other drug abuse assessment  
2 shall be in accordance with s. 48.361.

**NOTE:** Adds language to clarify that the “examination” referred to in s. 48.295 (1) is a physical, psychological, mental or developmental examination, as is specified in the title to this statutory section. Requires the court to inform a parent, guardian or legal custodian of the provisions of s. 48.295 (2c), stats., when an examination is ordered.

3 **SECTION 16.** 48.295 (2c) of the statutes is created to read:

4 48.295 (2c) Statements made by a parent, guardian, or legal custodian, and the results  
5 of any tests conducted and any diagnosis made, in the course of an assessment or examination  
6 performed under sub. (1), are not privileged in any proceeding under ch. 48 or ch. 938, except  
7 in a delinquency proceeding under s. 938.12.

**NOTE:** Provides that statements made by a parent and the results of any tests conducted and any diagnosis made in the course of an alcohol or drug abuse assessment or physical, psychological, mental or developmental examination under 48.295 (1), are not privileged in any proceeding under ch. 48 or ch. 938, except in a delinquency proceeding under s. 938.12.

8 **SECTION 17.** 48.355 (2) (b) 1. of the statutes is renumbered 48.355 (2) (b) 1. (intro.) and  
9 amended to read:

10 48.355 (2) (b) 1. (intro.) The specific services or continuum of services to be provided  
11 to the child and family, to the child expectant mother and family or to the adult expectant  
12 mother, the identity of the agencies which are to be primarily responsible for the provision of  
13 the services ordered by the judge, the identity of the person or agency who will provide case  
14 management or coordination of services, if any, and, if custody of the child is to be transferred  
15 to effect the treatment plan, the identity of the legal custodian. Regardless of any other  
16 provision of an order under this section, during any period of incarceration of a parent serving  
17 a prison sentence, services shall be limited to the following for that parent:

1           **SECTION 18.** 48.355 (2) (b) 1. a., b., c., and d. of the statutes are created to read:

2           48.355 (2) (b) 1. a. The agency shall advise the parent of services that may be available  
3 within the correctional facility.

4           b. The agency shall advise the correctional facility of the mandated services and  
5 conditions of return contained in the court order.

6           c. The agency shall monitor the parent's participation and progress in relevant services  
7 made available to the parent within the correctional facility.

8           d. The agency shall arrange for visitation between the parent and child if the court finds  
9 that visitation is in the best interests of the child.

**NOTE:** Provides that services under a dispositional order for a parent who is serving a prison sentence must be limited to the following during any period of incarceration:

- The agency responsible for the provision of services must advise the parent of services that may be available within the correctional facility.
- The agency must advise the correctional facility of the mandated services and conditions of return contained in the court order.
- The agency must monitor the parent's participation and progress in relevant services made available to the parent within the correctional facility.
- The agency must arrange for visitation between the parent and child if the court finds that visitation is in the best interests of the child.

10           **SECTION 19.** 48.368 (1) of the statutes is amended to read:

11           **48.368 Continuation of dispositional orders.** (1) If a petition for termination of  
12 parental rights is filed under s. 48.41 or 48.415 or an appeal from a judgment terminating or  
13 denying termination of parental rights is filed during the year in which a dispositional order  
14 under s. 48.355 ~~or~~, an extension order under s. 48.365, a voluntary agreement for placement  
15 of the child under s. 48.63, or a guardianship order under ch. 880 is in effect, the dispositional



1 or extension order, voluntary agreement, or guardianship order shall remain in effect until all  
2 proceedings related to the filing of the petition or an appeal are concluded.

**NOTE:** Current law provides that if a petition for the TPR is filed or an appeal from a judgment terminating or denying termination of parental rights 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. This SECTION provides that a voluntary agreement for the placement of the child, or a guardianship order for the child, shall also remain in effect until all proceedings relating to a TPR petition or appeal are concluded.

3 **SECTION 20.** 48.41 (2) (b) of the statutes is renumbered 48.41 (2) (b) (intro.) and  
4 amended to read:

5 48.41 (2) (b) (intro.) If the court finds that it would be difficult or impossible for the  
6 parent to appear in person at the hearing, the court may do any of the following:

7 1. Accept accept the written consent of the parent given before an embassy or consul  
8 official, a military judge or a judge of any court of record in another county or state or a foreign  
9 jurisdiction. This written consent shall be accompanied by the signed findings of the embassy  
10 or consul official or judge who accepted the parent's consent. These findings shall recite that  
11 the embassy or consul official or judge or an attorney who represents any of the parties  
12 questioned the parent and found that the consent was informed and voluntary before the  
13 embassy or consul official or judge accepted the consent of the parent.

14 **SECTION 21.** 48.41 (2) (b) 2. of the statutes is created to read:

15 48.41 (2) (b) 2. On request of the parent, unless good cause to the contrary is shown,  
16 provide testimony on the record by telephone or live audiovisual means as prescribed in s.  
17 807.13 (2).

**NOTE:** Permits a parent to provide testimony on the record in a voluntary TPR proceeding via telephone or live audiovisual means, in addition to the methods provided for under current law.

1           **SECTION 22.** 48.415 (intro.) of the statutes is amended to read:

2           **48.415 Grounds for involuntary termination of parental rights.** (intro.) In this  
3 section, “parent” includes a person or persons who may be the parent of the child. At the  
4 fact-finding hearing the court or jury may make a finding that grounds exist for the  
5 termination of parental rights. Grounds for termination of parental rights shall be one of the  
6 following:

**NOTE:** Provides that the grounds for involuntary TPR apply to parents  
          and to persons who may be the parent of the child.

7           **SECTION 23.** 48.415 (2) (a) 3. of the statutes is amended to read:

8           48.415 (2) (a) 3. That the child has been outside the home for a cumulative total period  
9 of 6 months or longer pursuant to such orders not including time spent outside the home as  
10 an unborn child; and that the parent has failed to meet the conditions established for the safe  
11 return of the child to the home and there is a substantial likelihood that the parent will not meet  
12 these conditions within the ~~12-month~~ 9-month period following the fact-finding hearing  
13 under s. 48.424.

**NOTE:** Requires proof that there is a substantial likelihood that the  
          parent will not meet the conditions for the child’s safe return in the  
          9-month, instead of 12-month, period following the TPR fact-finding  
          hearing when parental rights are terminated on the ground that the child  
          is in continuing need of protection and services.

14           **SECTION 24.** 48.415 (6) (a) and (b) of the statutes are amended to read:

15           48.415 (6) (a) Failure to assume parental responsibility, which shall be established by  
16 proving that the parent or the person or persons who may be the parent of the child have ~~never~~  
17 not had a substantial parental relationship with the child.

18           (b) In this subsection, “substantial parental relationship” means the acceptance and  
19 exercise of significant responsibility for the daily supervision, education, protection and care

1 of the child. In evaluating whether the person has had a substantial parental relationship with  
2 the child, the court may consider such factors, including, but not limited to, whether the person  
3 has ever expressed concern for or interest in the support, care or well-being of the child,  
4 whether the person has neglected or refused to provide care or support for the child and  
5 whether, with respect to a person who is or may be the father of the child, the person has ever  
6 expressed concern for or interest in the support, care or well-being of the mother during her  
7 pregnancy.

**NOTE:** Modifies the involuntary TPR ground that the person failed to assume parental responsibility to provide that the state must show that the person has not had a substantial parental relationship with the child instead of requiring a showing that the person has never had a substantial parental relationship with the child.

8 **SECTION 25.** 48.415 (10) (a) of the statutes is amended to read:

9 48.415 **(10)** (a) That the child who is the subject of the petition has been adjudged to  
10 be in need of protection or services under s. 48.13 (2), (3) ~~or (3m)~~, (10), or (10m).

**NOTE:** Under current law, parental rights may be involuntarily terminated by proving both of the following:

1. The child who is the subject of the petition has been adjudged to be in 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 necessary care, clothing, medical or dental care, or shelter so as to seriously endanger the physical health of the child.

2. Within 3 years of the CHIPS adjudication, a court has ordered the involuntary TPR with respect to another child of the person.

This SECTION modifies the first criterion so that the ground also applies to a child who has been adjudged to be CHIPS because he or she is at substantial risk of becoming the victim of abuse or because his or her parent is at substantial risk of neglecting, refusing, or being unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care, or shelter so as to seriously endanger the physical health of the child, based on reliable and credible information that the child's parent has neglected, refused, or been unable for reasons other

than poverty to provide necessary care, food, clothing medical or dental care, or shelter so as to endanger seriously the physical health of another child in the home.

1           **SECTION 26.** 48.42 (1g) of the statutes is created to read:

2           48.42 (1g) (a) If the petition is filed by a person or agency other than the district  
3 attorney, corporation counsel, or other appropriate official under s. 48.09 and the petition  
4 seeks to terminate the parental rights of a person who may be the father of a nonmarital child  
5 who is under one year of age at the time the petition is filed, who is not adopted or whose  
6 parents do not subsequently intermarry under s. 767.60, and paternity has not been established,  
7 the petitioner shall file with the petition an affidavit signed by the birth mother of the child  
8 if the birth mother has voluntarily terminated or seeks to voluntarily terminate her parental  
9 rights to the child except as provided under par. (c). The affidavit shall include all of the  
10 following:

11           1. A statement that the mother has voluntarily terminated or seeks to voluntarily  
12 terminate her parental rights to the child.

13           2. A statement acknowledging that the mother has been asked to identify the father of  
14 the child.

15           3. A statement that the mother knows and is identifying the father or that she does not  
16 know the identity of the father.

17           4. A statement identifying any man who may be the child's father has lived in a familial  
18 relationship with the child.

19           5. If the mother states that she knows and is identifying the father under subd. 3. or 4.,  
20 the father's name, last-known mailing address, last-known employer address, and age.

21           6. If the mother states that she does not know the identity of the father, an explanation  
22 of why she is unable to identify him and a physical description of the father.

1           7. A statement that the mother has been informed and understands that if she  
2 misidentifies the father, she is permanently barred from attacking the proceedings for the  
3 termination of the father's or her parental rights on the basis that the father was not correctly  
4 identified.

5           8. A statement that the mother understands that she may be prosecuted under s. 946.32  
6 (2) for false swearing if she makes a false statement that she does not believe is true in the  
7 affidavit under this paragraph.

8           9. A statement that the mother has reviewed and understands the affidavit, the name of  
9 the person who explained the affidavit and the consequences of signing the affidavit to her,  
10 and a statement that the mother is signing the affidavit voluntarily.

11           (b) The petitioner shall notify any man identified in the affidavit under par. (a) as an  
12 alleged father of his right to file a declaration of paternal interest under s. 48.025 before the  
13 birth of the child, within 14 days after the birth of the child, or within 21 days after the date  
14 the notice is mailed, whichever is later; the birthdate or anticipated birthdate of the child; and  
15 the consequences of filing and of not filing a declaration of paternal interest. The petitioner  
16 shall include with the notice a copy of the form required to file a declaration of paternal interest  
17 under s. 48.025. The notice shall be sent by certified mail to the last-known address of the  
18 alleged father.

19           (c) If the birth mother relinquished custody of the child under s. 48.195 and has not  
20 subsequently identified herself as the child's mother or if the petitioner cannot locate the birth  
21 mother with reasonable diligence, the petitioner shall attach to the petition a statement that the  
22 birth mother relinquished custody of the child under s. 48.195 and has not subsequently  
23 identified herself as the child's mother or of the efforts the petitioner made to locate the mother  
24 instead of the affidavit under sub. (1).

**NOTE:** Requires a petitioner, other than a district attorney, corporation counsel, or other appropriate official, for the involuntary TPR of an alleged father of a nonmarital child who is under one year of age to file with the petition an affidavit signed by the birth mother if the mother has voluntarily or seeks to voluntarily terminate her parental rights to the child. The affidavit must include the following:

1. A statement that the mother has voluntarily terminated or seeks to voluntarily terminate her parental rights to the child.
2. A statement acknowledging that the mother has been asked to identify the father of the child.
3. A statement that she knows and is identifying the father or that she does not know the identity of the father.
4. If she states that she knows the identity of the father and is identifying the father, the father's name, last-known mailing address, last-known employer address, and age.
5. If she states that she does not know the identity of the father, an explanation of why she is unable to identify him and a physical description of the father.
6. A statement that she has been informed and understands that if she misidentifies the father, she is permanently barred from attacking the TPR proceedings on the basis that the father was not correctly identified.
7. A statement that she understands that she may be prosecuted for false swearing if she makes a false statement that she does not believe is true.
8. A statement that she 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 must notify any man who is identified in the affidavit of his right to file a declaration of paternal interest before the birth of the child, within 14 days after the birth of the child, or within 21 days after the notice is mailed, whichever is later, the birthdate or anticipated birthdate of the child, and of the consequences of filing or not filing a declaration. The mailing must include a form to file a declaration. The notice must be sent by certified mail to the man's last-known address.

The bill draft provides that if the child was relinquished by the mother as a newborn and the mother has not subsequently identified herself as the child's mother or if the petitioner cannot locate the mother with reasonable diligence, the petitioner must attach to the TPR petition a statement that the mother relinquished custody of her child as a newborn

and has not identified herself as the mother or of the efforts made to locate the mother.

1           **SECTION 27.** 48.42 (2) (am) of the statutes is created to read:

2           48.42 (2) (am) If the child is a nonmarital child who is under one year of age at the time  
3 the petition is filed and who is not adopted or whose parents do not subsequently intermarry  
4 under s. 767.60 and paternity has not been established and an affidavit under sub. (1g) (a) or  
5 a statement under sub. (1g) (c) is filed with the petition:

6           1. A person who has filed an unrevoked declaration of paternal interest under s. 48.025  
7 within 14 days after the birth of the child or within 21 days after a notice under sub. (1g) (b)  
8 is mailed, whichever is later.

9           2. A person who has lived in a familial relationship with the child and who may be the  
10 father of the child.

**NOTE:** Under current law, certain persons who may be the father of a nonmarital child whose paternity has not been established must be served with a summons and petition notifying the person of a TPR proceeding involving the child. Those persons include, in addition to a person who files a declaration of paternal interest, a person who is alleged to be the father of the child or who, based on statements made by the mother or other information, may be the father of the child, and a person who has lived in a familial relationship with the child and who may be the father of the child. A person who receives a summons and petition in a TPR proceeding has standing to appear and contest the TPR petition and, if grounds for TPR are found, may present evidence relevant to the disposition of the case and make alternative dispositional recommendations.

This SECTION creates a separate notice requirement for an alleged father in a TPR proceeding concerning a nonmarital child who is under one year of age at the time the petition is filed if an affidavit or a statement that an affidavit cannot be filed, as provided under sub. (1g), is filed with the TPR petition. Under this circumstance, an alleged father must receive notice if one of the following conditions is met:

1. He has filed an unrevoked declaration of paternal interest before the birth of the child, within 14 days after the birth of the child, or within 21 days after the date a notice under sub. (1g) (c) was mailed.

2. He has lived in a familial relationship with the child and may be the father of the child.

1       **SECTION 28.** 48.42 (2) (b) (intro.) of the statutes is amended to read:

2       48.42 (2) (b) (intro.) ~~If~~ Except as provided in par. (am), if the child is a nonmarital child  
3 who is not adopted or whose parents do not subsequently intermarry under s. 767.60 and  
4 paternity has not been established:

5       **SECTION 29.** 48.42 (2) (b) 1. of the statutes is amended to read:

6       48.42 (2) (b) 1. A person who has filed ~~a~~ an unrevoked declaration of paternal interest  
7 under s. 48.025 before the birth of the child or within 14 days after the birth of the child.

**NOTE:** Amends the current notice requirements for alleged fathers to reflect the creation of par. (am) and the new time limit for filing a declaration of paternal interest under s. 48.025 (2) (b).

8       **SECTION 30.** 48.42 (2m) of the statutes is renumbered 48.42 (2m) (a) and amended to  
9 read:

10       48.42 (2m) (a) Parent as a result of sexual assault. Except as provided in this subsection  
11 paragraph, notice is not required to be given to a person who may be the father of a child  
12 conceived as a result of a sexual assault in violation of s. 940.225 (1), (2) or (3), 948.02 (1)  
13 or (2), or 948.025 if a physician attests to his or her belief that a sexual assault as specified in  
14 this subsection paragraph has occurred or if the person who may be the father of the child has  
15 been convicted of sexual assault as specified in this subsection paragraph for conduct which  
16 may have led to the child's conception. A person who under this subsection paragraph is not  
17 given notice does not have standing to appear and contest a petition for the termination of his  
18 parental rights, present evidence relevant to the issue of disposition, or make alternative  
19 dispositional recommendations. This subsection paragraph does not apply to a person who



1 may be the father of a child conceived as a result of a sexual assault in violation of s. 948.02  
2 (1) or (2) if that person was under 18 years of age at the time of the sexual assault.

3 **SECTION 31.** 48.42 (2m) (b) of the statutes is created to read:

4 48.42 **(2m)** (b) *Parent of nonmarital child.* A person who may be the father of a  
5 nonmarital child who is not adopted or whose parents do not subsequently intermarry under  
6 s. 767.60 and whose paternity has not been established, by virtue of the fact that he has engaged  
7 in sexual intercourse with the mother of the child, is considered to be on notice that a  
8 pregnancy and a termination of parental rights proceeding concerning the child may occur, and  
9 has the duty to protect his own rights and interests. He is therefore entitled to actual notice  
10 of such a proceeding only as provided in sub. (2) (am) and (b). A person who is not entitled  
11 to notice under sub. (2) (am) or (b) does not have standing to appear and contest a petition for  
12 the termination of his parental rights, present evidence relevant to the issue of disposition, or  
13 make alternative dispositional recommendations.

**NOTE:** Provides that a person who may be the father of a nonmarital child who has under one year of age at the time the TPR petition was filed and whose paternity has not been established, by virtue of the fact that the person had sexual intercourse with the mother of the child, is considered to be on notice that a pregnancy and a TPR proceeding might result, has the duty to protect his own rights and interests, and, therefore, is entitled to actual notice of the TPR proceeding only as provided in the bill. In addition, specifies that a person who is not entitled to actual notice of a TPR proceeding does not have standing to appear and contest the petition, present evidence relevant to the issue of disposition, or make alternative dispositional recommendations.

14 **SECTION 32.** 48.42 (4) (a) of the statutes is amended to read:

15 48.42 **(4)** (a) *Personal service.* A Except as provided in par. (b), a copy of the summons  
16 and petition shall be served personally upon the parties specified in sub. (2), if known, at least  
17 7 days before the date of the hearing, except that service. Service of summons is not required

1 if the party submits to the jurisdiction of the court. Service upon parties who are not natural  
2 persons and upon persons under a disability shall be as prescribed in s. 801.11.

3 **SECTION 33.** 48.42 (4) (b) 1. of the statutes is created to read:

4 48.42 (4) (b) 1. If the child's custody was relinquished under s. 48.195, service to the  
5 parents of the child may be made by publication of the notice under subd. 4.

**NOTE:** Under current law, a copy of a TPR summons and petition must be served personally upon the parties to the proceeding, if known, at least 7 days before the date of the TPR fact-finding hearing. If with reasonable diligence a party cannot be personally served, service must be made by publication in a newspaper that is likely to give notice to the person affected. The court may also order that notice be given in a newspaper to an unknown father.

Also under current law, a parent of a child who is 72 hours old or younger may relinquish custody of the child to a law enforcement officer, emergency medical technician, or hospital staff person. A parent who relinquishes custody of a child and any person who assists the parent have the right to remain anonymous.

The bill draft allows notice of a TPR proceeding to be given by publication in a newspaper to the parents of a child whose custody was relinquished when the child was less than 72 hours old.

6 **SECTION 34.** 48.42 (5) of the statutes is created to read:

7 48.42 (5) PENALTY. Any person who knowingly and willfully makes or causes to be  
8 made any false statement or representation of a material fact in the course of a proceeding  
9 under this section with an intent to deceive or mislead the court for the purpose of preventing  
10 a person who is entitled to receive notice of a proceeding under this section from receiving  
11 notice may be fined not more than \$10,000 or imprisoned for not more than 9 months, or both.

**NOTE:** Creates a penalty under which a person who knowingly and willfully makes or causes to be made a false statement or representation of material fact in the course of a TPR proceeding with an intent to deceive or mislead the court for the purpose of preventing a person who is entitled to receive notice of a TPR proceeding from receiving notice may be fined not more than \$10,000 or imprisoned for not more than 9 months, or both.

1           **SECTION 35.** 48.422 (6) (a) of the statutes is amended to read:

2           48.422 (6) (a) ~~If the child is~~ In the case of a nonmarital child who is not adopted or whose  
3 parents do not subsequently intermarry under s. 767.60 and for whom paternity has not been  
4 established, or a declaration of paternal interest has not been filed under s. 48.025 within 14  
5 days after the date of birth of the child or, if s. 48.42 (1g) (b) applies, within 21 days after the  
6 date the notice under s. 48.42 (1g) (b) is mailed. the court shall hear testimony concerning the  
7 paternity of the child. Based on the testimony, the court shall determine whether all interested  
8 parties who are known have been notified under s. 48.42 (2). If not, the court shall adjourn  
9 the hearing and order appropriate notice to be given.

**NOTE:** Under current law, if paternity has not been established at the time of a TPR fact-finding hearing regarding a nonmarital child, the court must hear testimony concerning the paternity of the child. Based on the testimony, the court must determine whether all interested parties who are known have been notified of the hearing. If not, the court must adjourn the hearing and order appropriate notice to be given.

This SECTION requires the court to determine whether all interested parties who are known have been notified of the hearing in cases in which a declaration of paternal interest has not been timely filed.

10           **SECTION 36.** 48.423 of the statutes is amended to read:

11           48.423 ~~If a man who alleges that he is the father of the child~~ person appears at the hearing  
12 ~~and wishes to contest the termination of his parental rights~~ claims that he is the father of the  
13 child, the court shall set a date for a hearing on the issue of paternity or, if all parties agree,  
14 the court may immediately commence hearing testimony concerning the issue of paternity.  
15 The court shall inform the ~~man~~ person claiming to be the father of the child of any right to  
16 counsel under s. 48.23. The ~~man~~ person claiming to be the father of the child must prove  
17 paternity by clear and convincing evidence. A person who establishes his paternity of the child

1 under this subsection may further participate in the termination of parental rights proceeding  
2 only if the person meets a condition specified in s. 48.42 (2) (am) or (b).

**NOTE:** Under current law, if a man who alleges that he is the father of the child appears at the 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 the parties all agree, the court may immediately commence hearing testimony concerning the issue of paternity. The man must prove paternity by clear and convincing evidence.

Under this SECTION, the man may participate in the TPR proceeding only if he would be entitled to notice under s. 48.42 (2) (am) or (b).

3 **SECTION 37.** 48.43 (6) of the statutes is renumbered 48.43 (6) (a) and amended to read:

4 48.43 (6) (a) Judgments under this subchapter terminating parental rights are final and  
5 are appealable under s. 808.03 (1) according to the procedure specified in s. 809.107, and are  
6 subject to a petition for rehearing or a motion for relief only as provided in s. 48.46 (1m) and  
7 (2). The attorney representing a person during a proceeding under this subchapter shall  
8 continue representation of that person by filing a notice of intent to appeal under s. 809.107  
9 (2), unless the attorney has been previously discharged during the proceeding by the person  
10 or by the trial court.

11 **SECTION 38.** 48.43 (6) (b) and (c) of the statutes are created to read:

12 48.43 (6) (b) The mother of a child who completes an affidavit under s. 48.42 (1g) may  
13 not collaterally attack a judgment terminating parental rights on the basis that the father of the  
14 child was not correctly identified.

15 (c) In no event may any person, for any reason, collaterally attack a judgment  
16 terminating parental rights more than one year after the date on which the time limit for filing  
17 an appeal from the judgment has expired, or more than one year after the date on which all  
18 appeals from the judgment, if any were filed, have been decided.

**NOTE:** Under current law, a parent who has consented to a TPR or a parent who did not contest a petition for an involuntary TPR and whose rights were terminated may file a motion with the court for relief from judgment. The motion must be based on specified grounds such as mistake, newly discovered evidence, or fraud. Such a motion must generally be filed within 30 days after the entry of the TPR judgment. A person may also appeal to the court of appeals.

Current law does not address the appeal rights of a person who was not a party in the TPR proceeding.

The bill draft modifies current law as follows:

- Requires an attorney who represents a person in a TPR proceeding to continue 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.
- 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.
- Prohibits a mother who has completed an affidavit under s. 48.42 (1g), relating to the identity of the child's father from attacking a TPR judgment on the basis that the father was not identified correctly.

1           **SECTION 39.** 48.43 (6m) of the statutes is created to read:  
2           48.43 **(6m)** When the court orders the termination of a person's parental rights, the court  
3 shall provide written notification to the person, if present in court when the order is entered,  
4 of the time limits for appeal of the judgment. The person shall sign the written notification,  
5 indicating that he or she has been notified of the time limits for filing an appeal under ss. 808.04  
6 (7m) and 809.107. The person's counsel shall file a copy of the signed, written notification  
7 with the court on the date the judgment is entered.

**NOTE:** Requires the court that orders the termination of a person's parental rights 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

ss. 808.04 (7m) and 809.107. The person's counsel shall file a copy of the signed, written notification with the court on the date the judgment is entered.

1           **SECTION 40.** 48.48 (17) (bm) of the statutes is created to read:

2           48.48 (17) (bm) As soon as practicable after learning that a person who is receiving  
3 child welfare services under par. (a) from the department has changed his or her county of  
4 residence, the department shall provide notice of that change to the county department of the  
5 person's new county of residence. The notice shall include a brief, written description of the  
6 services offered or provided to the person by the department and the name, phone number, and  
7 address of a person to contact for more information.

**NOTE:** Provides that as soon as practicable after learning that a person who is receiving child welfare services from DHFS has changed his or her county of residence from Milwaukee County, DHFS must provide notice of that change to the county department of that person's new county of residence.

The notice must include a brief, written description of the services offered or provided to the person by DHFS and the name, telephone number, and address of a person to contact for more information.

8           **SECTION 41.** 48.57 (2m) of the statutes is created to read:

9           48.57 (2m) A county department, as soon as practicable after learning that a person who  
10 is receiving child welfare services under sub. (1) from the county department has changed his  
11 or her county of residence, shall provide notice of that change to the county department of the  
12 person's new county of residence or, if that new county of residence is a county having a  
13 population of 500,000 or more, the department. The notice shall include a brief, written  
14 description of the services offered or provided to the person by the county department and the  
15 name, phone number, and address of a person to contact for more information.

**NOTE:** Requires notice when a person who is receiving child welfare services moves from a county other than Milwaukee County, to another county. See the note to s. 48.48 (17) (bm) in this bill draft.

1           **SECTION 42.** 48.64 (4) (a) of the statutes is amended to read:

2           48.64 (4) (a) Any decision or order issued by an agency that affects the head of a foster,  
3 treatment foster or group home or the children involved may be appealed to the department  
4 under fair hearing procedures established under department rules. The department shall, upon  
5 receipt of an appeal, give the head of the home reasonable notice and opportunity for a fair  
6 hearing. The department may make such additional investigation as the department considers  
7 necessary. The department shall give notice of the hearing to the head of the home and to the  
8 departmental subunit, county department or child welfare agency that issued the decision or  
9 order. Each person receiving notice is entitled to be represented at the hearing. The head of  
10 a home who receives notice under sub. (1m) is a party to the proceeding under this paragraph.

11 At all hearings conducted under this subsection, the head of the home, or a representative of  
12 the head of the home, shall have an adequate opportunity, notwithstanding s. 48.78 (2) (a), to  
13 examine all documents and records ~~to be used at the hearing~~ relevant to the issue of the child's  
14 removal at a reasonable time before the date of the hearing as well as during the hearing, except  
15 that the agency may redact information from documents and records to protect the identity of  
16 an individual who provided information under s. 48.981 (2). The head of home, or a  
17 representative of the head of home, shall also have adequate opportunity to bring witnesses,  
18 to establish all pertinent facts and circumstances, and to question or refute any testimony or  
19 evidence, including opportunity to confront and cross-examine adverse witnesses. The  
20 department shall grant a continuance for a reasonable period of time when an issue is raised  
21 for the first time during a hearing. This requirement may be waived with the consent of the  
22 parties. The decision of the department shall be based exclusively on evidence introduced at  
23 the hearing. A transcript of testimony and exhibits, or an official report containing the  
24 substance of what transpired at the hearing, together with all papers and requests filed in the

1 proceeding, and the findings of the hearing examiner shall constitute the exclusive record for  
2 decision by the department. The department shall make the record available at any reasonable  
3 time and at an accessible place to the head of the home or his or her representative. Decisions  
4 by the department shall specify the reasons for the decision and identify the supporting  
5 evidence. No person participating in an agency action being appealed may participate in the  
6 final administrative decision on that action. The department shall render its decision as soon  
7 as possible after the hearing and shall send a certified copy of its decision to the head of the  
8 home and to the departmental subunit, county department or child welfare agency that issued  
9 the decision or order. The decision shall be binding on all parties concerned.

**NOTE:** Provides that a head of a home who receives notice of a fair hearing is a party to that proceeding. In addition, allows the head of the home, or his or her representative, to examine all documents and records, except that an agency may redact information from documents and records that are relevant to the child's removal in order to protect the identity of an individual who provided information in reporting suspected child abuse or neglect.

10 **SECTION 43.** 48.64 (4) (c) of the statutes is amended to read:

11 48.64 (4) (c) The circuit court for the county where the ~~child is placed~~ dispositional  
12 order was entered has jurisdiction upon petition of any interested party over a child who is  
13 placed in a foster home, treatment foster home, or group home. The circuit court may call a  
14 hearing, at which the head of the home and the supervising agency under sub. (2) shall be  
15 present, for the purpose of reviewing any decision or order of that agency involving the  
16 placement and care of the child. If the child has been placed in a foster home, the foster parent  
17 may present relevant evidence at the hearing. ~~The court shall determine the case so as to~~  
18 ~~promote~~ The petitioner has the burden of proving by clear and convincing evidence that the  
19 decision or order issued by the agency is not in the best interests of the child.



**NOTE:** Provides that the circuit court in which a CHIPS dispositional order was entered has jurisdiction upon petition of any interested party over a child who is placed in a foster home or group home. If the court holds a hearing to review an agency decision or order involving the care of the child, provides that the petitioner has the burden of proving by clear and convincing evidence that the decision or order is not in the best interests of the child.

1           **SECTION 44.** 48.72 of the statutes is amended to read:

2           **48.72 Appeal procedure.** Except as provided in s. 48.715 (6) and (7), any person  
3 aggrieved by the department's refusal or failure to issue, renew or continue a license or by any  
4 action taken by the department under s. 48.715 has the right to an administrative hearing  
5 provided for contested cases in ch. 227. To receive an administrative hearing under ch. 227,  
6 the aggrieved person shall send to the department a written request for a hearing under s.  
7 227.44 within 10 days after the date of the department's refusal or failure to issue, renew or  
8 continue a license or the department's action taken under s. 48.715. The department shall hold  
9 an administrative hearing under s. 227.44 within 30 days after receipt of the request for the  
10 administrative hearing unless the aggrieved person consents to an extension of that time  
11 period. Judicial review of the department's decision may be had by any party in the contested  
12 case as provided in ch. 227.

**NOTE:** Specifically grants the 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.

Section 48.72 sets forth the appeal procedure of foster home 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 ch. 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 they do not have the right to challenge decisions of administrative law judges in circuit court.

1           **SECTION 45.** 48.78 (2) (a) of the statutes is amended to read:

2           48.78 (2) (a) No agency may make available for inspection or disclose the contents of  
3 any record kept or information received about an individual in its care or legal custody, except  
4 as provided under s. 48.371, 48.38 (5) (b) or (d) or (5m) (d), 48.432, 48.433, 48.48 (17) (bm),  
5 48.57 (2m), 48.93, 48.981 (7), 938.51, or 938.78 or by order of the court.

**NOTE:** Permits a county department or DHFS to make available for inspection or disclose the contents of any record kept or information received about an individual in its care or legal custody in order to provide the notice as required under ss. 48.48 (17) (bm) and 48.57 (2m) when a child receiving child welfare services moves to another county.

6           **SECTION 46.** 48.825 (3m) of the statutes is created to read:

7           48.825 (3m) No person may publish by a public medium an advertisement that violates  
8 this section. If the owner, agent, or employee of the public medium receives a copy of the  
9 license of the person or agency requesting the advertisement that indicates that the person or  
10 agency is licensed to provide adoption services in this state, there is a rebuttable presumption  
11 that the advertisement does not violate this section.

12           **SECTION 47.** 48.825 (5) of the statutes is amended to read:

13           48.825 (5) Any person who violates sub. (2) or (3m) may be fined not more than \$10,000  
14 or imprisoned not more than 9 months or both.

**NOTE:** Prohibits any person from publishing by public medium an adoption advertisement that violates current law relating to advertising for adoption. Under this provision, if the owner, agent, or employee of the public medium receives a copy of the license of the person or agency requesting the advertisement that indicates that the person or agency is licensed to provide adoption services in this state, there is a rebuttable presumption that the advertisement does not violate the prohibition on certain advertising.

A person who violates this provision is subject to a penalty of a fine not to exceed \$10,000 and imprisonment not to exceed 9 months.

15           **SECTION 48.** 48.837 (1m) of the statutes is created to read:

1           48.837 (1m) Notwithstanding s. 48.988, a parent having custody of a child, and the  
2 proposed adoptive parent or parents of the child if those proposed adoptive parents live out  
3 of this state and are not related to the child, may petition the court for placement of the child  
4 for adoption in the home, if the home meets the criteria established by the laws of the other  
5 state for the acceptance of the child by nonrelatives for a pre-adoptive placement.

6           **SECTION 49.** 48.837 (4) (c) of the statutes is amended to read:

7           48.837 (4) (c) Shall When the petition has been filed under sub. (1), shall order the  
8 department or a county department under s. 48.57 (1) (e) or (hm) to investigate the proposed  
9 adoptive placement, to interview each petitioner, to provide counseling if requested and to  
10 report its recommendation to the court at least 5 days before the hearing on the petition. If a  
11 licensed child welfare agency has investigated the proposed adoptive placement and  
12 interviewed the petitioners, the court may accept a report and recommendation from the child  
13 welfare agency in place of the court-ordered report required under this paragraph.

**NOTE:** Creates a new provision, in the statute relating to pre-adoptive placement of a child in the home of the proposed adoptive parents who are nonrelatives, that applies when the proposed adoptive parents live in a state outside of Wisconsin. Under this provision, a parent having custody of the child, and the proposed adoptive parent or parents of the child if those parents live out of this state and are not related to the child, may petition the court for placement of the child for adoption in the home, if the home meets the criteria established by the laws of the other state for the acceptance of the child by nonrelatives for a pre-adoptive placement.

14           **SECTION 50.** 48.837 (4) (cf) of the statutes is created to read:

15           48.837 (4) (cf) When the petition has been filed under sub. (1m), shall request that the  
16 appropriate agency where the proposed adoptive parent or parents reside to follow the  
17 procedure established by the laws of that state to ensure that the proposed adoptive home meets  
18 the criteria for the acceptance of the child by nonrelatives for a pre-adoptive placement.

**NOTE:** Requires the court to request, rather than order, an out-of-state agency to ensure that the proposed adoptive home meets the criteria for the acceptance of the child by nonrelatives for a pre-adoptive placement, when the proposed adoptive parents live in a state outside of Wisconsin and are seeking a pre-adoptive placement of the child in their home under s. 48.837 (1m).

1           **SECTION 51.** 48.837 (4) (e) of the statutes is amended to read:

2           48.837 (4) (e) Shall, before hearing the petitions under subs. (2) and (3), ascertain  
3 whether the ~~child's~~ paternity of a nonmarital child who is not adopted or whose parents do not  
4 subsequently intermarry under s. 767.60 has been acknowledged under s. 767.62 (1) or a  
5 substantially similar law of another state or adjudicated in this state or another jurisdiction.  
6 ~~If any person has filed a declaration of paternal interest under s. 48.025, the court shall~~  
7 ~~determine the rights of that person.~~ If the child's paternity has not been acknowledged or  
8 adjudicated ~~and if no person has filed a declaration under s. 48.025, the court shall attempt to~~  
9 ascertain the paternity of the child and shall determine the rights of any person who may be  
10 the father of the child as provided under s. 48.423. The court may not proceed with the hearing  
11 on the petitions under this section unless the parental rights of the nonpetitioning parent,  
12 whether known or unknown, have been terminated.

**NOTE:** Provides that before holding a hearing on adoptive placement and TPR petitions filed by the child's parent and the proposed adoptive parent or parents, the court must ascertain whether the paternity of a nonmarital child has been established. If the child's paternity has not been established, the court must attempt to ascertain the paternity of the child and must determine the rights of any person who may be the father of the child. These rights are the rights that are set forth regarding alleged fathers' participation in TPR proceedings under s. 48.42 (2m) (b). As under current law, the court may not proceed with the hearing on the petitions unless the parental rights of the nonpetitioning parent have been terminated.

13           **SECTION 52.** 48.8395 of the statutes is created to read:

1           **48.8395 Preparation for prospective adoptive parents. (1)** A person who petitions  
2 to adopt a child under s. 48.833 or 48.837 or is proposing to adopt a foreign child under s.  
3 48.839 and has not previously adopted any children, shall complete preparation prior to the  
4 placement of the child in the prospective adoptive home. The preparation shall be provided  
5 by a licensed child welfare agency, a licensed private adoption agency, or a state-funded  
6 post-adoption resource center. If the person does not live in this state, the person may meet  
7 this requirement by obtaining equivalent preparation in the person's state of residence.

8           **(2)** The department shall promulgate rules establishing the number of hours of required  
9 pre-adoption preparation under sub. (1) and the topics it shall cover. The preparation shall  
10 include training on issues that may confront adoptive parents, in general, and that may  
11 confront adoptive parents of special needs or foreign children.

12           **(3)** Persons petitioning to adopt a child under s. 48.837 or 48.839 shall pay the costs of  
13 pre-adoption preparation required under sub. (1). The county department of the prospective  
14 adoptive parents' county of residence, or, if the prospective adoptive parents reside in a county  
15 with a population of 500,000 or more, the department, shall pay the costs of the training for  
16 persons petitioning to adopt a child under s. 48.833.

**NOTE:** Requires the court, in a proceeding on a petition for adoption of a child by nonrelatives, to order a person who is a first-time adoptive parent 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. If the person lives in another state, the petitioner may obtain equivalent preparation in that state. The department is required to promulgate rules on the number of hours of required pre-adoption preparation, as well as topics to be covered.

Requires the proposed adoptive parents to pay the costs of the required pre-adoption preparation, unless the child is being adopted from the child welfare system.

17           **SECTION 53.** 48.91 (2) of the statutes is amended to read:

1           48.91 (2) In an adoption proceeding for a nonmarital child who is not adopted or whose  
2 parents do not subsequently intermarry under s. 767.60, the court shall establish ~~whether the~~  
3 ~~rights of any persons who have filed declarations of paternal interest under s. 48.025 have been~~  
4 ~~determined or whether~~ the child's paternity has been acknowledged under s. 767.62 (1) or a  
5 substantially similar law of another state or adjudicated in this state or in another jurisdiction.  
6 If the court finds that ~~no such determination has been made~~ child's paternity has not been  
7 acknowledged or adjudicated, the court shall proceed, prior to any action on the petition for  
8 adoption, to attempt to ascertain the paternity of the child and ~~the rights of any person who~~  
9 ~~has filed a declaration under s. 48.025~~ shall determine the rights of any person who may be  
10 the father of the child as provided under s. 48.423. The court may not proceed with the hearing  
11 on the petition for adoption unless the parental rights of the nonpetitioning parent, whether  
12 known or unknown, have been terminated.

NOTE: Provides that, at the final adoption hearing, the court must determine whether a nonmarital child's paternity has been established. If the child's paternity has not been established, the court must attempt to ascertain the paternity of the child and must determine the rights of any person who may be the father of the child. The bill draft specifies that the court may not proceed with the hearing on the petition for adoption unless the parental rights of the nonpetitioning parent have been terminated.

13           **SECTION 54.** 48.913 (1) (c), (i) and (m) of the statutes are amended to read:

14           48.913 (1) (c) Maternity clothes for the child's birth mother, ~~not to exceed a reasonable~~  
15 in an amount not to exceed \$300.

16           (i) Living expenses of the child's birth mother, in an amount not to exceed \$1,000  
17 \$5,000, if payment of the expenses by the proposed adoptive parents or a person acting on their  
18 behalf is necessary to protect the health and welfare of the birth mother or the fetus.

- 1 (m) A gift to the child's birth mother from the proposed adoptive parents, of no greater  
2 than ~~\$50~~ \$100 in value.

**NOTE:** 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 various expenses, including the following:

- Maternity clothes for the child's birth mother, not to exceed a reasonable amount.
- 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.
- A gift to the child's birth mother from the proposed adoptive parents, of no greater than \$50 in value.

This SECTION does the following:

- Provides that the cost for maternity clothes may not exceed \$300.
- Increases the amount that may be paid for living expenses to \$5,000.
- Increases the amount that may be paid for a gift to the birth mother to \$100.

3 **SECTION 55.** 808.04 (7m) of the statutes is amended to read:

4 808.04 (7m) An appeal from a judgment or order terminating parental rights or denying  
5 termination of parental rights shall be initiated by filing the notice required by s. 809.107 (2)  
6 within 30 days after the date of entry of the judgment or order appealed from. Notwithstanding  
7 s. 809.82 (2) (b), this time period may not be enlarged unless the judgment or order was entered  
8 as a result of a petition under s. 48.417 that was filed by a representative of the public under  
9 s. 48.09.

**NOTE:** Provides that the time in which to file a notice of appeal of a final judgment in a TPR case may be enlarged if the judgment or order was entered as a result of a petition for involuntary TPR filed by a district attorney, corporation counsel, or other representative of the public.

10 **SECTION 56.** 808.04 (8) of the statutes is amended to read:

1           808.04 (8) If the record discloses that the judgment or order appealed from was entered  
2 after the notice of appeal or intent to appeal was filed, the notice of appeal shall be treated as  
3 filed after such entry and on the day thereof.

**NOTE:** Current s. 808.04 (8), stats., provides that if the record discloses that the judgment or order appealed from was entered after the notice of appeal was filed, the notice of appeal shall be treated as filed after such entry and on the day thereof. Currently, this provision affects a few TPR cases each year where a notice of intent to appeal (which is required in TPR cases, under s. 809.107, stats.) is filed prior to the entry of the judgment or order. In those cases, the notice of intent to appeal is treated as being filed too early and in violation of s. 808.04 (8), stats.

This draft amends s. 808.04 (8), stats., to provide that 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 shall be treated as filed after such entry and on the day thereof.

4           **SECTION 57.** 809.107 (5) (am) of the statutes is created to read:

5           809.107 (5) (am) *Notice of abandonment of appeal.* If the person who filed a notice of  
6 intent to appeal under sub. (2) and requested a transcript and case record under sub. (4) decides  
7 not to file a notice of appeal, that person shall notify the person required to be served under  
8 sub. (2) of this decision, within 30 days after the service of the transcript and case record under  
9 sub. (4).

**NOTE:** Requires a person to provide notification to certain persons that an appeal will not be filed, within 30 days after service of the transcript on the person.

10          **SECTION 58.** 809.82 (2) (b) of the statutes is amended to read:

11          809.82 (2) (b) Notwithstanding the provisions of par. (a), the time for filing a notice of  
12 appeal or cross–appeal of a final judgment or order, other than in an appeal under s. 809.30  
13 or 809.32 or as provided under s. 808.04 (7m), may not be enlarged.

**NOTE:** Provides that the time in which to file notice of appeal of a final judgment in a TPR case may be enlarged as provided under s. 808.04 (7m).



1           **SECTION 59.** 938.27 (3) (b) 1. a. of the statutes is amended to read:

2           938.27 (3) (b) 1. a. A person who has filed a declaration of paternal interest under s.  
3 48.025.

4           **SECTION 60.** 938.27 (5) of the statutes is amended to read:

5           938.27 (5) Subject to sub. (3) (b), the court shall make every reasonable effort to identify  
6 and notify any person who has filed a declaration of paternal interest under s. 48.025, any  
7 person who has acknowledged paternity of the child under s. 767.62 (1), and any person who  
8 has been adjudged to be the ~~biological~~ father of the juvenile in a judicial proceeding unless  
9 the ~~biological father's~~ person's parental rights have been terminated.

**NOTE:** Makes the changes as provided in s. 48.27 (3) (b) 1. a. and (5) for  
          proceedings under the juvenile justice code.

10          **SECTION 61.** 938.57 (2m) of the statutes is created to read:

11          938.57 (2m) A county department, as soon as practicable after learning that a person  
12 who is receiving juvenile welfare services under sub. (1) from the county department has  
13 changed his or her county of residence, shall provide notice of that change to the county  
14 department of the person's new county of residence. The notice shall include a brief, written  
15 description of the services offered or provided to the person by the county department and the  
16 name, phone number, and address of a person to contact for more information.

**NOTE:** Requires notice when a person who is receiving juvenile welfare  
          services moves from a county to another county. See the note to s. 48.48  
          (17) (bm) in this bill draft.

17          **SECTION 62.** 938.78 (2) (a) of the statutes is amended to read:

18          938.78 (2) (a) No agency may make available for inspection or disclose the contents  
19 of any record kept or information received about an individual in its care or legal custody,

1 except as provided under sub. (3) or s. 938.371, 938.38 (5) (b) or (d) or (5m) (d), ~~or 938.51,~~  
2 or 938.57 (2m) or by order of the court.

**NOTE:** Permits a county department to make available for inspection or disclose the contents of any record kept or information received about an individual in its care or legal custody in order to provide the notice required under s. 938.57 (2m) when a person receiving juvenile welfare services moves to another county.

3 **SECTION 63.** 977.07 (1) (c) of the statutes is amended to read:

4 977.07 (1) (c) For all referrals made under ss. 809.107, 809.30, 974.06 (3) (b) and  
5 974.07 (11), except a referral of a child who is entitled to be represented by counsel under s.  
6 48.23 or 938.23, a representative of the state public defender shall determine indigency. For  
7 referrals made under ss. 809.107, 809.30 and 974.06 (3) (b), except a referral of a child who  
8 is entitled to be represented by counsel under s. 48.23 or 938.23, the representative of the state  
9 public defender may, unless a request for redetermination has been filed under s. 809.30 (2)  
10 (d) or the ~~defendant's~~ person's request for representation states that his or her financial  
11 circumstances have materially improved, rely upon a determination of indigency made for  
12 purposes of trial representation under this section.

**NOTE:** 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, the statute 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.

13 **SECTION 64. Initial applicability.**

14 (1) NOTICE OF AND PARTICIPATION IN TERMINATION OF PARENTAL RIGHTS PROCEEDINGS. The  
15 treatment of sections 48.42 (2) (b) (intro.) and 1., 48.422 (6) (a), 48.423, 48.837 (4) (e), and  
16 48.91 (2) of the statutes, the renumbering and amendment of sections 48.42 (2m) and 48.43  
17 (6) of the statutes, and the creation of sections 48.42 (1g), (2) (am) and (2m) (b) and 48.43 (6)

1 (b) of the statutes first apply to a termination of parental rights petition filed on the effective  
2 date of this subsection.

3 (2) NOTICE TO COUNTY WHEN PERSON RECEIVING SERVICES CHANGES COUNTY OF RESIDENCE.  
4 The treatment of sections 48.48 (17) (bm), 48.57 (2m), 48.78 (2) (a), 938.57 (2m), and 938.78  
5 (2) (a) of the statutes first applies to a person who changes his or her county of residence on  
6 the effective date of this subsection.

7 **SECTION 65. Effective date.**

8 This act takes effect on the day after publication except as follows: first day of the 3rd  
9 month beginning after publication.

10 (1) The treatment of sections 46.03 (7) (bm), 48.025 (1), (5) and (6), 48.27 (3) (b) 1.  
11 a., 48.27 (5), 48.42 (1g), (2) (am), (b) (intro.) and 1., 48.422 (6) (a), 48.423, 48.837 (4) (e),  
12 48.91 (2), 938.27 (3) (b) 1. a., and 938.27 (5) of the statutes, the renumbering of sections  
13 48.025 (3) and 48.43 (6) of the statutes, the renumbering and amendment of sections 48.025  
14 (2) and 48.42 (2m) of the statutes, and the creation of sections 48.025 (2) (b) and (d) and (3)  
15 (a), (c), and (d), 48.42 (2m) (b), and 48.43 (6) (b) take effect on the first day of the 3rd month  
16 beginning after publication of the act.

**NOTE:** Provides that the act takes effect on the first day after publication  
except that the provisions relating to declarations of paternal interest take  
effect on the first day of the 3rd month beginning after publication of the  
act.