

1 **AN ACT** *to renumber and amend* 48.33 (5); *to amend* 48.355 (2) (b) 2., 48.357 (1)
2 (am) 1., 48.357 (1) (c) 2., 48.837 (1r) (c), 48.88 (2) (a) (intro.) and 48.93 (1d); and *to*
3 *create* 48.33 (5) (b), 48.355 (2) (b) 2g., 48.357 (1) (am) 1r., 48.357 (1) (c) 2g., 48.88
4 (2) (d) and 48.93 (1m) of the statutes; **relating to:** disclosure of name and address of
5 permanent or preadoptive placement in a court report, dispositional order, or change
6 of placement report; elimination of a home investigation during adoption
7 proceedings if the petitioner has obtained a license to operate a foster home; and
8 disclosure of the name of last-known address of a proposed adoptive parent of a
9 child to an agency that is determining the availability of an adoptive placement for a
10 sibling of the child.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill draft was prepared for the Joint Legislative Council's Special Committee on Permanency for Young Children in the Child Welfare System.

Background

Disclosure of Name and Address of a Permanent or Proposed Adoptive Placement in a Court Report, Dispositional Order, or Change of Placement Report

Currently, before a child is adjudged to be in need of protection or services, the department of children and families (DCF), a county department of human or social services (county department), or a child welfare agency must submit a report to the court assigned to exercise jurisdiction under the Children's Code (juvenile court) which includes the name and address of the foster parent if the report recommends out-of-home placement. A copy of the child in need of protection or services (CHIPS) court report must be given to the child's parent or guardian. However, the juvenile court may order that the name and address of the foster parent be withheld and not included in the copy of

the report given to the child's parent or guardian if the court finds that disclosure would result in imminent danger to the child or to the foster parent. The court must hold a hearing on this matter prior to ordering that the information be withheld.

Also, if the child is adjudged to be in need of protection or services, the court may also order the name and address of a foster parent be withheld in the copy of the dispositional order given to the child's parent or guardian if the court holds a hearing and finds that disclosure would result in imminent harm to the child or foster parent. Current law does not include a confidentiality provision for withholding this information if there is a change in out-of-home placement.

Home Investigation of An Adoptive Parent

Under current law, after an adoption petition is filed, the juvenile court must order an investigation to determine whether the child is a proper subject for adoption and whether the petitioner's (adoptive parent's) home is suitable for the child. The home of an adoptive parent must be investigated for adoption purposes even if the adoptive parent has obtained a license to operate a foster home.

Disclosure of Last Known Address of an Adoptive Parent or Proposed Adoptive Parent

Current law requires DCF, a county department, or a child welfare agency to include in a child's permanency plan, which is a plan designed to ensure that the child quickly attains a placement or home providing long-term stability, a statement as to the availability of a safe and appropriate placement for the child with a foster parent, adoptive parent, or proposed adoptive parent of a sibling of the child. Current law also requires DCF, a county department, or a child welfare agency, before placing for adoption a child who has a sibling who has been adopted or has been placed for adoption, to consider the availability of a placement for adoption with an adoptive parent or proposed adoptive parent of a sibling of the child who is identified in the child's permanency plan or who is otherwise known by DCF, the county department, or the child welfare agency. However, those records and papers must be kept in a separate locked file and may not be disclosed except under certain exceptions or by order of the court assigned to exercise jurisdiction under the Children's Code for good cause shown.

Bill Draft

Disclosure of Name and Address of a Permanent or Adoptive Placement in a Court Report, Dispositional Order, or Change of Placement Report

The draft creates a procedure for a juvenile court to order the name and address of a foster parent to be withheld from a child's parent or guardian from the CHIPS court report or dispositional order if placement with the foster parent is a permanent placement or is a proposed adoptive placement and, after holding a hearing on the matter with notice given to the parent or guardian, the court finds that disclosure is not in the child's best interest.

Likewise, the draft also gives the ability for the name and address of a proposed change in out-of-home placement or a change from an in-home placement to out-of-home placement to be withheld from the change in placement notice given to the child's parent or guardian, and if the child is an Indian child, the Indian child's parent or Indian custodian, if the person or agency primarily responsible for implementing the dispositional order, the district attorney, or the corporation counsel reasonably believes that withholding of this information is in the best interest of the child. The court must then hold a hearing on this matter after giving notice to the child's parent or guardian, and if the child is an Indian child, the Indian child's custodian and tribe. The court must order that this information be disclosed if it finds that withholding is not in the best interest of the child.

Home Investigations of an Adoptive Parent

The draft eliminates the requirement for a home investigation to be conducted for purposes of an adoption if all of the following apply: (1) the petitioner's home is a foster home certified to provide level 2 care; (2) the petitioner is licensed to operate his or her home as a foster home certified to provide level 2 care and the license is effective at the time the adoption petition is filed; (3) the petitioner has never had a license to operate a foster home revoked or suspended; and (4) the child to be adopted has resided in the home for 12 consecutive months or more immediately prior to the filing of the adoption petition.

Disclosure of Last Known Address of an Adoptive Parent or Proposed Adoptive Parent

This draft permits records and papers pertaining to an adoption proceeding to be disclosed for purposes of determining the availability of a placement for a child with an adoptive parent or proposed adoptive parent of a sibling of the child.

- 1 **SECTION 1.** 48.33 (5) of the statutes is renumbered 48.33 (5) (a) and amended to read:
- 2 48.33 **(5)** (a) IDENTITY OF FOSTER PARENT; CONFIDENTIALITY. If Except as provided in par.
- 3 (b), if the report recommends placement in a foster home, and the name of the foster parent

1 is not available at the time the report is filed, the agency shall provide the court and the child's
2 parent or guardian with the name and address of the foster parent within 21 days after the
3 dispositional order is entered, except that the court may order the information to be withheld
4 from the child's parent or guardian if the court finds that disclosure would result in imminent
5 danger to the child or to the foster parent. After notifying the child's parent or guardian, the
6 court shall hold a hearing prior to ordering the information withheld.

7 **SECTION 2.** 48.33 (5) (b) of the statutes is created to read:

8 48.33 (5) (b) If the foster parent's home is anticipated to be a permanent placement or
9 is a proposed adoptive placement, the court may order the name and address of the foster
10 parent to be withheld from the child's parent or guardian if the court finds that disclosure of
11 the name and address of the placement is not in the best interest of the child. After notifying
12 the child's parent or guardian, the court shall hold a hearing prior to ordering that the
13 information be withheld.

NOTE: SECTIONS 1 and 2 allow the court to order the name and address of the foster parent to be withheld from the copy of the CHIPS court report (prepared by DCF, a county department, or a child welfare agency and submitted to the court) that is given to the child's parent or guardian if the foster parent's home is anticipated to be a permanent placement or is a proposed adoptive placement and the court finds that disclosure is not in the best interest of the child. The court may not order that this information be withheld until a hearing is held on the issue, with notice of the hearing given to the child's parent or guardian.

14 **SECTION 3.** 48.355 (2) (b) 2. of the statutes is amended to read:

15 48.355 (2) (b) 2. If Except as provided under subd. 2g., if the child is placed outside the
16 home, the name of the place or facility, including transitional placements, where the child will
17 be cared for or treated, except that if the placement is a foster home and if the name and address
18 of the foster parent is not available at the time of the order, the name and address of the foster
19 parent shall be furnished to the court and the parent within 21 days after the order. If, after

1 a hearing on the issue with due notice to the parent or guardian, the judge finds that disclosure
2 of the identity of the foster parent would result in imminent danger to the child or the foster
3 parent, the judge may order the name and address of the prospective foster parents to be
4 withheld from the parent or guardian.

5 **SECTION 4.** 48.355 (2) (b) 2g. of the statutes is created to read:

6 48.355 (2) (b) 2g. If the child is placed outside the home and the placement is anticipated
7 to be a permanent placement or is a proposed adoptive placement, the court may order the
8 name and address of the placement to be withheld from the child's parent or guardian if the
9 court finds that disclosure of the name and address of the placement is not in the best interest
10 of the child. After notifying the child's parent or guardian, the court shall hold a hearing prior
11 to ordering that the information be withheld.

NOTE: SECTIONS 3 and 4 allow the court to order that the name and address of the out-of-home placement be withheld from the copy of the CHIPS dispositional order that is given to the child's parent or guardian if the placement is anticipated to be a permanent placement or is a proposed adoptive placement and the court finds that disclosure is not in the best interest of the child. The court may not order that this information be withheld until a hearing is held on the issue, with notice of the hearing given to the child's parent or guardian.

12 **SECTION 5.** 48.357 (1) (am) 1. of the statutes is amended to read:

13 48.357 (1) (am) 1. If Except as provided under subd. 1r., if the proposed change in
14 placement involves any change in placement other than a change in placement specified in par.
15 (c), the person or agency primarily responsible for implementing the dispositional order, the
16 district attorney, or the corporation counsel shall cause written notice of the proposed change
17 in placement to be sent to the child, the parent, guardian, and legal custodian of the child, any
18 foster parent or other physical custodian described in s. 48.62 (2) of the child, the child's
19 court-appointed special advocate, and, if the child is an Indian child who has been removed

1 from the home of his or her parent or Indian custodian, the Indian child's Indian custodian and
2 tribe. If the child is the expectant mother of an unborn child under s. 48.133, written notice
3 shall also be sent to the unborn child by the unborn child's guardian ad litem. If the change
4 in placement involves an adult expectant mother of an unborn child under s. 48.133, written
5 notice shall be sent to the adult expectant mother and the unborn child by the unborn child's
6 guardian ad litem. The notice shall contain the name and address of the new placement, the
7 reasons for the change in placement, a statement describing why the new placement is
8 preferable to the present placement, and a statement of how the new placement satisfies
9 objectives of the treatment plan ordered by the court.

10 **SECTION 6.** 48.357 (1) (am) 1r. of the statutes is created to read:

11 48.357 (1) (am) 1r. If the proposed change in placement is to a placement that is
12 anticipated to be a permanent placement or is a proposed adoptive placement, and the person
13 or agency primarily responsible for implementing the dispositional order, the district attorney,
14 or the corporation counsel reasonably believes that withholding the name and address of the
15 placement is in the best interest of the child, then the person or agency primarily responsible
16 for implementing the dispositional order, the district attorney, or the corporation counsel may
17 cause written notice of the proposed change in placement under subd. 1. to be sent to the child's
18 parent or guardian without disclosure of the name and address of the placement. The court
19 shall hold a hearing to determine whether withholding the name and address of the placement
20 is in the best interest of the child with due notice to the child's parent or guardian, and if the
21 child is an Indian child, the Indian child's Indian custodian and tribe. If, after a hearing on the
22 issue, the court finds that withholding the name and address of the placement is not in the best
23 interest of the child, then the court shall order the name and address to be disclosed to the
24 parent or guardian, and if the child, is an Indian child, his or her parent or Indian custodian.

NOTE: SECTIONS 5 and 6 allow the name and address of a proposed change in out-of-home placement to withhold and be included in the written notice of the proposed change in placement that is given to the child's parent or custodian, and if the child is an Indian child, the Indian child's parent or Indian custodian, if the person or agency primarily responsible for implementing the dispositional order, the district attorney, or the corporation counsel reasonably believes that disclosure of this information is not in the best interest of the child.

If the name and address of the new placement is withheld, then the court must hold a hearing to determine whether disclosure of the name and address is in the best interest of the child, after notice is given to the child's parent or custodian, and if the child is an Indian child, the Indian child's parent or Indian custodian and tribe. The court must order that disclosure of the name and address of the placement if it finds that this is in the best interest of the child.

1 **SECTION 7.** 48.357 (1) (c) 2. of the statutes is amended to read:

2 48.357 (1) (c) 2. The court shall hold a hearing prior to ordering any change in
3 placement requested under subd. 1. ~~Not~~ Except as provided under subd. 2g., not less than 3
4 days prior to the hearing, the court shall provide notice of the hearing, together with a copy
5 of the request for the change in placement, to the child, the parent, guardian, and legal
6 custodian of the child, the child's court-appointed special advocate, all parties that are bound
7 by the dispositional order, and, if the child is an Indian child, the Indian child's Indian
8 custodian and tribe. Subject to subd. 2r., if all parties consent, the court may proceed
9 immediately with the hearing.

10 **SECTION 8.** 48.357 (1) (c) 2g. of the statutes is created to read:

11 48.357 (1) (c) 2g. The court may order the name and address of the requested change
12 in placement to be withheld from the child's parent or guardian, and if the child is an Indian
13 child, his or her parent or Indian custodian, if the court finds that disclosure of the name and
14 address of the placement is not in the best interest of the child. After notifying the child's

1 parent or guardian, and if the child is an Indian child, the Indian child's parent or Indian
2 custodian, the court shall hold a hearing prior to ordering the information to be withheld.

NOTE: SECTIONS 7 and 8 allow the court to order that the name and address of a proposed change in placement from an in-home placement to an out-of-home placement not be included in the written notice that is given to the child's parent or custodian, and if the child is an Indian child, the Indian child's parent or Indian custodian, if the court finds that disclosure of this information is not in the best interest of the child.

COMMENT: Is it the committee's intent to make the same confidentiality provisions also applicable to instances where the proposed change in placement is requested by the child, the parent, guardian, legal custodian, or Indian custodian of the child, the expectant mother, the unborn child by the unborn child's guardian ad litem, or any person or agency primarily bound by the dispositional order, other than the person or agency responsible for implementing the order, under s. 48.357 (2m), stats.?

3 **SECTION 9.** 48.837 (1r) (c) of the statutes is amended to read:

4 48.837 (1r) (c) The department, a county department under s. 48.57 (1) (e) or (hm), or
5 a child welfare agency licensed under s. 48.60 may place a child under par. (a) in the home
6 of a proposed adoptive parent or parents who reside outside this state if the placement is made
7 in compliance with s. 48.98, 48.988, or 48.99, whichever is applicable, if the home meets the
8 criteria established by the laws of the state where the proposed adoptive parent or parents
9 reside for a preadoptive placement of a child in the home of a nonrelative, and if an appropriate
10 agency in that state has completed an investigation of the home as required under s. 48.88 (2)
11 (a) and filed a report and recommendation concerning the home with the department, county
12 department, or licensed child welfare agency.

13 **SECTION 10.** 48.88 (2) (a) (intro.) of the statutes is amended to read:

14 48.88 (2) (a) (intro.) Except as provided under pars. (ag) ~~and~~, (c), and (d), when a
15 petition to adopt a child is filed, the court shall order an investigation to determine whether

1 the child is a proper subject for adoption and whether the petitioner's home is suitable for the
2 child. The court shall order one of the following to conduct the investigation:

3 **SECTION 11.** 48.88 (2) (d) of the statutes is created to read:

4 48.88 (2) (d) An investigation to determine whether the petitioner's home is suitable
5 for the child is not required if all of the following apply:

6 1. The petitioner's home is a foster home that is certified to provide level 2 care, as
7 defined in the rules promulgated under s. 48.62 (8) (a).

8 2. The petitioner is licensed to operate his or her home as a foster home that is certified
9 to provide level 2 care, as defined in the rules promulgated under s. 48.62 (8) (a), and this
10 license is effective at the time the adoption petition is filed.

11 3. The petitioner has never had a license to operate a foster home revoked or suspended.

12 4. The child who is the subject of the adoption petition has resided in the petitioner's
13 home for 12 consecutive months or more immediately prior to the filing of the adoption
14 petition.

NOTE: SECTIONS 9, 10, and 11 eliminate the requirement that a home study be conducted for purposes of an adoption if all of the following apply: (1) the petitioner's home is a foster home certified to provide level 2 care; (2) the petitioner is licensed to operate his or her home as foster home certified to provide level 2 care and the license is effective at the time the adoption petition is filed; (3) the petitioner has never had a license to operate a foster home be revoked or suspended; and (4) the child to be adopted has resided in the home for 12 consecutive months or more immediately prior to the filing of the adoption petition.

15 **SECTION 12.** 48.93 (1d) of the statutes is amended to read:

16 48.93 (1d) All records and papers pertaining to an adoption proceeding shall be kept
17 in a separate locked file and may not be disclosed except under sub. (1g), (1m), (1r), or (1v),
18 s. 48.432, 48.433, 48.434, 48.48 (17) (a) 9. or 48.57 (1) or by order of the court for good cause
19 shown.

1 **SECTION 13.** 48.93 (1m) of the statutes is created to read:

2 48.93 **(1m)** If an adoptive parent or proposed adoptive parent of a child consents, the
3 court or the agency that placed the child for adoption in the home of the adoptive parent or
4 proposed adoptive parent may disclose the name and last-known address of the adoptive
5 parent or proposed adoptive parent to an agency that is determining the availability of an
6 adoptive placement for a sibling of the child under s. 48.38 (4) (br), 48.834 (2), or 938.38 (4)
7 (br).

NOTE: SECTIONS 12 and 13 permit records and papers pertaining to an
 adoption proceeding to be disclosed for purposes of determining the
 availability of a placement for a child with an adoptive parent or
 proposed adoptive parent of a sibling of the child.

8 **SECTION 14. Initial applicability.**

9 (1) DISCLOSURE OF NAME AND ADDRESS OF A PERMANENT OR PROPOSED ADOPTIVE
10 PLACEMENT. The treatment of sections 48.33 (5) (a) and (b), and 48.355 (2) (b) 2. and 2g., first
11 applies to a petition filed under s. 48.13 on the effective date of this subsection. The treatment
12 of sections 48.357 (1) (am) 1. and 1r., and 48.357 (1) (c) 2. and 2g. of the statutes first applies
13 to a request for a change in placement filed on the effective date of this subsection.

NOTE: This SECTION specifies that the disclosure provisions related to
 the name and address of a placement that is anticipated to be a
 permanent placement or is a proposed adoptive placement that are
 included in the CHIPS court report or dispositional order are prospective
 as they apply to a CHIPS petition filed on or after the effective date of
 this subsection. The disclosure provisions related to a requested change
 in placement, however, apply to any CHIPS case that has a request for a
 change in placement that is filed on or after the effective date of this
 draft.

COMMENT: Is it the committee's intent to make the disclosure provisions
 related to a change of placement request first apply to a request filed on
 or after the effective date of the subsection?

(2) HOME INVESTIGATIONS OF AN ADOPTIVE PARENT. The treatment of sections 48.837 (1r) (c) and 48.88 (2) (a) (intro) and (d) of the statutes first applies to an adoption petition filed on the effective date of this subsection.

NOTE: This specifies that the provisions specifying when a home investigation of an adoptive parent is not required are prospective as they apply to an adoption petition filed on or after the effective date of this subsection.

(3) **DISCLOSURE OF LAST KNOWN ADDRESS OF AN ADOPTIVE PARENT OR PROPOSED ADOPTIVE PARENT.** The treatment of sections 48.93 (1d) and 48.93 (1m) of the statutes first applies to an adoption petition filed on the effective date of this subsection.

NOTE: This specifies that the provisions permitting the disclosure of records and papers pertaining to an adoption for purposes of determining the availability of a placement for a child with an adoptive parent or proposed adoptive parent are prospective as they apply to an adoption petition filed on or after the effective date of this subsection.

(END)