



WISCONSIN LEGISLATIVE COUNCIL  
REPORT TO THE LEGISLATURE

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SPECIAL COMMITTEE ON  
ADOPTION  
AND TERMINATION OF  
PARENTAL RIGHTS LAW

*[2005 ASSEMBLY BILL 521]*

July 25, 2005

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# Special Committee on Adoption and Termination of Parental Rights Law

Prepared by:  
Laura Rose, Deputy Director, and Anne Sappenfield, Senior Staff Attorney  
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# **PART I**

## **KEY PROVISIONS**

### **OF COMMITTEE RECOMMENDATION**

The Special Committee on Adoption and Termination of Parental Rights Law recommends the following proposal to the Joint Legislative Council for introduction in the 2005-06 Session of the Legislature.

#### **2005 Assembly Bill 521, Relating to Termination of Parental Rights and Adoption**

2005 Assembly Bill 521, relating to termination of parental rights (TPR) and adoption, does all of the following:

- Modifies current law relating to declarations of paternal interest and notification to putative fathers of TPR and adoption proceedings.
- Modifies the following grounds for involuntary TPR: the ground that requires a showing of prior involuntary TPR to another child; the ground that requires a showing that the child is in continuing need of protection or services (CHIPS); and the ground that requires a showing of failure to assume parental responsibility.
- Provides that the grounds for involuntary TPR apply to persons who may be the parent of the child.
- Modifies several provisions relating to TPR and CHIPS, including:
  - Providing that the county where the dispositional order was entered has jurisdiction to review an agency decision or order involving the placement of the child.
  - Providing that when a child welfare services client changes county of residence, that the new county of residence must be notified of the change by the prior county of residence.
  - Allowing a person to give voluntary consent to TPR by telephone or live audiovisual means, if unable to appear in person at the hearing.
  - Providing that notice of a TPR proceeding may be given to the parents of a child who was relinquished in a “safe haven” case by publication in a newspaper rather than by personal service.
  - Clarifying the role of a guardian ad litem (GAL) appointed for a parent who is not competent, in a contested TPR proceeding involving a child found to be in need of protection or services.
  - Creating 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.
  - Specifying 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 of the parent in certain proceedings are not privileged.

- Provides that services under a dispositional order for a parent who is serving a prison sentence are limited during the period of incarceration.
- Makes various procedural changes relating to appeals in TPR proceedings, including:
  - The timing of filing of a notice of intent to appeal.
  - Requiring notification of certain persons when an appeal is not pursued.
  - Permitting the state public defender to rely, in a TPR appeal, upon an indigency determination made for purposes of trial representation.
  - Providing for continued representation of a person in a TPR appeal by an attorney who represented the person in a TPR proceeding if that attorney filed the notice of intent to appeal, unless the attorney was previously discharged.
  - Requiring the court to provide written notification, to a person whose parental rights are being terminated, of the time limits for appeal of the judgment.
  - Providing for the enlargement of time for filing a notice of appeal in a TPR case.
  - Prohibiting 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.
- Makes several changes in adoption law, including:
  - Prohibiting publishing adoption advertisements that violate current law.
  - Placing a cap on the amount that proposed adoptive parents may pay for the cost of maternity clothes for the birth mother and increasing the amount proposed adoptive parents may pay for living expenses and a gift for the birth mother.
  - Providing that a proposed adoptive parent who lives out-of-state may petition the court for a pre-adoptive placement of the child in their home if criteria under their state's laws are met.
  - Requiring 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 previously adopted any children, to obtain pre-adoption preparation on issues that may confront adoptive parents.
  - Providing that if voluntary agreement for the placement of the child, or a guardianship order for the child, is in place, that it shall remain in effect until all proceedings relating to a TPR petition or appeal are concluded.
- 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.
- Grants the Bureau of Milwaukee Child Welfare the right to judicial review of an administrative law judge's decision, in cases where an administrative law judge has made a licensing decision that the bureau disagrees with and wishes to appeal.

## PART II

### COMMITTEE ACTIVITY

#### Assignment

The Joint Legislative Council established the Special Committee on Adoption and Termination of Parental Rights Law by a May 21, 2004 mail ballot. The committee was directed to study current law relating to adoption and TPR to determine whether modifications could be made to encourage adoptions in Wisconsin and to make the adoption and TPR processes more efficient and more cost effective. The committee was directed to consider creating a state tax credit for adoption expenses. The committee was also directed to study TPR and adoption in the context of the child welfare system to ensure compliance with federal law and that permanency is achieved for children as quickly as possible.

Membership of the Special Committee, appointed by a July 21, 2004 mail ballot, consisted of 12 members: two Senators, three Representatives, and seven Public Members. A list of committee members is included as *Appendix 3* to this report.

#### Summary of Meetings

The Special Committee held six meetings. The first meeting was held in the State Capitol in Madison; subsequent meetings were held at the offices of the Legislative Council staff. The meetings of the committee were held on the following dates:

August 24, 2004	December 14, 2004
September 15, 2004	January 21, 2005
October 13, 2004	February 18, 2005

August 24, 2004: At the first meeting of the Special Committee, the committee was welcomed by Terry Anderson, Director, Legislative Council, who provided information on the logistics of serving on the committee. The committee heard from the following invited speakers, who provided information on the TPR and adoption procedures, particularly within the context of the child welfare system: Elizabeth Schaefer, Director of Adoption Services, Lutheran Social Services; and a Department of Health and Family Services (DHFS) panel which included: Kitty Kocol, Administrator, Division of Children and Family Services; Mark Mitchell, Manager, Policy Development Section, Bureau of Programs and Policies, Division of Children and Family Services; Denise Revels Robinson, Director, Bureau of Milwaukee Child Welfare; Catherine Swessel, Director of Permanency Planning, Children's Service Society of Wisconsin; and Mark Campbell, Director, Bureau of Programs and Policies.

September 15, 2004: At this meeting, the committee was provided information regarding legislation from the previous legislative session relating to declarations of paternal interests and the development of a birth father registry. After extensive committee discussion, the committee formed a working group to develop a new bill draft on this topic. The committee also was provided information on adoption tax credits and legislation from a past Legislative Council study committee in 1996 on adoption laws. Finally, the committee reviewed a staff memorandum on options for committee consideration regarding adoption and TPR laws and discussed modifying certain TPR grounds; eliminating jury trials in TPR proceedings; and modifying the parties who may file a TPR petition, among other issues.

October 13, 2004: Dale Langer, Manager, Adoption and Consultation Section, Bureau of Programs and Policies, Division of Children and Family Services, DHFS, provided the committee with information regarding adoption assistance. Mary Sowinski of the Milwaukee County District Attorney's TPR unit presented suggestions for legislative changes to adoption and TPR laws. The committee directed staff to prepare several bill drafts, including drafts to: permit biological siblings of adoptees to

register their contact information with DHFS; permit a person in a voluntary TPR action to appear by telephone or videoconferencing; provide for notice of a TPR via publication to the alleged parents in "safe haven" proceedings, and to request DHFS to revise the brochure regarding the safe haven law to include information regarding the necessity for a court proceeding to terminate parental rights; require appellate counsel to provide notice when an appeal of a TPR is not going to be pursued; permit appeals of administrative law judge rulings relating to foster home licensing; modify certain grounds for TPR, including failure to assume parental responsibility and continuing need for protection and services, and applying all grounds for TPR to alleged fathers; clarify the role of a GAL appointed for an incompetent parent in a TPR case; and provide for the admissibility of psychological evaluations.

December 14, 2004: Colleen Ellingson, Executive Director, Adoption Resources of Wisconsin, appeared before the committee to provide information on adoption and post-adoption resources for families who adopt. She emphasized the resources needed by, and available to, families who adopt a special needs child. The committee discussed several bill drafts prepared by staff and approved bill drafts relating to: involuntary TPR based on failure to assume parental responsibility; adoption expenses; filing of notice of intent to appeal; notice of a TPR proceeding to parents of a child whose custody was relinquished; permitting a parent who is unable to appear in person at a hearing on the voluntary termination of his or her parental rights to give consent by telephone or live audiovisual means; requiring a person to file a notice of abandonment of appeal within 30 days after service of the transcript in a TPR case; grounds for involuntary TPR; a child welfare agency's right to appeal administrative hearing decisions on licensure of a foster home or treatment foster home; permitting placement of a child in the home of a proposed adoptive parent or parents who live out-of-state; false statements in the course of a TPR proceeding and providing a penalty; and involuntary TPR on the ground that the child is in need of protection or services, and that parental rights to another child have been terminated.

January 21, 2005: This meeting began with comments from Public Member Mary Jane Proft, who described her experiences as an adoptive parent of special needs children. She related some of her experiences in order to illustrate the need to provide training and support to persons who wish to pursue adopting special needs children, as well as the need to provide support to these children once they turn 18. The committee approved bill drafts relating to the time limit for collateral attack on TPR judgment; the role of a GAL appointed for a parent in a contested TPR proceeding involving a child found to be in need of protection or services; and notice that a person receiving child welfare services has changed his or her county of residence. The committee deferred action on several other bill drafts, including fair hearings for heads of foster, treatment foster, or group homes; involuntary TPR ground of continuing need of protection and services; specifying that an evidentiary privilege does not apply to statements made by a parent during the course of an alcohol and drug abuse assessment or a mental, physical, psychological, or developmental examination of the parent in a TPR proceeding; advertising related to adoption; and training for prospective adoptive parents.

February 18, 2005: At this meeting, which was the final meeting of the committee, the committee approved bill drafts relating to: hearings to review an agency decision of order affecting placement of a child; fair hearings for heads of foster, treatment foster, or group homes; involuntary TPR on the ground of continuing need of protection and services; services to be provided to a parent under a child in need of protection or services dispositional order during any period that the parent is in prison; declarations of paternal interest; specifying that evidentiary privilege does not apply to statements made by a parent during the course of certain examinations of the parent in a TPR proceeding; advertising related to adoption; training for prospective adoptive parents; indigency determinations made by the state public defender in TPR proceedings; continuing representation of a person in a TPR proceeding; requiring the court to advise a party of time limits in TPR proceedings; the enlargement of time for filing a notice of appeal in a TPR proceeding; and requiring voluntary agreement for child placement or a guardianship order to remain in effect during the pendency of a TPR proceeding. The committee decided not to take action on the issue of the right to a jury trial in TPR proceedings. The committee also agreed to form a work group on birth sibling searches and post-TPR contact between a child and the child's birth parents, birth siblings, and other birth relatives. The committee gave final approval to letters that will be sent to Secretary of Health and Family Services



**Helene Nelson; Director of State Courts John Voelker; and Representative Curt Gielow, Chair of the Assembly Committee on Medicaid Reform.**



# PART III

## RECOMMENDATION INTRODUCED BY THE JOINT LEGISLATIVE COUNCIL

This part of the report provides background information on, and a description of, the bill as recommended by the Special Committee on Adoption and Termination of Parental Rights Law.

### **2005 Assembly Bill 521, Relating to Termination of Parental Rights and Adoption**

General descriptions of the major provisions of the bill are set forth below. A more detailed description of each provision is set forth in the Joint Legislative Council prefatory note to the bill.

#### **Termination of Parental Rights Provisions**

##### **Declarations of Paternal Interest (Birth Father Registry)**

###### *Background*

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 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. [s. 48.025, Stats.]

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. [s. 48.03 (7) (bm), Stats.]

A person who files a declaration of paternal interest is entitled to receive notice of a proceeding to terminate his parental rights to the child. In addition, the following must receive notice of a TPR proceeding under current law:

- A 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.

[s. 48.42 (2) (b), Stats.]

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. [s. 48.42 (2m), Stats.]

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. [s. 48.423, Stats.]

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. [s. 48.837, Stats.]

The committee received testimony that more reliance on declarations of paternal interest as a mechanism for determining when alleged fathers receive notice of and may participate in TPR proceedings would make the process for adopting infants more efficient.

#### *Description*

The bill modifies current law relating to declarations of paternal interest and notification to putative fathers of TPR and adoption proceedings in cases in which the child is under one year of age.

The bill makes various changes relating to declarations of paternal interest. The bill 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 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 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 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 nine months, or both.

Also, a person who intentionally obtains, uses, or discloses information relating to a declaration that is confidential may be fined up to \$1,000 or imprisoned for up to 90 days, or both.

The bill also creates a new provision under which the petitioner 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 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 of a TPR proceeding concerning the child if an affidavit signed by the birth mother or a statement that the birth mother cannot be found, as described above, is filed with the petition. In these cases, the bill requires notice to be provided to the following:

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

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

## Grounds for TPR

### Definition of "Parent"

#### *Background*

Under current law, certain grounds for involuntary TPR specifically apply to parents and to persons who may be the parent of the child. It is not clear if the other grounds apply to persons who may be the parent of the child.

#### *Description*

The bill provides that all of the grounds for involuntary TPR apply to persons who may be the parent of the child.

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

#### *Background*

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. [s. 48.415 (6), Stats.]

According to testimony received by the Special Committee, requiring a showing that the person has *never* had a substantial relationship with the child can be difficult if the parent ever showed any interest or had any contact with the child.

*Description*

The bill modifies this ground providing that failure to assume parental responsibility is established by proving that the parent ***has not had*** a substantial parental relationship with the child.

**Prior Involuntary TPR to Another Child**

*Background*

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 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.

[s. 48.415 (10), Stats.]

Committee members agreed it would be appropriate to use this ground in cases in which the child is adjudged to be CHIPS because he or she is at risk of being abused or neglected.

*Description of Draft*

The draft modifies the ground that requires a showing of prior involuntary TPR to another child so that a TPR of another child may be considered in terminating the parental rights to a subsequent child who is adjudged CHIPS because he or she is at risk of being abused or neglected.

**Continuing Need for Protection and Services**

*Background*

The ground of 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.

[s. 48.415 (2) (a), Stats.]

Committee members expressed concerns about requiring juries or judges to look forward 12 months to determine whether a parent is likely to meet court-ordered conditions, especially in light of time limits under the federal Adoption and Safe Families Act for TPR to children in out-of-home care.

### *Description*

The draft modifies the ground that requires a showing that the child is in CHIPS 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**

#### *Background*

Under current law, a person may be convicted of perjury for orally making a false statement under oath or affirmation. Perjury is a Class H felony, punishable by a fine not to exceed \$10,000 or imprisonment not to exceed six years, or both. In addition, a person who makes or subscribes to a false statement under oath or affirmation may be convicted of false swearing. False swearing is a Class H felony if the statement is required or authorized by law or required by a public officer or governmental agency as a prerequisite to official action. Otherwise, it is a Class A misdemeanor punishable by a fine not to exceed \$10,000 or imprisonment not to exceed nine months, or both. There is no general penalty for making a false statement if it is not made under oath or affirmation, although some statutes contain penalties for making a false statement under specified conditions. [ss. 946.31 and 946.32, Stats.]

There was consensus among committee members that there should be a penalty if a person knowingly makes a false statement or representation of fact with the intent to prevent a person from receiving notice of a TPR proceeding.

#### *Description*

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

### **Voluntary Consent to TPR by Telephone or Audiovisual Means**

#### *Background*

Under current law, a person may give voluntary consent to the termination of his or her parental rights as provided in s. 48.41, Stats. 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 or 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.

The committee heard testimony on problems with these current provisions. First, it requires that that official or judge from another jurisdiction apply Wisconsin law in determining whether the appropriate voluntary questions are asked. Second, if the parent is in the custody of the federal prison system or another state for criminal purposes, there is no authority to have them appear in the Wisconsin jurisdiction, or in the presence of any consular official or military judge, for the hearing. Also, because TPR's are civil proceedings, the federal prison system refuses to accommodate this request for security reasons. In addition, there are cases where parents cannot afford to travel from where they live to the Wisconsin court that has jurisdiction, in order to enter their voluntary consent to TPR in person. This requirement has resulted in several undesirable outcomes: taking a voluntary consent to TPR by telephone in direct contradiction to the statute; entering a default judgment against

the parent and involuntarily terminating their parental rights despite their request to voluntarily do so; or scheduling a trial to involuntarily terminate their rights.

*Description*

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**

*Background*

Section 48.195, Stats., commonly referred to as the “safe haven law,” provides no requirement that the person giving up the child establish that they are the parent of the child and prohibits the state from seeking identifying information about the parents. However, there is no provision in the notice portion of the CHIPS or TPR statute that exempts the state from providing notice 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, the committee heard testimony that providing notice when the parent is identified presents its own dilemma. In most cases, the parents who relinquish their newborns do so in part because they do not want family members to know about the child. In order to notice them of the TPR and CHIPS proceedings, the statute requires, under ss. 48.42 (2m) and 48.27 to send 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.

*Description*

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

**Guardian ad Litem for Parent in TPR Proceeding**

*Background*

Under current law, s. 48.235, Stats., 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. Unfortunately, these cases do not specify what role that GAL is to play in the proceedings. This results in different courts applying different rules for the GAL’s participation. The committee heard testimony that, in many cases, this results in adding significant time and expense to the proceedings with no corresponding increase in the protection of the rights of the parent.

*Description*

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**

### *Background*

Under current law, s. 48.295, Stats., 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 or TPR proceedings, or whether the client or patient privilege applies to these reports. These evaluations often contain important information regarding the parent's drug and alcohol use, as well as intelligence testing and other data regarding whether the parent is intellectually able to parent the child. These evaluations also provide the basis for the court's inclusion of specific conditions for the parent to complete in order to have their children returned to their care, and subsequent allegations of involuntary grounds for TPR if the parent fails to complete those conditions.

### *Description*

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 in any proceeding under ch. 48 or 938, Stats., except for a delinquency proceeding under s. 938.12.

## **Services Under a Dispositional Order for an Incarcerated Parent**

### *Background*

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 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 and therefore grounds would exist.

However, this ground also requires that the court or jury find that "reasonable efforts" were made by the county or, in Milwaukee County, the 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.

### *Description*

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

### Time for Filing of Notice of Appeal

#### *Background*

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. [s. 808.04 (8), Stats.] An appeal of a TPR judgment is initiated by the filing of a notice of ***intent to appeal***. [s. 809.107 (2), Stats.] 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.

#### *Description*

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

#### *Background*

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. The committee heard testimony that the majority of parents who contest TPR proceedings at the trial court level exercise their right to file a notice of intent to appeal the termination of their parental rights. In some of these cases, the appellate counsel declines to file an appeal after the initial notice of intent to appeal is filed, for a variety of reasons. The current statute places no obligation on that appellate counsel to notify the parties that the appeal will not be filed.

The current system may cause delays in adoption proceedings while it is determined whether all of the transcripts have been received by appellate counsel, whether appellate counsel is intending to file an appeal and just missed the deadline, and trying to have the case called back into court so that there is an adequate record for the trial court to determine that the appeal has been abandoned.

#### *Description*

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**

### *Background*

Under current law, a representative of the Office 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 Office 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. The representative of the Office of the State Public Defender indicated that it would be appropriate to generally rely upon an indigency determination made for trial representation in a TPR proceeding in determining whether the parent is financially eligible for representation for an appeal of the TPR judgment.

### *Description*

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, 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.

## **Continuing Representation in TPR Appeals**

### *Background*

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

### *Description*

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**

### *Background*

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.

### *Description*

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**

### *Background*

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.

### *Description*

The bill provides that the time in which to file notice of appeal in a TPR case may be enlarged if the judgment or order was entered as a result of a TPR petition that was filed by a district attorney, corporation counsel, or other representative of the public.

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

### *Background*

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. There was consensus among committee members that, at a certain point, an appeal of a TPR judgment should not be permitted for any reason in order to give stability and permanence to the adopted child and the child's adoptive family.

### *Description*

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**

#### *Background*

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.

[s. 48.913 (1), Stats.]

There was consensus among committee members that the amount that may be reimbursed for maternity clothes should not be unlimited. In addition, there was consensus that the amount that may be reimbursed for living expenses should be increased so that birth mothers who need additional money for living expenses are able to receive reimbursement without leaving Wisconsin to adopt their children. Finally, there was agreement that a small increase in the amount that may be spent on a gift for the birth mother was reasonable.

*Description*

The bill 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**

*Background*

Under current law, s. 48.837, Stats., 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.

### *Description*

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

### **Adoption Advertising**

#### *Background*

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. [s. 48.825, Stats.]

The committee was informed that such advertising continues in publications such as telephone directories because the current law is not enforced.

#### *Description*

The bill prohibits publishing adoption advertisements that violate current law.

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

#### *Background*

The committee was provided with information from one of its members who is an adoptive parent, as well as from an organization that provides post-adoption services to families. These individuals emphasized the need for pre-adoption preparation for prospective adoptive parents in order to prevent disrupted adoptions. These services are valuable for all adoptive parents, but especially necessary for persons who are adopting children with special needs or children from foreign countries who may have experienced trauma and abuse or neglect.

#### *Description*

The bill requires a court, in a proceeding for the adoption of a child by nonrelatives, to order the person or persons who are petitioning to adopt the child if they have not 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. DHFS is required to promulgate rules on the number of hours of required pre-adoption preparation, as well as topics to be covered in the training. The proposed adoptive parents must pay for the training.

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

### **Continuation of Dispositional Orders**

#### *Background*

Under current law, s. 48.368, Stats., 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.

*Description*

The bill 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**

*Background*

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. [s. 48.64, Stats.]

Concerns were raised to the committee that it is not clear whether a head of home is a party to a proceeding appealing an agency decision or order. Also, arguments were made that the head of home should have access to documents and records in addition to those that are to be used at the hearing to support the agency's position. Finally, the committee concluded that the circuit court in which the dispositional order was entered should have jurisdiction to review agency decisions or orders so that there is not an additional court involved in the child's case and that the burden of proof in a circuit court review should be clarified.

*Description*

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

## **Appeals of Licensing Decisions**

### *Background*

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. A “public licensing agency” is defined as “a county department or, in a county having a population of 500,000 or more, the department.” [s. 48.75 (1b), Stats.] For licensing of Milwaukee County foster and treatment foster homes, the 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.

### *Description*

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**

#### *Background*

Testimony received by the committee indicated that, in some cases, when a person who is receiving child welfare services moves to another county, the new county of residence is not informed that the person has moved to the county or of the services that the person is to receive.

#### *Description*

The bill 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 of Human or Social Services (“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.



### Committee and Joint Legislative Council Votes

The following drafts were recommended by the Special Committee on Adoption and Termination of Parental Rights Law to the Joint Legislative Council for introduction in the 2005-06 Session of the Legislature:

#### Special Committee Vote

- Patrick Kenney moved, seconded by Stephen Hayes, that WLC: 0015/2 be approved. The motion was approved by a vote of Ayes, 10 (Reps. Jeskewitz and Kestell; Sens. Plale and Reynolds; and Public Members Dreyfus, Ehmann, Hayes, Kenney, Proft, and Timmerman); and Absent, 2 (Rep. Sinicki; and Public Member Foley).
- Senator Plale moved, seconded by Stephen Hayes, that WLC: 0016/1 be approved. The motion was approved by a vote of Ayes, 10 (Reps. Jeskewitz and Kestell; Sens. Plale and Reynolds; and Public Members Dreyfus, Ehmann, Hayes, Kenney, Proft, and Timmerman); and Absent, 2 (Rep. Sinicki; and Public Member Foley).
- Patrick Kenney moved, seconded by Stephen Hayes, that WLC: 0026/3 be approved, as amended. The motion was approved by a vote of Ayes, 6 (Rep. Jeskewitz; and Public Members Dreyfus, Foley, Hayes, Kenney, and Proft); Noes, 2 (Public Members Ehmann and Timmerman); and Absent, 4 (Reps. Kestell and Sinicki; and Sens. Plale and Reynolds).
- Patrick Kenney moved, seconded by Stephen Hayes, that WLC: 0028/1 be approved, as amended. The motion was approved by a vote of Ayes, 10 (Reps. Jeskewitz and Kestell; Sens. Plale and Reynolds; and Public Members Dreyfus, Ehmann, Hayes, Kenney, Proft, and Timmerman); and Absent, 2 (Rep. Sinicki; and Public Member Foley).
- Stephen Hayes moved, seconded by Patrick Kenney, that WLC: 0030/2 be approved. The motion was approved by a vote of Ayes, 8 (Reps. Jeskewitz and Kestell; Sen. Reynolds; and Public Members Ehmann, Hayes, Kenney, Proft, and Timmerman); and Absent, 4 (Rep. Sinicki; Sen. Plale; and Public Members Dreyfus and Foley).
- Patrick Kenney moved, seconded by Stephen Hayes, that WLC: 0033/2 be approved. The motion was approved by a vote of Ayes, 8 (Rep. Jeskewitz; and Public Members Dreyfus, Ehmann, Foley, Hayes, Kenney, Proft, and Timmerman); and Absent, 4 (Reps. Kestell and Sinicki; and Sens. Plale and Reynolds).
- Senator Plale moved, seconded by Representative Kestell, that WLC: 0035/1, be approved, as amended. The motion was approved by a vote of Ayes, 10 (Reps. Jeskewitz and Kestell; Sens. Plale and Reynolds; and Public Members Dreyfus, Ehmann, Hayes, Kenney, Proft, and Timmerman); and Absent, 2 (Rep. Sinicki; and Public Member Foley).
- Stephen Hayes moved, seconded by Representative Kestell, that WLC: 0038/4 be approved, as amended. The motion was approved by a vote of

Ayes, 9 (Reps. Jeskewitz and Kestell; and Public Members Dreyfus, Ehmann, Foley, Hayes, Kenney, Proft, and Timmerman); and Absent, 3 (Rep. Sinicki; and Sens. Plale and Reynolds).

- Stephen Hayes moved, seconded by Senator Plale, that WLC: 0040/1, be approved. The motion was approved by a vote of Ayes, 10 (Reps. Jeskewitz and Kestell; Sens. Plale and Reynolds; and Public Members Dreyfus, Ehmann, Hayes, Kenney, Proft, and Timmerman); and Absent, 2 (Rep. Sinicki; and Public Member Foley).
- Patrick Kenney moved, seconded by Jodi Timmerman, that WLC: 0043/1 be approved. The motion was approved by a vote of Ayes, 10 (Reps. Jeskewitz and Kestell; Sens. Plale and Reynolds; and Public Members Dreyfus, Ehmann, Hayes, Kenney, Proft, and Timmerman); and Absent, 2 (Rep. Sinicki; and Public Member Foley).
- Patrick Kenney moved, seconded by Stephen Hayes, that WLC: 0044/2 be approved. The motion was approved by a vote of Ayes, 8 (Reps. Jeskewitz and Kestell; Sen. Reynolds; and Public Members Ehmann, Hayes, Kenney, Proft, and Timmerman); and Absent, 4 (Rep. Sinicki; Sen. Plale; and Public Members Dreyfus and Foley).
- Patrick Kenney moved, seconded by Jodi Timmerman, that WLC: 0045/2 be approved, as amended. The motion was approved by a vote of Ayes, 9 (Rep. Jeskewitz; Sen. Reynolds; and Public Members Dreyfus, Ehmann, Foley, Hayes, Kenney, Proft, and Timmerman); and Absent, 3 (Reps. Kestell and Sinicki; and Sen. Plale).
- Patrick Kenney moved, seconded by Stephen Hayes, that WLC: 0070/1 be approved. The motion was approved by a vote of Ayes, 10 (Reps. Jeskewitz and Kestell; Sens. Plale and Reynolds; and Public Members Dreyfus, Ehmann, Hayes, Kenney, Proft, and Timmerman); and Absent, 2 (Rep. Sinicki; and Public Member Foley).
- Susan Dreyfus moved, seconded by Jodi Timmerman, that WLC: 0073/1 be approved. The motion was approved by a vote of Ayes, 10 (Reps. Jeskewitz and Kestell; Sens. Plale and Reynolds; and Public Members Dreyfus, Ehmann, Hayes, Kenney, Proft, and Timmerman); and Absent, 2 (Rep. Sinicki; and Public Member Foley).
- Stephen Hayes moved, seconded by Patrick Kenney, that WLC: 0074/1 be approved. The motion was approved by a vote of Ayes, 9 (Reps. Jeskewitz and Kestell; Sen. Plale; and Public Members Dreyfus, Ehmann, Hayes, Kenney, Proft, and Timmerman); and Absent, 3 (Rep. Sinicki; Sen. Reynolds; and Public Member Foley).
- Stephen Hayes moved, seconded by Mary Jane Proft, that WLC: 0087/2 be approved. The motion was approved by a vote of Ayes, 8 (Rep. Jeskewitz; and Public Members Dreyfus, Ehmann, Foley, Hayes, Kenney, Proft, and Timmerman); Noes, 1 (Sen. Reynolds); and Absent, 3 (Reps. Kestell and Sinicki; and Sen. Plale).
- Representative Kestell moved, seconded by Patrick Kenney, that WLC: 0092/1 be approved. The motion was approved by a vote of Ayes, 8 (Reps. Jeskewitz and Kestell; Sen. Reynolds; and Public Members Ehmann,

Hayes, Kenney, Proft, and Timmerman); and Absent, 4 (Rep. Sinicki; Sen. Plale; and Public Members Dreyfus and Foley).

- Stephen Hayes moved, seconded by Susan Dreyfus, that WLC: 0094/2, be approved, as amended. The motion was approved by a vote of Ayes, 9 (Reps. Jeskewitz and Kestell; and Public Members Dreyfus, Ehmann, Foley, Hayes, Kenney, Proft, and Timmerman); Noes, 1 (Sen. Reynolds); and Absent, 2 (Rep. Sinicki; and Sen. Plale).
- Joseph Ehmann moved, seconded by Patrick Kenney, that WLC: 0095/1, be approved. The motion was approved by a vote of Ayes, 9 (Reps. Jeskewitz and Kestell; and Public Members Dreyfus, Ehmann, Foley, Hayes, Kenney, Proft, and Timmerman); and Absent, 3 (Rep. Sinicki; and Sens. Plale and Reynolds).
- Patrick Kenney moved, seconded by Jodi Timmerman, that WLC: 0098/1, be approved. The motion was approved by a vote of Ayes, 9 (Reps. Jeskewitz and Kestell; and Public Members Dreyfus, Ehmann, Foley, Hayes, Kenney, Proft, and Timmerman); and Absent, 3 (Rep. Sinicki; and Sens. Plale and Reynolds).
- Joseph Ehmann moved, seconded by Mary Jane Proft, that WLC: 0103/1, be approved, as amended. The motion was approved by a vote of Ayes, 9 (Reps. Jeskewitz and Kestell; and Public Members Dreyfus, Ehmann, Foley, Hayes, Kenney, Proft, and Timmerman); and Absent, 3 (Rep. Sinicki; and Sens. Plale and Reynolds).
- Joseph Ehmann moved, seconded by Patrick Kenney, that WLC: 0114/1 be approved, as amended. The motion was approved by a vote of Ayes, 9 (Reps. Jeskewitz and Kestell; and Public Members Dreyfus, Ehmann, Foley, Hayes, Kenney, Proft, and Timmerman); and Absent, 3 (Rep. Sinicki; and Sens. Plale and Reynolds).
- Stephen Hayes moved, seconded by Susan Dreyfus, that WLC: 0128/1, be approved. The motion was approved by a vote of Ayes, 9 (Reps. Jeskewitz and Kestell; and Public Members Dreyfus, Ehmann, Foley, Hayes, Kenney, Proft, and Timmerman); and Absent, 3 (Rep. Sinicki; and Sens. Plale and Reynolds).
- Patrick Kenney moved, seconded by Stephen Hayes, that WLC: 0130/1 be approved. The motion was approved by a vote of Ayes, 8 (Rep. Jeskewitz; and Public Members Dreyfus, Ehmann, Foley, Hayes, Kenney, Proft, and Timmerman); and Absent, 4 (Reps. Kestell and Sinicki; and Sens. Plale and Reynolds).

Chair Jeskewitz directed staff to combine these approved drafts into one comprehensive bill draft, WLC: 0166/1.

#### **Joint Legislative Council Vote**

At its April 6, 2005 meeting, the Joint Legislative Council voted as follows on the recommendation of the Special Committee:

*Introduction by the Joint Legislative Council of WLC: 0166/1, relating to termination of parental rights and adoption, passed by a vote of:*

*Ayes, 19 (Sens. Lasee, Brown, Decker, Fitzgerald, Kapanke, Miller, Risser, Robson, Schultz and Zien; and Reps. Wieckert, Ainsworth, Gard, Kaufert, Kreuser, Nischke, Pocan, Schneider and Travis); Noes, 0; and Excused, 3 (Sen. Grothman; and Reps. Freese and Huebsch).*

**[Rep. Freese noted that had he been present, he would have voted “aye” on WLC: 0166/1.]**

**The proposal that the Joint Legislative Council voted to introduce was subsequently introduced as 2005 Assembly Bill 521.**

## Appendix 2

### Joint Legislative Council

*[Joint Legislative Council Members Who Selected and Appointed Committee and Its Membership]*

**Co-Chair**

**ALAN LASEE**  
*Senate President*  
2259 Lasee Road  
De Pere, WI 54115

**Co-Chair**

**STEVE WIECKERT**  
*Representative*  
1702 S. Irma Street  
Appleton, WI 54915

#### SENATORS

**RONALD W. BROWN**  
1112 Violet Avenue  
Eau Claire, WI 54701

**MICHAEL G. ELLIS**  
1752 County Road GG  
Neenah, WI 54956

**MARY E. PANZER**  
*Majority Leader*  
635 Tamarack Drive West  
West Bend, WI 53095

**G. SPENCER COGGS**  
3732 North 40th Street  
Milwaukee, WI 53216

**JON ERPENBACH**  
*Minority Leader*  
2385 Branch St.  
Middleton, WI 53562

**FRED A. RISSER**  
5008 Risser Road  
Madison, WI 53705

**ALBERTA DARLING**  
1325 West Dean Road  
River Hills, WI 53217

**SHEILA HARSDORF**  
N6627 County Road E  
River Falls, WI 54022

**ROBERT WELCH**  
*President Pro Tempore*  
P.O. Box 523  
Redgranite, WI 54970

**RUSSELL DECKER**  
6803 Lora Lee Lane  
Schofield, WI 54476

#### REPRESENTATIVES

**STEVEN M. FOTI**  
*Majority Leader*  
351 Lisbon Road  
Oconomowoc, WI 53066

**JIM KREUSER**  
*Minority Leader*  
3505 14th Place  
Kenosha, WI 53144

**DAN SCHOOFF**  
1955 Pebble Drive  
Beloit, WI 53511

**STEPHEN J. FREESE**  
*Speaker Pro Tempore*  
310 East North Street  
Dodgeville, WI 53533

**MICHAEL LEHMAN**  
1317 Honeysuckle Road  
Hartford, WI 53027

**JOHN TOWNSEND**  
297 Roosevelt Street  
Fond du Lac, WI 54935

**JOHN GARD**  
*Speaker*  
481 Aubin Street, P.O. Box 119  
Peshtigo, WI 54157

**MARLIN D. SCHNEIDER**  
3820 Southbrook Lane  
Wisconsin Rapids, WI 54494

**DAVID TRAVIS**  
5440 Willow Road  
Waunakee, WI 53597

**DEAN KAUFERT**  
1360 Alpine Lane  
Neenah, WI 54956

This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the co-chairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees. [s. 13.81, Stats.]

## Joint Legislative Council

[Current Joint Legislative Council Members Receiving Committee Report]

### Co-Chair

**ALAN LASEE**

*Senate President*

2259 Lasee Road  
De Pere, WI 54115

### Co-Chair

**STEVE WIECKERT**

*Representative*

1 Weatherstone Drive  
Appleton, WI 54914

### SENATORS

**RONALD W. BROWN**

1112 Violet Avenue  
Eau Claire, WI 54701

**DAN KAPANKE**

1610 Lakeshore Drive  
La Crosse, WI 54603

**DALE SCHULTZ**

*Majority Leader*  
515 N. Central Avenue  
Richland Center, WI 53581

**RUSSELL DECKER**

6803 Lora Lee Lane  
Schofield, WI 54476

**MARK MILLER**

4903 Roigan Terrace  
Monona, WI 53716

**DAVID ZIEN**

*President Pro Tempore*  
1716 63<sup>rd</sup> Street  
Eau Claire, WI 54703

**SCOTT FITZGERALD**

N4692 Maple Road  
Juneau, WI 53039

**FRED A. RISSER**

5008 Risser Road  
Madison, WI 53705

**GLENN GROTHMAN**

111 South 6<sup>th</sup> Avenue  
West Bend, WI 53095

**JUDY ROBSON**

*Minority Leader*  
2411 E. Ridge Road  
Beloit, WI 53511

### REPRESENTATIVES

**JOHN AINSWORTH**

W6382 Waukechon Road  
Shawano, WI 54166

**DEAN KAUFERT**

1360 Alpine Lane  
Neenah, WI 54956

**MARLIN D. SCHNEIDER**

3820 Southbrook Lane  
Wisconsin Rapids, WI 54494

**STEPHEN J. FREESE**

*Speaker Pro Tempore*  
310 East North Street  
Dodgeville, WI 53533

**JIM KREUSER**

*Minority Leader*  
3505 14th Place  
Kenosha, WI 53144

**DAVID TRAVIS**

5440 Willow Road  
Waunakee, WI 53597

**JOHN GARD**

*Speaker*  
481 Aubin Street, P.O. Box 119  
Peshtigo, WI 54157

**ANN NISCHKE**

202 W. College Avenue  
Waukesha, WI 53186

**MICHAEL HUEBSCH**

*Majority Leader*  
419 West Franklin  
West Salem, WI 54669

**MARK POCAN**

309 N. Baldwin Street  
Madison, WI 53703

This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the co-chairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees. [s. 13.81, Stats.]

## Appendix 3

### Adoption and Termination of Parental Rights Law

Representative Suzanne Jeskewitz, **Chair**  
N80 W15239 Hilltop Drive  
Menomonee Falls, WI 53051

Senator Jeffrey T. Plale  
1404 18th Avenue  
South Milwaukee, WI 53172

Representative Christine Sinicki  
3132 South Indiana Avenue  
Milwaukee, WI 53207

Joseph Ehmann  
First Assistant State Public Defender  
Madison Appellate Office  
315 N. Henry St., 2nd Floor  
Madison, WI 53707-7923

Stephen W. Hayes  
The Schroeder Group, SC  
20800 Swenson Drive Ste 475  
Waukesha, WI 53186

Mary Jane Proft  
N98 W15725 Shagbark Road  
Germantown, WI 53022-5150

Representative Steve Kestell  
W3829 State Highway 32  
Elkhart Lake, WI 53020

Senator Thomas G. Reynolds  
9430 W. Schlinger Avenue  
West Allis, WI 53214

Susan Dreyfus  
Alliance for Children and Families  
11700 W. Lake Park Drive  
Milwaukee, WI 53224-3099

Christopher R. Foley  
Presiding Judge, Juvenile Division  
Milwaukee County Circuit Court  
901 North Ninth St., Room 609  
Milwaukee, WI 53233-1425

Patrick Kenney  
District Attorney's Office  
Children's Court  
10201 Watertown Plank Rd.  
Wauwatosa, WI 53226

Jodi Timmerman  
Rock County Asst. Corp. Counsel  
1300 Moline Street  
Stoughton, WI 53589

**STUDY ASSIGNMENT:** The committee is directed to study current law relating to adoption and termination of parental rights (TPR) to determine whether modifications could be made to encourage adoptions in Wisconsin and to make the adoption and TPR processes more efficient and more cost effective. The committee shall consider creating a state tax credit for adoption expenses. The committee shall also study TPR and adoption in the context of the child welfare system to ensure compliance with federal law and that permanency is achieved for children as quickly as possible.

**12 MEMBERS:** 2 Senators, 3 Representatives, and 7 Public Members.

**LEGISLATIVE COUNCIL STAFF:** Anne Sappenfield, Senior Staff Attorney, Laura Rose, Deputy Director, Zeke Fletcher, Legal Intern, and Tracey Uselman, Support Staff.





### Committee Materials List

#### February 18, 2005 Meeting

- [WLC: 0026/3](#), relating to fair hearings for head of foster, treatment foster, or group home
- [WLC: 0033/2](#), relating to involuntary termination of parental rights ground of continuing need of protection and services
- [WLC: 0038/4](#), relating to declarations of paternal interest
- [WLC: 0045/2](#), relating to specifying that evidentiary privilege does not apply to statements made by a parent during the course of an alcohol and drug abuse assessment or a mental, physical, psychological or developmental examination of the parent in a termination of parental rights proceeding
- [WLC: 0087/2](#), relating to advertising related to adoption
- [WLC: 0088/2](#), relating to involuntary termination of parental rights on the grounds of continuing need of protection or services
- [WLC: 0094/2](#), relating to training for prospective adoptive parents
- [WLC: 0114/1](#), relating to enlargement of time for filing a notice of appeal in a termination of parental rights proceeding
- [WLC: 0128/1](#), relating to requiring voluntary agreement for child placement or a guardianship order to remain in effect during the pendency of a termination of parental rights proceedings
- [WLC: 0130/1](#), relating to hearing to review agency decision of order affecting placement of a child

#### January 21, 2005 Meeting

- [WLC: 0026/2](#), relating to fair hearings for head of foster, treatment foster, or group home
- [WLC: 0028/2](#), relating to filing of notice of intent to appeal
- [WLC: 0030/2](#), relating to creating a time limit for collateral attack on termination of parental rights judgment
- [WLC: 0038/3](#), relating to declarations of paternal interest
- [WLC: 0044/2](#), relating to the role of a guardian ad litem appointed for a parent in a contested termination of parental rights proceeding involving a child found to be in need of protection or services
- [WLC: 0087/1](#), relating to advertising related to adoption
- [WLC: 0088/1](#), relating to involuntary termination of parental rights on the grounds of continuing need of protection or services
- [WLC: 0091/1](#), relating to posttermination of parental rights contact between a child and the child's birth parents, birth siblings, and other birth relatives
- [WLC: 0092/1](#), relating to notice that a person receiving child welfare services has changed his or her county of residence

- [WLC: 0094/1](#), relating to training for prospective adoptive parents
- [WLC: 0095/1](#), relating to indigency determinations made by the state public defender in termination of parental rights proceedings
- [WLC: 0098/1](#), relating to continuing representation of a person in a termination of parental rights proceeding
- [WLC: 0103/1](#), relating to requiring the court to advise a part of time limits in termination of parental rights proceedings
- [Draft letter to Secretary Helene Nelson](#), Department of Health and Family Services
- [Draft letter to Representative Curt Gielow](#), Chair, Assembly Committee on Medicaid Reform
- [Draft letter to A. John Voelker](#), Director, Director of State Courts Office
- [Memorandum](#) from Attorney Judith Sperling-Newton
- [Email](#), from Marcia MacKenzie, Dane County Corporation Counsel

## **December 14, 2004 Meeting**

- WLC: [0015/2](#), relating to involuntary termination of parental rights based upon failure to assume parental responsibility
- WLC: [0033/1](#), relating to involuntary termination of parental rights ground of continuing need of protection and services
- WLC: [0032/1](#), relating to involuntary termination of parental rights on the ground that the child is in need of protection or services and that parental rights to another child have been terminated
- WLC: [0034/1](#), relating to creating involuntary termination of parental rights ground of continuing incarceration
- WLC: [0035/1](#), relating to notice of a termination of parental rights proceeding to parents of a child whose custody was relinquished
- WLC: [0038/2](#), relating to declarations of paternal interest
- WLC: [0040/1](#), relating to permitting a parent who is unable to appear in person at a hearing on the voluntary termination of his or her parental rights to give consent by telephone or live audiovisual means.
- WLC: [0043/1](#), relating to requiring a person to file a notice of abandonment of appeal within 30 days after service of the transcript in a termination of parental rights case
- WLC: [0044/1](#), relating to the role of a guardian ad litem appointed for a parent in a contested termination of parental rights proceeding involving a child found to be in need of protection or services
- WLC: [0045/1](#), relating to specifying that evidentiary privilege does not apply to statements made by a parent during the course of an alcohol and drug abuse assessment or a mental, physical, psychological or developmental examination of the parent in a termination of parental rights proceeding
- WLC: [0070/1](#), relating to grounds for involuntary termination of parental rights
- WLC: [0071/1](#), relating to permitting adoptees to obtain access to medical and genetic and identifying information about their birth siblings

- WLC: [0073/1](#), relating to specifying the Milwaukee child welfare agency's right to appeal administrative hearing decisions on licensure of a foster home or treatment foster home
- WLC: [0074/1](#), relating to permitting placement of a child in the home of a proposed adoptive parent or parents who live out-of-state
- [Draft letter](#) to Secretary Helene Nelson, Department of Health and Family Services
- [Letter](#), from Senator Tom Reynolds, dated October 13, 2004
- [Email](#), from John Talis, dated November 18, 2004
- [Memorandum](#), from Bob Anderson, League Action of Wisconsin, Inc., dated December 3, 2004

## October 13, 2004 Meeting

- Memo No. 5, **Definition of "Relative" Following a Termination of Parental Rights** (10-4-04)
- [Memo No. 6, Adoption and Post-Adoption Financial and Other Assistance](#) (10-5-04)
  - [Enclosure](#), *Midwest Evaluation of the Adult Functioning of Former Foster Youth: Conditions of Youth Preparing to Leave State Care*
- [Memo No. 7, Summary of the October 4, 2004 Meeting of the Birth Father Registry Working Group](#) (10-13-04)
- [WLC: 0015/1](#), relating to involuntary termination of parental rights based upon failure to assume parental responsibility
- [WLC: 0016/1](#), relating to adoption expenses
- [WLC: 0026/1](#), relating to fair hearings for head of foster, treatment foster, or group home
- [WLC: 0027/1](#), relating to prohibiting visitation prior to termination of parental rights
- [WLC: 0028/1](#), relating to filing of notice of intent to appeal
- [WLC: 0029/1](#), relating to false statements in the course of a termination of parental rights proceeding and providing a penalty
- [WLC: 0030/1](#), relating to creating a time limit for bringing a collateral attack against a judgment terminating parental rights
- [Facts and Procedural Status](#), submitted by Public Member Christopher Foley (undated)
- [Memorandum, Declarations of Paternal Interest; Abandonment and Failure to Assume Parental Responsibility](#), submitted by Public Member Christopher Foley (9-22-04)
- Presentation by Representative David Ward
  - [LRB-2972/2](#)
  - [LRB-0500/3](#)
- [Memorandum, Legislative Changes Necessary to Allow Compliance with ASFA and The Federal Lawsuit Consent Decree](#), submitted by Mary Sowinski, Assistant District Attorney, Milwaukee County (10-13-04)

- [Testimony and enclosures](#), presented by Dale W. Langer, Bureau of Programs and Policies, Division of Children and Family Services, Department of Health and Family Services

## September 15, 2004 Meeting

- [Memo No. 1](#), **Declarations of Paternal Interest**, (9-2-04)
- [Memo No. 2](#), **2003-04 Legislation on Adoption Tax Credits** (9-2-04)
- [Memo No. 3](#), **Legislation Introduced by the 1996 Joint Legislative Council Special Committee on Adoption Laws** (9-7-04)
  - [Report No. 4](#), **Legislation on Adoption Laws, Adoption Assistance and Long-Term Kinship Care** (12-3-97) (Enclosed with Memo No. 3)
- [Memo No. 4](#), **Options for Legislation Relating to Termination of Parental Rights** (9-8-04)
- [Memorandum](#), **Possible Discussion Points for Chapter 48**, submitted by Public Member Patrick Kenney (8-28-04)
- [List of Proposals](#), submitted by Public Member Mary Jane Proft (undated)
- [List of Proposals](#), submitted by Public Member Stephen Hayes

## August 24, 2004 Meeting

- [Staff Brief 04-1](#), **Adoption and Termination of Parental Rights Law** (8-17-04)
- [Testimony](#), **Elizabeth Schaefer**, Director of Adoption Services, Lutheran Social Services
- [Outline for Panel Presentation](#), **Department of Health and Family Services**
  - [Testimony](#), **Denise Revels Robinson and Catherine Swessel**
  - [Testimony](#), **Denise Revels Robinson and Catherine Swessel**
  - [Testimony](#), **Denise Revels Robinson and Catherine Swessel**
  - [Testimony](#), **Mark D. Campbell**, Director, Bureau of Programs and Policies
  - [Testimony](#), **Mark D. Campbell**, Director, Bureau of Programs and Policies
  - [Testimony](#), **Mark S. Mitchell**, Manager, Child Welfare Policy Development Section