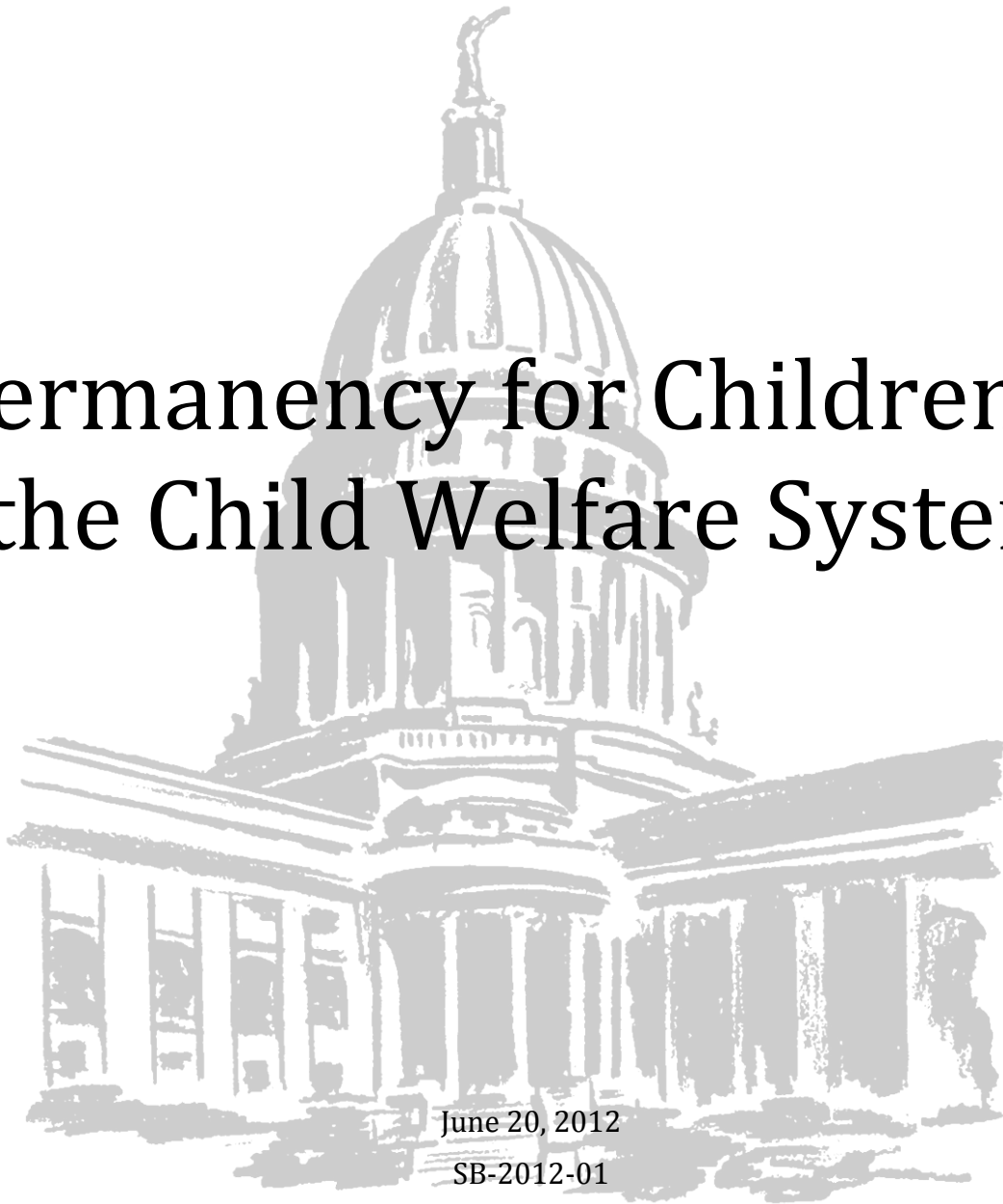


Staff Brief

Permanency for Children in the Child Welfare System



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INTRODUCTION

This Staff Brief describes current law that is relevant to the discussion of policy options relating to achieving permanency for children under the age of eight years who are placed outside of their homes due to a child in need of protection or services (CHIPS) court order.

In Wisconsin, child welfare services are administered by counties, with the exception of Milwaukee County. In Milwaukee County, the Department of Children and Families (DCF), the state-level agency that is responsible for child welfare services, administers direct child welfare services through the Bureau of Milwaukee Child Welfare (BMCW).

The Wisconsin statutes governing child welfare services are contained in ch. 48, Stats., the Children's Code.¹ Children who are alleged to have committed a delinquent act or to be truant, uncontrollable, or runaways are under the jurisdiction of the juvenile court through ch. 938, Stats., the Juvenile Justice Code. Because this Staff Brief focuses on younger children, most of the statutes described are contained in the Children's Code.

Under the Children's Code and the Juvenile Justice Code, the juvenile court has jurisdiction over children who are alleged to be in need of protection or services that can be ordered by the court and who meet specified conditions, such as having been a victim of neglect or abuse.

The Staff Brief is divided into the following parts:

- **Part I** provides a brief overview of the sources of constitutional, federal, and state laws that govern child welfare policy.
- **Part II** describes current law relating to children who are placed outside of their home pursuant to a CHIPS order.
- **Part III** describes current law regarding permanency plans and permanency goals for children who are placed outside of their home pursuant to a CHIPS order.

This Staff Brief was prepared by Margit Kelley and Melissa Schmidt, Staff Attorneys.

¹ Many provisions of ch. 48 were amended by 2011 Wisconsin Act 181, also referred to as DCF's "Program Improvement Plan," or "PIP" Act. Act 181 goes into effect on November 1, 2012. As such, any reference to the statutes include changes made by Act 181, even though the changes are not in effect on the date of this brief.

PART I – OVERVIEW OF CHILD WELFARE POLICY

While child welfare policy is implemented at the state level, it is shaped by constitutional law relating to the rights of parents and by federal law which conditions receipt of federal funding on the state meeting various standards. This Part briefly describes those sources of law and also describes relevant portions of the legislative intent statement in the Children's Code that reflects broader state policy goals for the Children's Code.

CONSTITUTIONAL LAW

In the United States, the relationship between a parent and a child is a constitutionally protected right. [See *Stanley v. Illinois*, 405 U.S. 645 (1972).] Therefore, a biological parent's rights to a relationship with his or her child must be considered in actions removing a child from the parent or terminating the parent's parental rights.

The parameters of parents' rights in the upbringing of their children have been delineated by the U.S. Supreme Court in its interpretation of the liberty interest protected in the Fourteenth Amendment to the U.S. Constitution. That amendment provides in part that, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law."

In two seminal cases, decided in the 1920's, the U.S. Supreme Court upheld parents' rights under the Fourteenth Amendment to direct the upbringing of their children, with limitations on a state's ability to override parents' autonomy. [*Meyer v. Nebraska*, 262 U.S. 390 (1923); and *Pierce v. Society of Sisters*, 268 U.S. 510 (1925).] In *Meyer v. Nebraska*, the Court stated that "liberty" means:

...not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.

In a third seminal case, the U.S. Supreme Court struck down a Washington state law that had allowed any third party to petition for visitation rights with a child over the objections of a parent. To support its holding, the Court cited the constitutional right of parents to rear their children, stating that the interest of parents in the care, custody, and control of their children is perhaps the oldest of the fundamental liberty interests recognized by the Court. The holding requires that state courts give special weight to a fit parent's decisions about the upbringing of a

child, as those choices are sheltered by the Fourteenth Amendment against a state's unwarranted usurpation, disregard, or disrespect. [*Troxel v. Granville*, 530 U.S. 57 (2000).]

As a result, the state is constitutionally constrained from intervening in a biological parent's upbringing of a child unless there is a compelling state interest, such as actual harm to the child or neglect of basic needs (due to reasons other than poverty).

Other decisions by the U.S. Supreme Court and Wisconsin Supreme Court specific to termination of parental rights (TPR) have held that, due to the interest at stake, a parent must be found to be unfit before his or her parental rights may be terminated except under unusual circumstances (e.g., the parent has never had any daily involvement in the child's life). [See *Quillion v. Walcott*, 434 U.S. 246 (1978); and *Mrs. R. v. Mr. & Mrs. B.*, 102 Wis. 2d 118 (1981).]

FEDERAL LAWS

The parameters of the Children's Code are further delineated by a number of federal laws. This section briefly describes a few of the major federal laws affecting child welfare and adoption policy.

The Adoption Assistance and Child Welfare Act of 1980

The Adoption Assistance and Child Welfare Act of 1980 focuses on family preservation efforts to help keep families together and children out of foster care or other out-of-home placement options. The Act requires a state to make "reasonable efforts" to keep a child in the family home, or risk losing federal funding. Among other items, the Act requires regular judicial reviews for children in foster care, with an emphasis on returning children home as soon as possible, and requires that a dispositional plan for the child's future be determined within 18 months after being placed in foster care. [P.L. 96-272.]

The Adoption and Safe Families Act of 1997

The Adoption and Safe Families Act of 1997 (commonly referred to as "ASFA") promotes the adoption of children in foster care. Under the Act, the child's health and safety is the paramount goal. The Act encourages a permanency plan for adoption to be worked on concurrently with a reunification plan. Another element of the Act is that it requires court proceedings to initiate TPR, in order to make adoption available, if a child has been in foster care for at least 15 of the previous 22 months, unless the child is in the care of a relative or TPR is not in the best interests of the child. [P.L. 105-89.]

The Fostering Connections to Success and Increasing Adoption Act of 2008

The Fostering Connections to Success and Increasing Adoptions Act of 2008 ("Fostering Connections Act") is intended to connect and support relative caregivers and improve incentives for adoption. The Act requires an agency to make reasonable efforts to place siblings together in the same out-of-home placement. Among other aspects, the Act requires an agency to identify and notify all adult relatives of a child, within 30 days of the child's removal from the home, of the

relatives' options to become a placement resource for the child, and requires each case plan to include a plan for ensuring educational stability for the child. [P.L. 110-351.]

The Indian Child Welfare Act of 1978

The Indian Child Welfare Act of 1978 (ICWA), incorporated into Wisconsin law, requires an agency caseworker to determine in every adoptive or foster care placement whether the Act applies. The Act applies if the child is either a member of an Indian tribe or eligible for membership, and is the biological child of a member of an Indian tribe. This is determined based on each tribe's standards of eligibility for membership. In general, the tribe must be notified and given an opportunity to assert the statutory placement preference priority in favor of the child's extended family and tribe. [P.L. 95-608; 2009 Wisconsin Act 94.]

Titles IV-B and IV-E

The largest federally funded programs that support state and tribal efforts for child welfare, foster care, and adoption activities are authorized under titles IV-B and IV-E of the Social Security Act. These programs are administered by the U.S. Department of Health and Human Services and include the title IV-B Child Welfare Services and Promoting Safe and Stable Families (formerly known as Family Preservation) programs, the title IV-E Foster Care Program, the title IV-E Adoption Assistance Program, and the title IV-E Chafee Foster Care Independence Program. The Social Services Block Grant (SSBG) is authorized under title XX of the Act and funds a wide range of programs that support various social policy goals.

LEGISLATIVE PURPOSE OF THE WISCONSIN CHILDREN'S CODE

In codifying the laws regarding children's welfare, the Wisconsin Legislature memorialized the legislative purpose, directing that in construing the Children's Code, the best interests of the child must always be of paramount consideration. [s. 48.01 (1) (intro.), Stats.]

The directive specifies that while the paramount goal is to protect children, the code must be liberally construed to preserve the unity of the family whenever appropriate, and that the state must assist parents in fulfilling their parental responsibilities. Specifically, the courts and agencies responsible for child welfare, while assuring that a child's health and safety are the paramount concerns, must assist parents in changing any circumstances in the home that could harm the child, or that would require the child to be placed outside the home. [s. 48.01 (1) (a), Stats.]

However, the directive also specifies that in considering the best interests of the child, the courts must recognize that they have the authority, in appropriate cases, not to reunite a child with the family. The courts and agencies responsible for child welfare must recognize that instability and impermanence in family relationships are contrary to the welfare of children, and must therefore recognize the importance of eliminating the need for children to wait unreasonable periods of time for a parent to correct the conditions that prevent a child's safe return to the family. [s. 48.01 (1) (a), Stats.]

The code specifies that children have certain basic needs that must be provided for, including the need for adequate food, clothing, and shelter; the need to be free from physical,

sexual, or emotional injury or exploitation; the need to develop physically, mentally, and emotionally to their potential; and the need for a safe and permanent family. It is further recognized that, under certain circumstances, in order to ensure that the needs of a child are provided for, a court may determine that it is in the best interests of the child for the child to be removed from the parents, in a manner that is consistent with laws relating to the rights of parents. [s. 48.01 (1) (ag), Stats.]

The code directs that children be protected against the harmful effects resulting from the absence of parents or parent substitutes, from the inability, other than financial inability, of parents or parent substitutes to provide care and protection for their children, and from the destructive behavior of parents or parent substitutes in providing care and protection for their children. [s. 48.01 (1) (bg) 1., Stats.]

Lastly, the directive specifies that the state must promote the adoption of children into safe and stable families, rather than allowing children to remain in the impermanence of foster care, and that the state must allow for TPR at the earliest possible time after rehabilitation and reunification efforts are discontinued and TPR is in the best interests of the child. [s. 48.01 (1) (gg) and (gr), Stats.]

PART II – OUT-OF-HOME PLACEMENTS

WISCONSIN CHILDREN IN OUT-OF-HOME PLACEMENTS AND REASONS FOR REMOVAL

According to DCF, on December 31, 2010, there were 6,509 Wisconsin children placed in out-of-home care. Of these children, 2,909 were under the age of eight. Table 1 sets forth the number of children in out-of-home placements broken down by age.

**Table 1: Number and Percentage of Children
in Out-of-Home Care on December 31, 2010**

Child's Age in Years	Total Children in Out-of-Home Care	% of Total Children in Out-of-Home Care
Under 1	336	5%
1	453	7%
2	488	7%
3	398	6%
4	360	6%
5	352	5%
6	271	4%
7	251	4%
8	271	4%
9	223	3%
10	230	4%
11	236	4%
12	241	4%
13	280	4%
14	350	5%
15	453	7%
16	615	9%
17	553	8%
18+	148	2%
State Total	6,509	100%
Number of Children Under the Age of 8 Years Old = 2,909		
Average Age of a Child in Out-of-Home Care = 9 Years Old		

Source: Wisconsin DCF, *Wisconsin Children in Out-of-Home Care: Annual Report for Calendar Year 2010*, p. 16 (December 8, 2011).

When a child is removed from the home, the child welfare worker is required to document reasons for the removal in the initial assessment. If there are multiple reasons for removal, the child welfare worker lists all of the reasons. The number of children in Wisconsin removed from their home in calendar year (CY) 2010 was 4,686 children. [DCF, *Wisconsin Children in Out-of-Home Care*, p. 25 (December 8, 2011).]

Table 2 lists the various reasons for which a child may be removed from the home, along with the number of removed children with that reason documented in the initial assessment.

Table 2: Number and Percentage of Children Removed From Home by Reason for Removal in 2010

Removal Reason	# of Children Removed in CY 2010 for This Reason	% of Children Removed in CY 2010 for This Reason*
Neglect	3,320	71%
Child Behavior Problem**	1,711	37%
Parent Substance Abuse	1139	24%
Caretaker Inability to Cope	1,051	22%
Physical Abuse	857	18%
Parent Incarcerated	678	14%
Inadequate Housing	407	9%
Sexual Abuse	199	4%
Abandonment	141	3%
Child Drug Abuse	134	3%
Child Clinically Diagnosed	134	3%
Child Alcohol Abuse	78	1%
Parent Death	70	1%
Relinquishment	65	1%

*The total number of children removed from their homes in CY 2010 was 4,686. However, because a child may be removed for more than one reason, the numbers of children impacted by all reasons is higher than the number of children removed in CY 2010 and the percentages will sum to more than 100%.

**The child behavior problem removal reason includes juvenile justice placements.

Source: DCF, *Wisconsin Children in Out-of-Home Care*, p. 31 (December 8, 2011).

GROUNDS FOR JURISDICTION OVER CHILDREN IN NEED OF PROTECTIVE SERVICES

When a child is removed from his or her home, and is not released, there must be a temporary physical custody hearing within 48 hours of removal, excluding Saturdays, Sundays, and legal holidays. By the time of the hearing, a CHIPS petition must be filed, with some exceptions. Also, if no petition has been filed, an additional 72 hours from the time of the hearing may be granted in certain circumstances. [s. 48.21 (1), Stats.]

The Children's Code provides that the juvenile court has jurisdiction over a child who is alleged to be in need of protection or services, may issue a CHIPS order, and may order that services may be provided if the child meets one of the following conditions:

- The child is without a parent or guardian.
- The child has been abandoned.
- A parent has relinquished custody of the child to a law enforcement officer, emergency medical technician, or hospital staff member without expressing intent to return for the child.
- The child has been the victim of abuse, including physical injury that was not accidentally inflicted; criminal sexual intercourse or sexual contact; sexual exploitation; permitting, allowing, or encouraging a child to engage in prostitution; causing a child to view or listen to sexual activity; causing a child to expose genitals or pubic area; or manufacture of methamphetamine in the child's home or in the child's presence. An injury may have been self-inflicted or inflicted by another.
- The child is at substantial risk of becoming the victim of abuse, based on reliable and credible information that another child in the home has been the victim of such abuse.
- A parent or guardian has signed a petition requesting jurisdiction, and is unable to care for or provide necessary special treatment or care for the child.
- A parent or guardian has refused or is unable to sign a petition requesting jurisdiction, but is unable to care for or provide necessary special treatment or care for the child.
- The child has been illegally placed for care or adoption.
- The child is receiving inadequate care while a parent is missing, incarcerated, hospitalized, or institutionalized.
- The child is at least 12 years old, has requested jurisdiction, and is in need of special treatment or care that the parent, guardian, or legal custodian is unwilling, neglecting, unable, or needs assistance to provide.
- The parent, guardian, or legal custodian neglects, refuses, or is 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.

- The child is at substantial risk of neglect, for reasons other than poverty, so as to seriously endanger the physical health of the child, based on reliable and credible information that the parent, guardian, or legal custodian has neglected another child in the home.
- The child is suffering emotional damage for which the parent, guardian, or legal custodian has neglected, refused, or been unable, for reasons other than poverty, to obtain necessary treatment or improvement of symptoms.
- The child is suffering from an alcohol or other drug abuse impairment, exhibited to a severe degree, for which the parent, guardian, or legal custodian is neglecting, refusing, or unable to provide treatment.
- The child has not been immunized as required by law, and the child is not exempt from the immunization requirement.

[s. 48.13, Stats.]

CHIPS DISPOSITIONS

If the juvenile court finds, following a plea hearing or a fact-finding hearing, that a child is in need of protection or services, the court must hold a dispositional hearing to determine the disposition of the case. When determining the disposition, one of the options available to the juvenile court is placement in out-of-home care. There are four out-of-home placement options available to the court: (a) the home of a relative; (b) a foster home; (c) a group home; and (d) a residential care center for children and youth. [s. 48.345 (3), Stats.]

If the agency responsible for the child's case (i.e., the county department, BMCW, or a licensed child welfare agency) recommends that the child be placed in out-of-home care, the agency must present specific information to the court showing all of the following:

- That continued placement of the child in the home would be contrary to the welfare of the child.
- That the agency primarily responsible for providing services to the child has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's health and safety are the paramount concerns, unless reasonable efforts are not required, as described below.
- That, if a permanency plan, as described below, has previously been prepared for the child, the agency has made reasonable efforts to achieve the permanency goal of the plan, including, if appropriate, through an out-of-state placement.
- If the child has one or more siblings who have been removed from the home or for whom out-of-home placement is recommended, that the agency has made reasonable efforts to place the children to remain together or, if it is recommended that the siblings not be placed in a joint placement, that the agency has made reasonable efforts for frequent visitation with each other. This does not apply if the agency shows that a joint

placement or frequent visitation would be contrary to the safety or well-being of any of the children.

- If the child is an Indian child, the agency shall also present as specific evidence that all of the following information exists:
 - That continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.
 - That active efforts have been made to prevent the breakup of the Indian child's family and that those efforts have proved unsuccessful.
 - That the placement recommended is in compliance with the statutory order of placement preference, or that if placement is not in compliance with that order, that there is good cause for departing from that order.

[s. 48.335 (3g) and (3j), Stats.]

If the child is an Indian child who is being removed from the home of a parent or Indian custodian, under ICWA, the court must designate the out-of-home placement in the following order of preference, unless the court finds good cause for departing from that order:

- The home of an extended family member of the Indian child.
- A foster home licensed, approved, or specified by the Indian child's tribe.
- An Indian foster home licensed or approved by DCF, a county department, or a child welfare agency.
- A group home or residential care center for youth approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the needs of the Indian child.

[s. 48.345 (3m), Stats.]

At the conclusion of the CHIPS dispositional hearing, the court must make a dispositional order. If the order places the child outside the home, the parent, if present at the dispositional hearing, must be asked to provide the names of three relatives of the child or other adult individuals whose homes the parent requests the court to consider as placements for the child. A parent who does not provide the information at the hearing must be permitted to give the information at a later date. [s. 48.335 (6), Stats.]

If the CHIPS order places the child outside of the home, the order must include the above findings (e.g., that continued placement of the child in the home would be contrary to the welfare of the child). The court must make these findings on a case-by-case basis based on the circumstances specific to the child and must document or reference the specific information on which those findings are based in the court order. [s. 48.355 (2), Stats.]

REASONABLE EFFORTS STANDARD

As previously noted, before a court may order that a child be placed in out-of-home care, the agency primarily responsible for providing services to the child must make reasonable efforts to prevent the removal of a child from the home, while assuring that the child's health and safety are the paramount concerns. In determining whether an agency has made reasonable efforts throughout the process, the court must consider all of the following efforts, and any other appropriate measures:

- A completed comprehensive assessment of the family's situation, including a determination of the likelihood of protecting the child's health, safety, and welfare effectively in the home.
- Provision of applicable financial assistance to the family.
- Offer or provision of applicable services to the family, including assistance to enable the family to utilize the services.
- Monitoring of parent progress and participation in services.
- Consideration of alternative ways of addressing the family's needs, if services were not available.

[s. 48.355 (2c) (a), Stats.]

The agency, however, is ***not*** required to make reasonable efforts to prevent the removal of a child from the home if a parent has subjected the child to aggravated circumstances; committed or attempted murder of the child's other parent; committed an assault crime that resulted in great or substantial bodily harm to the child or another child of the parent; had parental rights involuntarily terminated as to another child; or relinquished custody of the child within 72 hours of the birth. Subjecting a child to "aggravated circumstances" includes torture, chronic abuse, sexual abuse, and felony abandonment of the child. [s. 48.355 (2d), Stats.]

PART III – PERMANENCY PLANNING AND PLACEMENT GOALS

PERMANENCY PLANS

Permanency plans are prepared by either the agency that either placed the child outside the home or arranged the out-of-home placement, or the agency that by court order is assigned the primary responsibility for providing services to the child. Wisconsin law requires that a permanency plan be prepared in writing for most children in out-of-home placements. [s. 48.38 (2), Stats.]

Contents of Plan

Permanency plans are statutorily required to include numerous items, including the following: (a) the contact information for the parent, guardian, or legal custodian; (b) the date of removal; (c) basis for the removal and basis for continuing placement; (d) a statement as to the availability of kinship care; (e) a description of attempts to maintain sibling attachment; (f) the child's educational status; (g) the child's medical information; (h) services that have been provided to the child and family; (i) services that will be provided to the child and family; and (j) the permanency plan goals and conditions for return home.² This section highlights some of these elements related to determining the services to be provided and the placement goals. [s. 48.38 (4), Stats.]

Services to be Provided

The statutes require that the permanency plan must include a description of the services that will be provided to the child, the child's family, and the child's foster parent, relative, or care provider with whom the child is living to carry out the dispositional order, including services planned to accomplish all of the following:

- Ensure proper care and treatment of the child and promote safety and stability in the placement.
- Meet the child's physical, emotional, social, educational, and vocational needs.

² If the child is an Indian child, the plan must also include all of the following:

- The name, address, and telephone number of the Indian child's Indian custodian and tribe.
- A description of the remedial services and rehabilitation programs offered in an effort to prevent the breakup of the Indian child's family.
- A statement as to whether the Indian child's placement is in compliance with the placement preferences required by ICWA, and if not, that there is good cause shown for departing from that order.

[s. 48.38 (4) (im), Stats.]

- Improve the conditions of the parents' home to facilitate the safe return of the child to the home, or, if appropriate, obtain for the child a placement for adoption, with a guardian, with a fit and willing relative, or in some other planned permanent living arrangement that includes an appropriate, enduring relationship with an adult.³

[s. 48.38 (4) (e), Stats.]

Permanency Goals

The permanency plan must include the goal of the permanency plan or, if the agency is engaging in concurrent planning, the permanency and concurrent permanency goals of the plan. The plan must include the rationale for deciding on the goal or goals. The agency must determine one or more of the following to be the goal or goals of the plan:

- Return of the child to the home.
- Placement of the child for adoption.
- Placement of the child with a guardian.
- Permanent placement of the child with a fit and willing relative.
- Some other appropriate planned permanent living arrangement that includes an enduring relationship with an adult, including sustaining care or long-term foster care. Before November 1, 2012, this also includes independent living.

In order to help clarify whether the goal of reunification may occur, the plan must also include the conditions, if any, upon which the child will be returned safely to the home, including any changes required in the parents' conduct, the child's conduct, or the nature of the home. [s. 48.38 (4) (fg) and (g), Stats.]

Concurrent Planning Requirement

Beginning November 1, 2012, the court must work simultaneously towards achieving more than one of the permanency goals for a child placed in out-of-home care if it determines that a concurrent plan is appropriate under administrative standards. Until that time, a court is not required to, but may, engage in such concurrent planning. [s. 48.355 (2b), Stats.]

Time Requirements for Permanency Plans

Generally, a permanency plan must be filed with the court within 60 days after the date that the child was first removed from the home. [s. 48.38 (3), Stats.] The plan must then be reviewed by the court or a review panel within six months of the child's removal from the home, and at least every six months after that, for as long as the child is placed outside the home. [s. 48.38 (5) (a), Stats.] Reasonable efforts are not required and expedited procedures for determining a permanency plan apply if a parent has done any of the following: (a) subjected the child to aggravated circumstances; (b) committed or attempted to commit murder of the child's

³ This language is effective November 1, 2012. Until that date, this provision provides, "Improve the conditions of the parents' home to facilitate the safe return of the child to his or her home, or, if appropriate, obtain an alternative permanent placement for the child."

other parent; (c) committed an assault crime that resulted in great or substantial bodily harm to the child or another child of the parent; (d) had parental rights involuntarily terminated as to another child; or (e) relinquished custody of the child within 72 hours of the birth. [s. 48.38 (4m) (a), Stats.]

Review of the Permanency Plan

At the permanency plan's review hearing, the juvenile court or review panel must make the following determinations: (a) the continuing necessity, safety, and appropriateness of the placement; (b) the extent of compliance with the plan by the agency, the parents, the child, and any service providers; (c) the extent of efforts to involve appropriate service providers to meet any special needs of the child and the parents; (d) the progress towards eliminating the cause for the placement; and (e) the date by which it is likely that the child would be returned to the home or placed for adoption or guardianship. Effective November 1, 2012, the juvenile court must also determine the continuing appropriateness of the permanency goal, and, if appropriate, any concurrent permanency goals. [s. 48.38 (5) (c), Stats.]

Also at the permanency review, the juvenile court or review panel must determine, if a child has been placed outside the home for 15 of the most recent 22 months, the appropriateness of the permanency plan and the circumstances that prevent the child from being returned safely to the home; that prevent a petition for involuntary TPR filed and the child being placed for adoption; or that prevent the child being placed with a guardian or in the home of a fit and willing relative or other appropriate planned permanent living arrangement. [s. 48.38 (5) (c) 6., Stats.]

Annual Permanency Hearings

In addition to the permanency review, the juvenile court must hold a hearing to review the permanency plan and to make the determinations also required at the permanency review no later than 12 months after the child was removed from the home and at least every 12 months after that, for as long as the child is placed outside the home. [s. 48.38 (5m) (a), Stats.] The juvenile court must issue a written finding of fact and conclusions of law relating to the review determinations, and may revise the dispositional order, as appropriate. [s. 48.38 (5m) (e) and (f), Stats.]

PERMANENT PLACEMENT OPTIONS

As previously noted, the permanency plan must include one or more goals. These permanent placement goals are: (a) reunification of the child to the child's home; (b) placement of the child for adoption; (c) placement of the child with a guardian; (d) permanent placement of the child with a fit and willing relative; and (e) other appropriate planned permanent living arrangement. [s. 48.38 (4) (fg), Stats.]

According to DCF, in CY 2010, a total of 4,739 children were discharged from out-of-home care, and in most cases, placed into a permanent living situation. Reunification accounted for nearly two-thirds of all discharges. Table 3 lists each reason for discharge and the number of children discharged to that living arrangement.

**Table 3: Number and Percentage of Children Discharged From
Out-of-Home Care in 2010**

Reason for Discharge From Out-of-Home Care	# of Children Discharged in CY 2010	% of Total Discharges
Reunification With Primary Caretaker	2,937	62%
Adoption Finalized Through Special Needs Adoption Program	644	14%
Age of Majority	423	9%
Guardianship	411	9%
Living With Other Relatives	146	3%
Transfer to Another Agency/Facility for Adoption Purposes	95	2%
Other*	81	1%
Total	4,739	100%

*“Other” includes children discharged from out-of-home care into independent living; children in independent living that are not yet 18 years old; deceased children; and children missing from out-of-home care.

Source: DCF, *Wisconsin Children in Out-of-Home Care*, p. 35 (December 8, 2011).

Reunification

Wisconsin statutes intend that, underlying any CHIPS order, there is a preference for the juvenile court to order placement and treatment that are necessary to maintain and protect the well-being of the child, while also being the least restrictive of the rights of the parent and child, and assuring that the care, treatment, or rehabilitation of the child and family is consistent with the protection of the public. The statutes expressly state that when appropriate, the family unit must be preserved and there must be a policy of transferring custody of a child from the parent only when there is no less drastic alternative. [s. 48.355 (1), Stats.]

As illustrated in Table 3, reunification accounts for nearly two-thirds of all discharges from out-of-home care. Reunification is appropriate when continued placement of the child at home is

not contrary to the welfare of the child. [See s. 48.355 (2) (b) 6., Stats.] Reunification occurs when the juvenile court determines that the elements of the permanency plan have been achieved, that the safety and well-being of the child can be met in the care of the parent, and that the reasons for the removal from the home are no longer valid.

As of November 1, 2012, a juvenile court may order that a **trial reunification** take place, allowing a child that was placed in out-of-home care to reside in the home of either the child's parents, or the child's relative if the child was removed from that relative's home, for a temporary period. This period is for seven consecutive days or longer, but may not exceed 150 days. The purpose of the trial reunification is to determine the appropriateness of changing the placement of the child to that home. [s. 48.358 (1), Stats.] Trial reunifications are prohibited, however, when the parent or relative has been convicted of first- or second-degree intentional homicide of the child's other parent, unless the conviction has been reversed, set aside, or vacated. [s. 48.358 (6) (a), Stats.]

Placement With a Fit and Willing Relative

If there is no alternative less drastic than transferring the custody of the child from the parent to someone else, the juvenile court must consider transferring custody to a relative whenever possible. [s. 48.355 (1), Stats.] However, to be considered a permanent placement option for a child, the relative must be "fit and willing." Typically, the agency responsible for the child's case conducts an investigation as to whether the relative meets the "fit and willing" standard.

The statutes broadly define a "relative" other than a parent to include a stepparent, brother, sister, stepbrother, stepsister, half brother, half sister, brother-in-law, sister-in-law, first cousin, second cousin, nephew, niece, uncle, aunt, stepuncle, steppaunt, or any person of a preceding generation as denoted by the prefix of grand, great, or great-great, whether by blood, marriage, or legal adoption, or the spouse of any such person. If the child is an Indian child, an extended family member⁴ as defined by ICWA is also considered a relative. [s. 48.02 (15), Stats.]

The relative with whom a child is placed by court order may be eligible to receive kinship care payments for providing care and maintenance for the child.⁵ The relative must apply for a license to operate a foster home. Kinship care payments require an application process, background check, and annual review. [s. 48.57 (3m) (am) and (3n) (am), Stats.]

A relative appointed as guardian may also be eligible for subsidized guardianship payments. However, a relative guardian may not receive both kinship care and subsidized guardianship payments. Also, even though the kinship care program requires the relative to apply

⁴ The term "extended family member" means a person who is defined as a member of an Indian child's extended family by the law or custom of the Indian child's tribe, or in the absence of such a law or custom, a person who has attained the age of 18 years and who is the Indian child's grandparent, uncle, brother, sister, brother-in-law, sister-in-law, niece, nephew, first cousin, second cousin, or stepparent. [s. 48.028 (2) (am), Stats.]

⁵ The kinship care program consists of two types of benefits: (a) kinship care; and (b) long-term kinship care. A relative may only receive payments from one of these two options.

for a foster care license, if the relative receives kinship care payments, he or she is ineligible for foster care payments. [s. 48.57 (3m) (cm) and (3n) (cm), Stats.]

Guardianship

The juvenile court may place a child in the permanent placement of a guardian, if the home of a guardian has been recommended as the permanent placement, and appoint a person as a guardian after finding all of the following:

- That the person nominated as the guardian of the child is a person with whom the child has been placed or in whose home placement of the child is recommended, and that it is likely that the child will continue to be placed with that person for an extended period of time or until the child attains the age of 18 years.
- That, if appointed, it is likely that the person would be willing and able to serve as the child's guardian for an extended period of time or until the child attains the age of 18 years.
- That it is not in the best interests of the child that a petition to terminate parental rights be filed with respect to the child.
- That the child's parent is neglecting, refusing, or unable to carry out the duties of a guardian or, if the child has two parents, both parents are neglecting, refusing, or unable to carry out the duties of a guardian.
- That the agency primarily responsible for providing services to the child under a court order has made reasonable efforts, if required, to make it possible for the child to return to his or her home, while assuring that the child's health and safety are the paramount concerns, but that reunification of the child with the child's parent or parents is unlikely or contrary to the best interests of the child and that further reunification efforts are unlikely to be made or are contrary to the best interests of the child.

[s. 48.977 (2), Stats.]

An adult may be granted guardianship of a child without a TPR. This allows the child to still legally be the child of the parents. The guardian, however, is the person who has the duty and authority to make important decisions in matters having a permanent effect on the child's life and development, and the duty to be concerned about the child's welfare. [s. 48.023, Stats.]

Guardianship may only be issued by court order. The statutes direct that a petition be filed and served, and that notice be given to specified persons including the parent. There must also be a plea hearing and fact-finding hearing. If the juvenile court orders guardianship, it may decide to award either full or limited guardianship. If the court awards limited guardianship, it must specify what the limited guardian's duties and authority are. [s. 48.977 (4) and (5), Stats.]

As explained in the previous section, if the guardian is a relative, the relative may be eligible to receive kinship care or subsidized guardianship payments. If the guardian is not a relative, then the guardian may only be eligible for monthly subsidized guardianship payments in certain long-term care arrangements for the care of the child. [s. 48.623 (1), Stats.]

Subsidized guardianship payments are designed to encourage a person with a significant emotional relationship with the child who has had an existing relationship with the child, similar to a familial relationship to become a guardian. [s. 48.623 (1), Stats.] Before subsidized guardianship payments may be approved, the county department or DCF must negotiate and enter into a written, binding subsidized guardianship agreement with the proposed guardian and provide the proposed guardian with a copy of the agreement. [s. 48.623 (2), Stats.]

Adoption and TPR

Adoption is another permanency goal available for a child adjudicated to be in need of protection or services. A child is not eligible for adoption unless one or both parents are deceased or the parental rights of one or both parents have been terminated. [s. 48.81, Stats.] In CY 2010, a total of 739 children in need of protection or services were discharged from out-of-home care to be adopted. [DCF, *Wisconsin Children in Out-of-Home Care*, p. 35 (December 8, 2010).]

Special Needs Adoption Program

DCF administers the special needs adoption program (SNAP) for children who are available for adoption but have special needs if DCF has determined that the assistance is necessary to assure the child's adoption. [s. 48.975 (2), Stats.]

In CY 2010, 644 adoptive children received assistance through SNAP. [DCF, *Wisconsin Children in Out-of-Home Care*, p. 35 (December 8, 2011).] Through SNAP, DCF may provide adoption assistance for maintenance, medical care, or nonrecurring adoption expenses, or any combination of assistance according to criteria authorized by state statute. [s. 48.975 (3), Stats.]

The adoption assistance may continue after the adoption is finalized until the child reaches age 18; until age 19 if the child is a full-time high school student or the equivalent; or until age 21 if the child is a full-time student in high school or the equivalent and DCF determines that the child has a mental or physical handicap that warrants continuation of assistance through the program. [s. 48.975 (3m), Stats., and s. DCF 50.06 (3) (a) 1., Wis. Adm. Code.]

TPR

The statutes provide a timeline for when a TPR petition must be filed under a number of circumstances. When parental rights are terminated, a child is available for adoption. If a child in need of protection or services has been placed outside the home for 15 of the most recent 22 months, the agency must file a petition to terminate parental rights. Any time while the child was a runaway from the out-of-home placement or was residing in a trial reunification is not counted in the 15-month period. [s. 48.417 (1) (a), Stats.]

If a court finds that a child was abandoned when under one year of age, the agency must file a petition to terminate parental rights within 60 days after the child was found to have been abandoned. [s. 48.417 (1) (b), Stats.]

If a court finds that a parent has committed or attempted murder of the child's other parent, or committed an assault crime that resulted in great or substantial bodily harm to the child or another child of the parent, the agency must file a TPR petition within 60 days after the court

has determined that this circumstance exists and that therefore no reasonable efforts are required to return the child to the home. [s. 48.417 (1) (c) and (d), Stats.]

However, a petition to terminate parental rights is not required within those timeframes in any of the following circumstances:

- The child is being cared for by a fit and willing relative.
- TPR is not in the best interests of the child, as described and documented in the child's permanency plan.
- The services necessary for the safe return of the child to the home have not yet been provided within the time period prescribed in the permanency plan.
- The services necessary to prevent the breakup of an Indian child's family have not yet been provided within the time period prescribed in the permanency plan.
- Grounds for involuntary TPR do not exist.

[s. 48.417 (2), Stats.]

Using specified procedures, a court may accept a parent's voluntary TPR petition. [s. 48.41, Stats.] If, however, a parent does not agree to a voluntary TPR petition, before the court may determine whether TPR is in the best interest of the child and order TPR, the court or a jury must determine whether any of the following grounds for involuntary termination exist:

- Abandonment, as specifically defined in the statutes.
- Relinquishment within 72 hours of the child's birth.
- Continuing need of protection or services after the agency has made reasonable efforts to provide the services ordered by the court, the child has been placed outside the home for a cumulative total period of six months or longer, the parent has failed to meet the conditions established for the safe return of the child, and there is a substantial likelihood that the parent will not meet those conditions in the next nine months.
- The court has ordered protection or services with placement outside the home on three or more occasions, and the conditions requiring placement outside the home were caused by the parent.
- Continuing parental disability with inpatient treatment for a cumulative total period of at least two of the last five years, under a condition that is likely to continue indefinitely, and the child is not being provided with adequate care by a relative, parent, or guardian.
- Continuing denial by a court of physical placement or visitation to a parent for at least one year or more.
- A pattern of physically or sexually abusive behavior that is a substantial threat to the health of the child.

- Failure to assume parental responsibility, by lack of a substantial parental relationship with the child.
- A relationship between the parents that is closer than second cousins.
- Homicide or solicitation of homicide of the other parent.
- Sexual assault by the father that resulted in conception of the child.
- Commission of a serious felony against the person's child, or commission of child trafficking against any child.
- Prior involuntary TPR to another child.

[s. 48.415, Stats.]

Other Planned Permanent Living Arrangements

The last permanency goal is considered a goal of last resort. These other planned permanent living arrangements include: (a) sustaining care; (b) independent living for children age 15 or older; and (c) long-term foster care. According to DCF, these other planned permanent living arrangements lack the life-long connectedness aspects of the other permanency goals discussed previously. [DCF, *State of Wisconsin Foster Parent Handbook*, p. 16 (2008 ed., ch. 1).]

Beginning on November 1, 2012, other planned permanent living arrangements will exclude independent living and will be required to include an appropriate, enduring relationship between the child and an adult. [s. 48.38 (4) (fg) 5., Stats.]

Also beginning on November 1, 2012, in order for the permanency goal to be some other planned permanent living arrangement, the agency responsible for the child found to be in need of protection or services must determine that there is a compelling reason why it currently would not be in the best interests of the child to return to the home or to place the child for adoption, with a guardian, or with a fit and willing relative. If the agency makes this determination, the permanency plan must include the following:

- The efforts made to achieve the other planned permanent living arrangement permanency goal, including, if appropriate, through an out-of-state placement.
- A statement of the compelling reason.
- A concurrent plan towards achieving both goals of: (a) reunification, adoption, guardianship, or permanent placement with a fit and willing relative; and (b) some other planned permanent arrangement.

[s. 48.38 (4) (fm), Stats.]

Sustaining Care

A juvenile court may place a child in sustaining care if the court has either terminated the parental rights of the parent or parents or has appointed a guardian for a child without a living parent to determine adoptability, and the court finds that either the child is unlikely to be adopted or that adoption is not in the best interests of the child. [s. 48.428 (1), Stats.]

A sustaining caregiver may be either a licensed foster parent or kinship care relative, with sustaining care powers and duties specified in statute. When a child is placed in sustaining care, the juvenile court must do the following: (a) transfer legal custody of the child and guardianship to the county department, DCF, or a licensed welfare agency; and (b) place the child in the home of a licensed foster parent or kinship care relative with whom the child has resided for six months or longer. If the child is an Indian child, the court must comply with the order of placement preference, previously described, unless the court finds good cause to depart from this order. [s. 48.428 (2) (a) and (b), Stats.]

Long-Term Foster Care

Placement in long-term foster care allows foster care to be the child's permanency goal until turning 18, or until the child's 19th birthday if the child is: (a) a full-time student in high school or its vocational or technical equivalent; (b) reasonably expected to complete the program before reaching 19 years of age; and (c) was residing in the foster home immediately prior to the child's 18th birthday. [See s. 48.619, Stats.]

Independent Living

Until November 1, 2012, independent living may be used as a permanency goal through the category of some other planned permanent placement. According to DCF, in most cases, independent living means that the child will begin to live independently immediately after being discharged from foster care. However, when independent living is a permanency goal, there is "more immediacy to the situation." In these cases, the child may live in an apartment or other housing arrangement with case management services to help the child practice independent living skills with supervision. [DCF, *State of Wisconsin Foster Parent Handbook*, p. 16 (2008).]