



1995 SENATE BILL 501

January 25, 1996 - Introduced by JOINT LEGISLATIVE COUNCIL. Referred to
Committee on Judiciary.

1 **AN ACT to repeal** 48.01 (1) (b), 48.01 (1) (e), 48.371 (intro.) (except 48.371 (title)),
2 48.415 (6) (a) 2., 48.981 (1) (a), 48.981 (1) (b), 48.981 (1) (cm), 48.981 (1) (e),
3 48.982 (1) (a), 813.122 (1) (e), 813.122 (1) (f) and 813.122 (8); **to renumber** 48.02
4 (1), 48.235 (3), 48.368 and 48.415 (2) (b); **to renumber and amend** 48.01 (2),
5 48.27 (3) (a), 48.299 (6), 48.371 (1) and (2), 48.427 (3) (intro.), 48.428 (2) and
6 767.53 (1); **to consolidate, renumber and amend** 48.415 (6) (a) (intro.) and
7 1.; **to amend** 48.01 (1) (g), 48.01 (1) (gr), 48.023 (intro.), 48.09 (5), 48.13 (3),
8 48.13 (3m), 48.13 (4), 48.13 (9), 48.13 (11), 48.13 (11m), 48.14 (2) (b), 48.185 (1),
9 48.185 (2), 48.205 (1) (b), 48.21 (1) (a), 48.21 (1) (b), 48.235 (1) (c), 48.235 (3)
10 (title), 48.245 (2) (b), 48.299 (1) (a), 48.299 (4) (a), 48.299 (4) (b), 48.31 (2), 48.31
11 (4), 48.356 (1) and (2), 48.357 (1) and (2m), 48.361 (2) (a) 1., 48.362 (3), 48.363
12 (1), 48.365 (2), 48.371 (3), 48.375 (4) (b) 3., 48.38 (5) (c) 2., 48.415 (1) (a) (intro.),
13 48.415 (1) (a) 2., 48.415 (1) (a) 3., 48.415 (2) (intro.), 48.415 (2) (c), 48.415 (3)
14 (intro.), 48.415 (4), 48.415 (5) (intro.) and (b), 48.415 (6) (b), 48.415 (7), 48.415
15 (8), 48.415 (9) (a), 48.42 (3) (d), 48.42 (4) (c) 3., 48.425 (1) (f), 48.425 (1) (g), 48.43
16 (1) (a), 48.43 (4), 48.43 (5) (b), 48.43 (5) (c), 48.46 (2), 48.62 (2), 48.831 (title),
17 48.831 (1), 48.981 (2m) (c) (intro.), 48.981 (3) (c) 4., 48.981 (3) (cm), 48.982 (1)

1 (c), 252.15 (5) (a) 19., 767.075 (1) (a), 767.11 (8) (b) 1., 767.11 (10) (e) 1., 767.24
2 (2) (b) 2. c., 767.24 (5) (h), 767.45 (1) (i), 767.47 (10), 808.04 (7m), 809.107 (5),
3 809.107 (6) (e), 809.107 (6) (f), 905.04 (4) (e) 1. a. and 939.45 (5) (b); **to repeal**
4 **and recreate** 48.415 (1) (c) and 813.122 (1) (a); and **to create** 46.40 (7m), 48.01
5 (1) (ag), 48.01 (1) (bg), 48.01 (1) (br), 48.01 (1) (dm), 48.01 (1) (gt), 48.01 (2) (a)
6 and (b), 48.02 (1), 48.02 (5j), 48.02 (14m), 48.02 (14r), 48.065 (3) (g), 48.235 (3)
7 (b), 48.235 (4) (a) 7g., 48.235 (4) (a) 7m., 48.245 (2r), 48.27 (3) (a) 2., 48.293 (4),
8 48.299 (1) (ar), 48.299 (6) (b), (c) and (e), 48.299 (7), 48.299 (8), 48.365 (2m) (ag),
9 48.368 (2), 48.371 (1) (intro.), 48.396 (2) (dm), 48.415 (1) (a) 1m., 48.415 (2) (b)
10 1., 48.415 (9m), 48.415 (10), 48.42 (1m) (title) and (a), 48.42 (1m) (b), 48.42 (1m)
11 (c), 48.427 (1m), 48.427 (3p), 48.428 (2) (b), 48.977, 48.981 (3) (c) 6m., 48.981 (7)
12 (a) 1m., 756.096 (3) (e), 767.45 (5) (c), 767.45 (6r), 767.47 (1) (cm), 767.475 (7m),
13 767.53 (1) (c), 808.075 (4) (a) 10. and 808.075 (4) (a) 11. of the statutes; **relating**
14 **to:** the grounds for involuntary termination of parental rights over a child,
15 appeals of and motions for relief from orders terminating parental rights and
16 denial of visitation by a parent of a child adjudicated to be in need of protection
17 or services; the statement of legislative purpose in the children’s code; abuse
18 and neglect of a child; grounds for jurisdiction over a child alleged to be in need
19 of protection or services; criteria for holding a child in physical custody;
20 payment by a parent for alcohol and other drug abuse services or special
21 treatment or care for a child; duties of a county department of human services
22 or social services with respect to child abuse and neglect investigations;
23 grounds for a child abuse restraining order and injunction; the defense in
24 criminal prosecutions based on the privilege of reasonable discipline of a child;
25 determining whether a child alleged to be in need of protection or services needs

1 protection or services that can be ordered by a juvenile court; extension of an
2 informal disposition for a child when the informal disposition is based on
3 allegations that the child is in need of protection or services; the duties of a
4 guardian ad litem appointed in proceedings involving a child alleged to be in
5 need of protection or services; the right to a jury trial in proceedings involving
6 children alleged to be in need of protection or services; the release of certain
7 information, including the results of tests for the human immunodeficiency
8 virus or viral hepatitis, type B, regarding a child to the child's foster parent or
9 treatment foster parent or the operator of a group home or child caring
10 institution in which the child is placed; a county's authority to use certain
11 community aids funds to employ private attorneys for proceedings under the
12 children's code; disclosure of certain information to certain voluntary reporters
13 of suspected or threatened child abuse or neglect; the time by which a detention
14 hearing must be held and the time by which a petition must be filed under the
15 children's code if a child is held in custody; petitioning a court, at the time a
16 petition is filed for involuntary termination of parental rights to a child, for an
17 order prohibiting visitation or contact with that child; the role of foster parents,
18 treatment foster parents and certain other physical custodians in hearings
19 under the children's code; permitting genetic testing for paternity
20 determinations under the children's code, paternity determination proceedings
21 for a child alleged to be in need of protection or services and disclosure of records
22 relating to paternity determination proceedings; guardianship for certain
23 children adjudged to be in need of protection or services; requesting the joint
24 legislative council to study the use, effectiveness and funding of systems and

1 programs directed at the prevention of child abuse and neglect; and discovery
2 in proceedings under the children’s code.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the joint legislative council in the bill.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

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

PREFATORY NOTE: This bill was prepared for the joint legislative council’s special committee on children in need of protection or services.

The bill includes the following provisions:

A. STATEMENT OF LEGISLATIVE PURPOSE IN THE CHILDREN’S CODE

1. Current Law

Section 48.01, stats., sets forth the statement of legislative purpose section in the children’s code [ch. 48, stats.] (hereinafter referred to as ch. 48).

2. The Bill

The bill modifies the legislative purpose section in ch. 48 to reemphasize that the best interests of the child must always be the paramount and guiding interests that must be considered in using, and interpreting, ch. 48. The bill changes the legislative purpose provisions of ch. 48 as follows:

a. Creates a new provision recognizing that children have basic needs, including the need for adequate food, clothing and shelter; to be free from physical, sexual or emotional injury or exploitation; to develop physically, mentally and emotionally to their potential; and for a safe and permanent family.

b. Creates new provisions recognizing that children must be ensured of all of the following:

(1) Protection against the harmful effects resulting from: (a) the absence of parents or parent substitutes; (b) the inability (other than “financial inability”—i.e., poverty) of parents or parent substitutes to provide care and protection for their children; and (c) the destructive behavior of parents or parent substitutes in providing care and protection for their children.

(2) Good substitute parental care in the event of the absence, temporary or permanent inability (other than financial inability) or unfitness of parents to provide care and protection for their children.

c. Creates a new provision emphasizing the significance of prevention and intervention approaches in legislative, executive and local government

programs, policies and planning strategies for dealing with children under ch. 48.

d. Specifies that one of the legislative purposes of ch. 48 is to preserve the unity of the family, whenever appropriate, by strengthening family life through assisting parents in fulfilling their parental responsibilities.

e. Stresses to juvenile court judges that they have the authority, in appropriate cases, not to reunite a child with his or her family.

f. Creates a new provision which emphasizes that a parent's duty to support and maintain his or her minor child continues during any period in which the minor child may be removed from the custody of the parent under ch. 48.

B. DEFINITION OF "ABUSE"

1. Current Law

Current law defines "abuse" under s. 48.981 (1) (a), stats., for purposes of the child abuse and neglect reporting and investigation statute and the child abuse and neglect prevention board statute but does *not* define "abuse" for any other purpose under ch. 48.

2. The Bill

The bill defines "abuse" in the general definitions section of ch. 48 as meaning any of the following:

a. Physical injury inflicted on a child by other than accidental means.

b. Sexual intercourse or sexual contact under the general sexual assault statute or the statutes covering sexual assault of a child under the age of 13 (first degree) or under the age of 16 (2nd degree) or repeated acts of sexual assault against the same child.

c. Sexual exploitation of a child.

d. Permitting, allowing or encouraging a child to violate the prohibition of prostitution.

e. Causing a child to view or listen to sexual activity.

f. Either causing a child to expose genitals or pubic area or exposing genitals or pubic area to a child for purposes of sexual arousal or gratification.

g. Emotional damage.

The bill's definition of "abuse" is extended to other provisions relating to child abuse throughout the statutes.

C. DEFINITIONS OF "PHYSICAL INJURY" AND "REASONABLE DISCIPLINE"

1. Current Law

Current law defines "physical injury" under the child abuse and neglect reporting and investigation statute and then incorporates that definition in the definition of "abuse" in s. 48.981 (1) (a), stats.

Current law also defines "physical injury" in the child abuse restraining order and injunction statute. Both of these definitions provide that "'physical injury' includes but is not limited to lacerations, fractured bones, burns, internal injuries, severe or frequent bruising or great bodily harm as defined under s. 939.22 (14)".

2. The Bill

The bill repeals both definitions and defines “physical injury” in the general definitions section of ch. 48, incorporates that term in the definition of “abuse” created in the general definitions section of ch. 48 and then defines “abuse” in the child abuse restraining order and injunction statute by reference to the newly created definition of “abuse” in ch. 48. The bill defines “physical injury” as bodily harm as defined under s. 939.22 (4), stats., that is, “physical pain or injury, illness or any impairment of physical condition” but includes an exception for “reasonable discipline” by a person responsible for the child’s welfare, as defined in s. 939.45 (5) (a) 3., stats. The bill defines “reasonable discipline” as discipline that involves only such force as a reasonable person believes is necessary and specifies that it *does not include* the use of force which is intended to cause, or which creates an unreasonable risk of, lacerations, fractured bones, burns, internal injuries, severe or frequent bruising, great bodily harm, as defined in s. 939.22 (14), stats., or death.

With respect to the statute which currently provides that, as a defense to the prosecution of any crime, a privilege can be asserted that the actor’s conduct is “reasonable discipline” of a child by a person responsible for a child’s welfare and that it is not reasonable discipline to use force which is intended to cause, or creates an unreasonable risk of, great bodily harm as defined in s. 939.22 (14), stats., or death, the bill adds language to state that it also is not reasonable discipline to use force which is intended to cause, or which creates an unreasonable risk of, lacerations, fractured bones, burns, internal injuries or severe or frequent bruising.

D. DEFINITION OF “EMOTIONAL DAMAGE”

1. Current Law

Current law defines “emotional damage” under s. 48.981 (1) (cm), stats., for purposes of the child abuse and neglect reporting and investigation statute and then incorporates that definition in the definition of “abuse” in the child abuse and neglect reporting and investigation statute.

Current s. 48.981 (1) (cm), stats., provides that the harm to the child’s psychological or intellectual functioning must be exhibited by severe anxiety, depression, withdrawal or outward aggressive behavior, or a combination of those behaviors. However, it also provides that “emotional damage” *may* be demonstrated by a substantial and observable change in behavior, emotional response or cognition that is not within the normal range for the child’s age and stage of development.

Current law also defines “emotional damage” in s. 813.122 (1) (e), stats., for purposes of the child abuse restraining order and injunction statute and provides that the harm must be exhibited by severe anxiety, depression, withdrawal or outward aggressive behavior, or a combination of those behaviors. However, this definition does *not* provide that the harm may be demonstrated by a substantial and observable change in behavior, emotional

response or cognition that is not within the normal range for the child's age and stage of development.

2. The Bill

The bill repeals both definitions and defines "emotional damage" in the general definitions section of ch. 48 as harm to a child's psychological or intellectual functioning for which the child's parent, guardian or legal custodian has neglected, refused or been unable either to obtain the necessary treatment or to take necessary steps to ameliorate the symptoms. The bill requires that emotional damage be evidenced by one or more of the following characteristics exhibited to a substantial degree: (a) anxiety; (b) depression; (c) withdrawal; (d) outward aggressive behavior; or (e) substantial and observable change in behavior, emotional response or cognition that is not within the normal range for the child's age and stage of development.

E. GROUNDS FOR CHIPS JURISDICTION

1. Current Law

1995 Wisconsin Act 77 repeals several grounds for children in need of protection or services (CHIPS) jurisdiction under ch. 48 effective July 1, 1996. Unless amended by other enactments, as of that date, the grounds for CHIPS jurisdiction, as set forth in s. 48.13, stats., will be as follows:

- a. The child is without a parent or guardian.
- b. The child has been abandoned.
- c. The child has been the victim of sexual or physical abuse, including injury which is self-inflicted or inflicted by another by other than accidental means.
- d. The child is at substantial risk of becoming the victim of sexual or physical abuse, including injury that is self-inflicted or inflicted by another by other than accidental means, based on reliable and credible information that another child in the home has been the victim of sexual or physical abuse.
- e. The child's parent or guardian signs the petition requesting jurisdiction and states that he or she is unable to care for or provide necessary special treatment or care for the child.
- f. The child has been placed for care or adoption in violation of the law.
- g. The child is receiving inadequate care during the period of time a parent is missing, incarcerated, hospitalized or institutionalized.
- h. The child is at least age 12, signs the petition requesting jurisdiction and attests in court that he or she is in need of special care or treatment which the parent, guardian or legal custodian is unwilling to provide.
- i. The child's 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.
- j. The child's parent, guardian or legal custodian is at substantial risk of neglecting, refusing or being unable for reasons other than poverty to

provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of the child, based on reliable and credible information that the child's parent, guardian or legal custodian has neglected, refused or been unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of another child in the home.

k. The child is suffering emotional damage for which the parent or guardian is unwilling to provide treatment, which is evidenced by one or more of the following characteristics, exhibited to a severe degree: anxiety, depression, withdrawal or outward aggressive behavior.

L. The child is suffering from an alcohol and other drug abuse impairment, exhibited to a severe degree, for which the parent or guardian is unwilling to provide treatment.

m. The child has not been immunized as required by s. 252.04, stats., and not exempted under s. 252.04 (3), stats.

2. The Bill

The bill makes the following changes in the grounds for CHIPS jurisdiction:

a. With respect to items 1, c and d, above, cross-references certain paragraphs in the definition of "abuse" created in the general definitions section of ch. 48 by the bill, thus including them as grounds for CHIPS jurisdiction. Current law does not define sexual or physical abuse for purposes of CHIPS jurisdiction.

b. With respect to item 1, e, above, modifies the ground for CHIPS jurisdiction if a parent or guardian is **unable** to care for or provide necessary special treatment or care for a child to also provide a ground for CHIPS jurisdiction if the parent or guardian **needs assistance** in doing so. Also provides that CHIPS jurisdiction is not established simply by the parent's or guardian's **statement** that he or she is unable to care for or provide necessary special treatment or care for a child but, rather, is established only if the parent or guardian **proves** that he or she is unable or needs assistance to do so.

c. With respect to item 1, h, above, provides a ground for CHIPS jurisdiction if the child 12 years of age or over signs the petition and **proves** that the parent, guardian or legal custodian **is unwilling, neglecting, unable or needs assistance** to provide needed special treatment or care rather than the child's merely **attesting** that the parent, guardian or legal custodian is **unwilling** to do so.

d. With respect to item 1, k, above, deletes from the requirement that "emotional damage" be evidenced by anxiety, depression, withdrawal or outward aggressive behavior exhibited to a severe degree and refers to the definition of "emotional damage" as created in the bill. Further, adds grounds for CHIPS jurisdiction over a child who is suffering emotional damage if a parent or guardian is **neglecting, refusing or unable** to provide treatment rather than merely being **unwilling** to do so and adds grounds for

CHIPS jurisdiction over a child who is suffering emotional damage if a *legal custodian* is neglecting, refusing or unable to provide treatment.

e. With respect to item 1, L, above, adds grounds for CHIPS jurisdiction if a child is suffering from an alcohol or other drug abuse impairment if a parent or guardian is *neglecting, refusing or unable* to provide treatment rather than merely being *unwilling* to do so and adds grounds for CHIPS jurisdiction for alcohol or other drug abuse impairment if a *legal custodian* is neglecting, refusing or unable to provide treatment.

F. USE OF THE TERM “NEGLECTS, REFUSES OR IS UNABLE”

1. Current Law

Several provisions in ch. 48 relate to whether a parent, guardian or legal custodian is neglecting, refusing, failing, unable or in need of assistance to take certain actions.

2. The Bill

The bill makes the following changes:

a. With respect to one of the possible criteria for holding a child in physical custody, provides that there must be probable cause to believe that the child’s parent, guardian or legal custodian or other responsible adult is *neglecting, refusing, unable or unavailable* to provide adequate supervision and care, rather than merely being *unavailable, unwilling or unable* to do so.

b. With respect to the criteria to determine whether to continue to hold a child in physical custody, provides that there must be probable cause to believe that the child’s parent, guardian or legal custodian is *neglecting, refusing, unable or unavailable* to provide adequate supervision and care, rather than merely being *unwilling or unavailable* to do so.

c. With respect to court–ordered alcohol and other drug abuse services or court–ordered special treatment or care for a child, provides that a judge may order the parent to pay for such services if the child’s parent *neglects, refuses or is unable* to provide such services through his or her health insurance or other 3rd–party payments, rather than if the child’s parent merely *refuses or is unable* to do so.

d. With respect to the duty of a county department of human services or social services (county department) conducting a child abuse or neglect investigation and making a determination as to whether emotional damage has occurred, provides that the county department must establish that the person alleged to be responsible for the emotional damage is *neglecting, refusing or unable* to remedy the harm, rather than being merely *unwilling* to do so.

G. RIGHT TO, AND SIZE OF, JURY TRIAL IN PROCEEDINGS INVOLVING A CHILD ALLEGED TO BE CHIPS

1. Current Law

Under current law, a child and a parent, guardian or legal custodian of a child have the right under ch. 48 to a trial by jury at a fact–finding hearing in juvenile court. A trial by jury may be demanded on a petition alleging that

a child is CHIPS and on a petition for termination of parental rights (TPR). Under current s. 756.096 (3) (b), stats., a jury in *civil* cases [e.g., proceedings under ch. 48] must consist of **6** persons *unless a party requests a greater number not to exceed 12*. The court, on its own motion, may require a greater number, not to exceed 12.

2. The Bill

The bill retains the right to a jury trial under ch. 48 but *requires* a trial by a jury of **6 persons** (i.e., does not permit a jury of a larger size as is permitted under current law) in a juvenile court proceeding involving a child who is alleged to be CHIPS. The **12-person** jury is retained for *TPR cases* unless the parties agree to a lesser number.

H. ELEMENTS TO BE DETERMINED BY THE COURT VERSUS ELEMENTS TO BE DETERMINED BY THE JURY WHEN A CHILD IS ALLEGED TO BE CHIPS

1. Current Law

Under current law, a child who is the subject of a CHIPS petition or the child's parent, guardian or legal custodian may demand a jury trial to determine whether the allegations of the CHIPS petition are proved. In *In the Interest of Courtney E.*, 184 Wis. 2d 592 (1994), the Wisconsin supreme court held that in order for a juvenile court to exercise jurisdiction over a child alleged to be CHIPS, 2 things must be proved: (a) that one of the grounds for CHIPS jurisdiction exists; and (b) that the child is in need of protection or services that can be ordered by the court.

2. The Bill

The bill provides that the juvenile court, not the jury, determines whether the child needs protection or services which the juvenile court can order, thus leaving to the jury (or to the court, if a jury trial is not requested) the task of determining whether one of the underlying grounds for CHIPS jurisdiction, such as abandonment, abuse or neglect, has been proved.

I. DISCOVERY IN PROCEEDINGS UNDER THE CHILDREN'S CODE

1. Current Law

Current s. 48.293, stats., sets forth the various discovery procedures applicable in a proceeding under ch. 48. In general, current chs. 801 to 847, stats., including ch. 804, stats., regarding discovery in civil proceedings, govern procedure and practice in civil actions. However, s. 801.01 (2), stats., specifies that: "Chapters 801 to 847 govern procedure and practice in circuit courts of this state in all civil actions...except where different procedure is prescribed by statute or rule.". In *In the Interest of Zachary F.* [No. 95-1455, 1995 Wisc. App. LEXIS 1170, September 20, 1995 (ordered published) (petition for review pending)], the Wisconsin court of appeals held that the discovery procedure set forth in s. 48.293, stats., is "different" from that provided under ch. 804, stats., and that, therefore, s. 48.293, stats., is the "exclusive source of discovery rights to parties involved in ch. 48, stats., actions".

2. The Bill

The bill provides that, in addition to the discovery procedures permitted under s. 48.293, stats., the discovery procedures permitted under ch. 804, stats., apply to proceedings under ch. 48.

J. SPECIFIED DUTIES OF A GUARDIAN AD LITEM APPOINTED IN PROCEEDINGS INVOLVING A CHILD ALLEGED TO BE CHIPS

1. Current Law

Current s. 48.235 (3), stats., provides that a guardian ad litem (GAL) must be an advocate for the best interests of “the person for whom the appointment is made” (e.g., the child in a CHIPS case), but does not set forth in detail any of the duties or responsibilities of the GAL in advocating for the best interests of the child.

2. The Bill

The bill specifies that, in addition to any other duties and responsibilities imposed on a GAL, the GAL in a CHIPS case is required to do all of the following:

- a. Personally meet with the child, personally interview the child if the child is old enough to communicate, determine the child’s goals and concerns regarding his or her placement and assess the appropriateness and safety of the child’s environment in each placement.
- b. Personally, or through a trained designee, conduct, when applicable, interviews with the child’s parents, general guardian, legal custodian, foster parents, caseworkers, therapists, counselors, school personnel and mental health professionals.
- c. If any injuries or abuse have occurred or are alleged, review photographs and available videotapes or audiotapes of interviews with the child and contact appropriate health care facilities and health care providers for more information relating to those injuries or that abuse.
- d. Personally, or through a trained designee, determine whether there are alternatives to initial or continued out-of-home placement of the child, including in-home services or removal of the perpetrator of any abuse or alleged abuse from the child’s home.
- e. Personally, or through a trained designee, identify appropriate community resources and advocate for those resources, when appropriate, to protect the best interests of the child.
- f. Make *clear and specific recommendations* to the juvenile court concerning the best interests of the child at every stage of the proceeding, including all placement decisions; and ask that clear and specific orders be entered for the provision of treatment and services for the child and his or her family and for the evaluation, assessment and protection of the child and his or her family.

K. ROLE OF FOSTER AND TREATMENT FOSTER PARENTS AND CERTAIN OTHER PHYSICAL CUSTODIANS IN HEARINGS UNDER THE CHILDREN'S CODE

1. Current Law

Current law provides for a very limited role for foster parents, treatment foster parents and certain other physical custodians (e.g., relatives who provide care for a child) in CHIPS proceedings under ch. 48.

2. The Bill

The bill expands the role, or creates new provisions relating to the role, of foster parents, treatment foster parents and certain other physical custodians in hearings under ch. 48. The bill does the following:

- a. Expands current law which requires, in general, notice of all ch. 48 hearings involving a child to be given to specified persons (e.g., the child and any parent, guardian and legal custodian of the child as well as certain persons who may be the father of the child) to require such notice to be given to the child's foster parent, treatment foster parent or other physical custodian under s. 48.62 (2), stats. Section 48.62 (2), stats., sets forth those persons who provide care and maintenance for children but who are not required to obtain a foster care or treatment foster care license (e.g., a relative of the child providing care). These persons are hereafter referred to as "other physical custodians".
- b. Specifies that: (1) failure to give notice to a foster parent, treatment foster parent or other physical custodian does not deprive the juvenile court of jurisdiction in the action or proceeding; and (2) if such a person is not given the required notice of a hearing and the person requests a rehearing on the matter during the pendency of an order resulting from such hearing, the juvenile court must order that a rehearing on the matter be held.
- c. Specifies that, except in a hearing on parental consent for abortion, if a public hearing is not held in a proceeding under ch. 48, a child's foster parent, treatment foster parent or other physical custodian may be present at the hearing, except that the juvenile court may exclude a foster parent, treatment foster parent or other physical custodian from any portion of the hearing if that portion of the hearing deals with sensitive personal information of the child or the child's family or if the juvenile court determines that the exclusion would be in the best interests of the child. In a proceeding under s. 48.375, stats., the bill provides that the foster parent, treatment foster parent or other physical custodian may not be present unless requested by a party and approved by the juvenile court.
- d. Requires notification of foster or treatment foster parents or certain other physical custodians of a child when certain parties request a change in placement of the child.
- e. Permits a foster parent, treatment foster parent or certain other physical custodians to make a written or oral statement during the change in placement hearing.

f. Revises current law, relating to revision and extension of dispositional orders, to require the juvenile court to notify the child's foster parent, treatment foster parent or other physical custodian of the time and place of the hearing.

g. Creates s. 48.365 (2m) (ag), stats., to permit a foster parent, treatment foster parent or other physical custodian of the child to make a written or oral statement during an extension hearing, or to submit a written statement prior to an extension hearing, relevant to the issue of extension of a dispositional order.

h. Revises s. 48.427 (1m), stats., relating to dispositions in TPR proceedings, to require the juvenile court to permit the foster parent, treatment foster parent or other physical custodian of the child to make a written or oral statement to the juvenile court during the fact-finding or dispositional hearing, or to submit a written statement prior to disposition, relevant to the issue of disposition.

i. Revises s. 48.43 (5) (b), stats., relating to the hearing to review a child's permanency plan subsequent to a TPR, to require that notice of the time, date and purpose of the hearing be given to any other physical custodian of the child.

L. COUNTY AUTHORITY TO USE CERTAIN COMMUNITY AIDS FUNDS TO EMPLOY PRIVATE ATTORNEYS FOR PROCEEDINGS UNDER THE CHILDREN'S CODE

1. Current Law

Under current law, "community aids" are state and federal funds which are distributed by the department of health and social services (DHSS) to counties for the provision of human services.

2. The Bill

The bill authorizes counties to use certain community aids funds to employ private practice attorneys for ch. 48 proceedings relating to child abuse and neglect, TPR or any ch. 48 proceedings involving the federal Indian child welfare act (ICWA) if a county applies to DHSS and DHSS determines that use of community aids funds for this purpose does not affect any federal grants or federal funding. This specific authority is not set forth in current law.

M. TIME BY WHICH A DETENTION HEARING MUST BE HELD UNDER THE CHILDREN'S CODE

1. Current Law

Under current law, if a child who has been taken into custody is not released, a detention hearing must be held to determine whether the child should continue to be held in custody. This hearing must be held within **24 hours** after the time the decision was made to hold the child, excluding Saturdays, Sundays and legal holidays. If the hearing is not held within this time period, the child must be released.

2. The Bill

Under the bill, a detention hearing under ch. 48 must be held within **48 hours** after the decision was made to hold the child, excluding Saturdays, Sundays and legal holidays.

N. TIME BY WHICH A CHIPS PETITION MUST BE FILED FOR A CHILD HELD IN CUSTODY

1. Current Law

Under current law, a petition under ch. 48 must be filed by the time of the detention hearing unless the child was taken into custody under certain specified circumstances. [In the case of these exceptions, a written statement of the reasons for holding the child in custody must be substituted if a petition is not filed.] Under current law, if no petition or statement has been filed at the time of the detention hearing, the child must be released except in the following circumstance: the child may be held in custody with the approval of the judge or juvenile court commissioner for an additional 48 hours from the time of the detention hearing only if, as a result of facts brought forth at the hearing, the judge or juvenile court commissioner determines that: (a) the child is in imminent danger to himself or herself or to others; or (b) probable cause exists to believe that the parent, guardian or legal custodian of the child or other responsible adult is unwilling or unavailable to provide adequate supervision and care. If a petition is not filed within the 48-hour extension period, the judge or juvenile court commissioner must order the child's immediate release from custody.

2. The Bill

Under the bill, the 48-hour extension period is changed to an extension period of **72 hours**, excluding Saturdays, Sundays and legal holidays, after the detention hearing is held.

The bill also amends one of the 2 bases for approving the extension by providing that there be a determination that probable cause exists to believe that the child's parent, guardian or legal custodian or other responsible adult is neglecting, refusing, unable or unavailable to provide adequate supervision and care, rather than is unwilling or unavailable to do so.

O. EXTENSION OF AN INFORMAL DISPOSITION FOR A CHILD ALLEGED TO BE CHIPS

1. Current Law

Under current law, if a child is alleged to be CHIPS, a juvenile court intake worker may enter into a written agreement which imposes an informal disposition if: (a) the intake worker determines that the best interests of neither the child nor the public require the filing of a CHIPS petition; (b) the facts persuade the intake worker that jurisdiction of the juvenile court would exist if sought; and (c) the child and the child's parent, guardian and legal custodian consent to the informal disposition. An informal disposition may not exceed 6 months unless the informal disposition is based on allegations that a child is CHIPS based on habitual truancy, in which case, the informal disposition may not exceed one year.

2. The Bill

The bill does all of the following: (a) permits an intake worker to extend for up to an additional 6 months an informal disposition that is based on allegations that a child is CHIPS under ch. 48; (b) requires that the intake worker give written notice to the child and the child's parent, guardian and legal custodian prior to extending an informal disposition; (c) provides that the intake worker may not extend the informal disposition if the child or the child's parent, guardian or legal custodian objects to the extension; and (d) provides that if there is an objection to the extension, the intake worker may recommend that a CHIPS petition be filed.

P. PATERNITY DETERMINATION PROCEEDINGS FOR A CHILD ALLEGED TO BE CHIPS

1. Current Law

Under current law, if a putative father who has been given notice of a hearing in a CHIPS proceeding appears at the hearing, alleges that he is the father of the child and states that he wishes to have the paternity of the child established, the juvenile court is *required to refer* the matter to the state or to the attorney responsible for support enforcement (commonly known as the IV-D attorney) to determine whether an action should be brought in family court under ch. 767, stats., to determine the paternity of the child. Under current law, the juvenile court may stay the CHIPS proceedings pending the outcome of the paternity proceedings under ch. 767, stats.

2. The Bill

The bill does all of the following:

- a. Provides that, in addition to these provisions in current law, if a matter is referred by the juvenile court under the required referral provision, the IV-D attorney receiving the referral must: (1) give priority to such cases; (2) as soon as possible, but no later than 30 days after the referral, notify the juvenile court: (a) of the date a paternity action has been or will be brought in family court, (b) that a determination has been made that such an action should not be brought or, if a determination has not been made as to whether a paternity action should be brought, the approximate date by which the determination will be made or (c) that the man has been excluded as the father of the child; (3) if a paternity action is brought, notify the family court in the paternity proceeding petition that the matter was referred by the juvenile court under the required referral provision; and (4) notify the juvenile court as soon as possible of the family court's decision on the paternity action.
- b. Requires the family court to give priority to a paternity proceeding if the paternity proceeding petition filed by the IV-D attorney states that the matter was referred by the juvenile court under the required referral provision.
- c. Provides that a GAL appointed for a child under ch. 48 may bring a paternity action under ch. 767, stats.

d. Provides that, in cases in which a man who has been given notice of a CHIPS hearing appears, alleges that he is the child's father and states that he wishes to have the paternity of the child established: (1) the juvenile court must, at the hearing, orally inform the man that he may be required to pay for any genetic testing ordered by the juvenile court; (2) if it would be in the best interests of the child to do so, the juvenile court may order the man to submit to genetic testing to determine the probability that the man is the child's biological father; (3) if the testing indicates that the statistical probability that the man is the child's biological father is 99.0% or higher, the juvenile court may determine that for purposes of a proceeding under ch. 48, other than a proceeding under subch. VIII of ch. 48 (TPR), the man is the child's biological parent under s. 48.02 (13), stats., (defining "parent" in ch. 48); and (4) provides that such a determination by the juvenile court is not a judgment of paternity under ch. 767, stats., or an adjudication of paternity under subch. VIII of ch. 48.

e. Provides that, in cases in which a notice of a hearing in a CHIPS proceeding was given to a putative father who does *not* appear at a CHIPS hearing or in cases in which a man to whom notice was given appears but does *not* allege that he is the child's father and state that he wishes to have paternity established, the juvenile court *may* refer the matter to the state or the IV-D attorney who then may bring a paternity action in family court.

Q. DISCLOSURE OF COURT RECORDS RELATING TO PATERNITY

1. Current Law

Under current law, subject to certain exceptions, records of a juvenile court are not open to inspection and their contents may not be disclosed. Similarly, under current law, subject to certain exceptions, a family court's record of a paternity proceeding under ch. 767, stats., may not be disclosed.

2. The Bill

The bill does the following:

a. Adds an exception to require a juvenile court, upon request, to open for inspection or disclose juvenile court records relating to the paternity of a child to: (1) a family court; (2) a IV-D attorney; (3) the parties to a paternity proceeding under ch. 767, stats., or their attorneys; and (4) the child's GAL.

b. Adds the following to the list of individuals and entities to whom a family court's record of a paternity proceeding under ch. 767, stats., may be disclosed if the child is the subject of a ch. 48 proceeding: (1) the juvenile court in which the ch. 48 proceeding is pending; (2) the parties to the ch. 48 proceeding and their attorneys; (3) the person under s. 48.09, stats., who represents the interests of the public in the ch. 48 proceeding; (4) the child's GAL and the GAL for the child's parent; and (5) any governmental or social agency involved in the ch. 48 proceeding.

R. APPOINTMENT OF A GUARDIAN FOR A CHILD ADJUDGED CHIPS UNDER CERTAIN CIRCUMSTANCES

1. Current Law

Under current law, a juvenile court has exclusive jurisdiction over the appointment and removal of a guardian of the person for a child under the following circumstances: (a) when a guardianship petition is filed under ch. 880, stats., (relating to guardianship in general); (b) as part of a TPR disposition; (c) for a child in sustaining care; (d) as part of a TPR order; (e) for a child without a living parent if an adoptability finding is sought; (f) for the transfer of guardianship upon the revocation of a guardian's license; (g) for the transfer of guardianship if the guardian of a foreign child does not file an adoption or TPR petition; and (h) for a child adjudged CHIPS because the child is without a parent or guardian.

When a child is adjudged CHIPS and placed in foster care, the foster parent does not have the authority to do things such as signing permission slips allowing the child to participate in school or extracurricular activities, allowing out-of-state travel or consenting to routine medical services unless a parent has signed a form authorizing the foster parent to do so.

2. The Bill

a. In general

The bill provides that for certain children who have been adjudged CHIPS, a juvenile court has exclusive jurisdiction: (1) to appoint a child's relative as the guardian (or limited guardian) of the person for the child under certain circumstances; (2) to revise the guardianship order; and (3) to terminate the guardianship.

b. Criteria for appointment of a guardian

The bill specifies that a "relative", as defined in s. 48.02 (15), stats., or specified in s. 49.19 (1) (a) 2. a., stats., may be appointed as a guardian of the person of a child if the juvenile court finds all of the following by clear and convincing evidence:

- (1) The child has been adjudged CHIPS.
- (2) The child has been placed or continued in a placement outside the home under a CHIPS order or orders for a cumulative period of one year or longer.
- (3) The child has been placed with the relative, and it is likely that the child will continue to be placed with the relative for an extended period of time or until the child attains the age of 18 years.
- (4) The relative is 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.
- (5) It is not in the child's best interests that a TPR petition be filed.
- (6) The child's parent or parents are neglecting, refusing or unable to carry out the duties of a guardian.
- (7) The agency primarily responsible for providing services to the child under a juvenile court order has made reasonable efforts to make it possible for the child to return to his or her home but reunification is unlikely or

contrary to the child's best interests and further reunification efforts are unlikely to be made or are contrary to the child's best interests.

c. Procedural and miscellaneous aspects

The bill does the following:

- (1) Specifies the procedure for appointment of a guardian under the provisions created by the bill.
- (2) Prohibits a juvenile court commissioner from conducting hearings, making findings or issuing orders in such guardianship proceedings.
- (3) Provides that the district attorney or, if designated by the county board, the corporation counsel, must represent the interests of the public in such guardianship proceedings, but retains the provision in current law which allows a county board to designate any other appropriate person to do so.
- (4) Specifies venue for such guardianship proceedings.
- (5) Requires a juvenile court to appoint a GAL for a child who is the subject of such a guardianship proceeding.
- (6) Provides that a GAL may petition for the appointment of a guardian under the provisions of the bill, revision of the guardianship order or removal of such a guardian.
- (7) Provides that the general rules of evidence in chs. 901 to 911, stats., apply to a fact-finding hearing in such a guardianship proceeding.
- (8) Provides that the more relaxed rules of evidence in s. 48.299 (4) (b), stats., apply to hearings other than fact-finding hearings in such a guardianship proceeding.
- (9) Provides that if a juvenile court designates a child's placement with a guardian under this bill as a permanent foster home or treatment foster home placement, then a CHIPS dispositional order, revision order or extension order remains in effect until the earliest of the following occurs: (a) the guardianship is terminated; (b) the juvenile court enters a change in placement order; (c) a juvenile court order terminates the dispositional order, revision order or extension order; or (d) the child attains the age of 18 years.
- (10) Requires that in the 6-month permanency plan review, a determination must also be made as to the extent of compliance with the plan by the child's guardian.
- (11) Specifies that if an agency designated by the juvenile court in certain TPR dispositions determines that it is unlikely that a child will be adopted or that adoption is not in the best interests of the child, the plan for placing the child in a permanent setting (which is a required part of a required court report when a TPR petition is filed) must include either a recommendation as to the agency to be named as the guardian of the child or a recommendation that the person appointed as a guardian under this bill continue to be the child's guardian.
- (12) With respect to cases in which a juvenile court enters an order terminating parental rights and the child is left without a parent, provides that if a guardian under the bill has been appointed, the juvenile court may

transfer guardianship and custody of the child as set forth in current statutes but is not required to do so.

(13) Creates an exception to the mandatory transfer of legal custody when a sustaining care order is entered to provide that, if a guardian under the bill has been appointed, such a transfer of legal custody and guardianship is permissive.

(14) Requires that a juvenile court provide to a guardian under the bill a certified copy of a TPR order.

(15) Provides that a guardian under the bill may be licensed as a foster parent or treatment foster parent.

(16) Provides that a juvenile court may enter an order revising or terminating a guardianship as created under the bill despite the pendency of an appeal.

d. Duties and authority of a guardian

The bill does the following:

(1) Provides that a person appointed to be a guardian of the child under the bill has the duty and authority of a guardian as set forth in s. 48.023, stats.

(2) Explicitly provides that a juvenile court order may limit the authority of a guardian appointed under the provisions of this bill.

e. Revision of guardianship order

The bill does the following:

(1) Provides a procedure for revision of the guardianship order, including notice requirements, waiver provisions and hearing requirements.

(2) Provides that the juvenile court may order a revision of the guardianship order if the juvenile court finds that it has been proved by clear and convincing evidence that there has been a substantial change in circumstances since the last order affecting guardianship was entered and if the juvenile court determines that a revision would be in the child's best interests.

f. Termination of guardianship

The bill does the following:

(1) Provides that, unless the juvenile court orders that it be for a shorter period of time, a guardianship under the bill continues until the child attains the age of 18 years or until terminated by the juvenile court, whichever occurs first.

(2) Provides that a guardian under the bill may resign at any time if the resignation is accepted by the juvenile court.

(3) Provides a procedure and standards for removing the guardian for cause.

(4) Provides a procedure and standards for terminating the guardianship upon a parent's petition.

S. GROUNDS FOR INVOLUNTARY TPR--IN GENERAL

1. Current Law

Current law provides 9 grounds for involuntary TPR: abandonment, continuing need of protection or services, continuing parental disability, continuing denial of periods of physical placement, child abuse, failure to

assume parental responsibility, incestuous parenthood, intentional homicide of the child's other parent and being conceived as a result of sexual assault (created by 1995 Wisconsin Act 108).

2. The Bill

The bill modifies the grounds for involuntary TPR set out above to make clear that the ground *must be established by proving* the elements specified, rather than stating that the ground *may be established by a showing* of the elements specified.

T. INVOLUNTARY TPR BASED ON ABANDONMENT

1. Current Law

Under current law, abandonment may be established by a showing of one of 3 bases:

- a. The child has been left without provision for its care or support, the petitioner has investigated the circumstances surrounding the matter and, for 60 days, the petitioner has been unable to find either parent.
- b. The child has been placed, or continued in a placement, outside the parent's home by a juvenile court order containing the notice required by s. 48.356 (2), stats., (warning regarding the applicable grounds for involuntary TPR and the conditions necessary for the child to be returned home), and the parent has failed to visit or communicate with the child for a period of 6 months or longer.
- c. The child has been left by the parent with a relative or other person, the parent knows or could discover the whereabouts of the child and the parent has failed to visit or communicate with the child for a period of one year or longer.

Under current law, a parent may rebut the 2nd and 3rd of these bases by proving that he or she has not disassociated himself or herself from the child or relinquished responsibility for the child's care and well-being.

2. The Bill

The bill does the following:

- a. Provides an additional basis for establishing abandonment if a child has been left without provision for its care or support in a place or manner that exposes the child to substantial risk of death or great bodily harm, as defined in s. 939.22 (14), stats.
- b. Provides that, with respect to a child who has been placed, or continued in a placement, outside the parent's home by a juvenile court order, the parent has failed to visit or communicate with the child for a period of 3 months or longer, rather than 6 months or longer.
- c. Provides that, with respect to a child who has been left by the parent, the child must have been left with any person other than the child's other parent, rather than with a relative or other person (which may include the child's other parent), and provides that the parent then must have failed to visit or communicate with the child for a period of 6 months or longer, rather than one year or longer.

d. Deletes the provision allowing rebuttal of the presumption that abandonment has occurred based on evidence that the parent has not disassociated himself or herself from the child or relinquished responsibility for the child's care and well-being and instead provides that abandonment is not established under items b or c, above, if the parent proves all of the following by a preponderance of the evidence:

(1) That he or she had good cause for having failed to visit with the child throughout the time period specified in items b or c, above, whichever is applicable.

(2) That he or she had good cause for having failed to communicate with the child throughout the time period specified in items b or c, above, whichever is applicable.

(3) If the parent proves good cause for having failed to communicate with the child, including good cause based on evidence that the child's age or condition would have rendered any communication with the child meaningless, that the parent either:

(a) Communicated about the child with the person or persons who had physical custody of the child during the time period specified in items b or c, above, whichever is applicable, or, if item b, above, is applicable, with the agency responsible for the care of the child during the time period specified in item b, above; or

(b) Had good cause for having failed to communicate about the child with such person or persons or agency during the applicable time period.

U. INVOLUNTARY TPR BASED ON CONTINUING NEED OF PROTECTION OR SERVICES

1. Current Law

Currently, continuing need of protection or services as a ground for involuntary TPR may be established by a showing that: (a) the child has been adjudged CHIPS and placed, or continued in a placement, outside the child's home by the juvenile court under a CHIPS dispositional order, change of placement order, extension of dispositional order or revision of dispositional order; (b) the agency responsible for the care of the child and the family has made a diligent effort to provide the services ordered by the juvenile court; (c) the child has been outside the home under such an order for a cumulative total period of one year or longer or, if the child had not attained the age of 3 years at the time of the initial order placing the child outside the home, for a cumulative total period of 6 months or longer; and (d) the parent has failed to demonstrate substantial progress toward meeting the conditions established for the return of the child to the home and there is a substantial likelihood that the parent will not meet those conditions within the next 12 months.

2. The Bill

The bill does the following:

a. Amends this ground for a child who is 3 years of age or older at the time of the initial juvenile court order placing the child outside the home by

reducing the period of time that such a child must spend in a court-ordered out-of-home placement from one year to 6 months.

b. Defines “diligent effort” to provide court-ordered services.

V. INVOLUNTARY TPR BASED ON CONTINUING DENIAL OF PERIODS OF PHYSICAL PLACEMENT OR VISITATION

1. Current Law

Under current law, continuing denial of periods of physical placement by a court order in an action affecting the family is a ground for involuntary TPR if the parent has been denied periods of physical placement for a period of at least one year and the family court has not subsequently modified its order so as to permit periods of physical placement.

2. The Bill

The bill does the following:

a. Expands this ground to also provide for periods in which a juvenile court has denied visitation under a CHIPS dispositional order, a change in placement order, a revision of dispositional order or an extension of dispositional order if the order contained a warning about continuing denial of visitation as a ground for involuntary TPR and notified the parent of the conditions necessary for the parent to be granted visitation.

b. Requires a juvenile court, when denying a parent visitation under such an order, to warn the parent orally and in writing that continuing denial of visitation is a ground for involuntary TPR and of the conditions necessary for the parent to be granted visitation.

W. INVOLUNTARY TPR BASED ON CHILD ABUSE

1. Current Law

Currently, child abuse may be established as a ground for involuntary TPR by a showing that the parent has exhibited a pattern of abusive behavior which poses a substantial threat to the health of the child and that either: (a) the parent has been convicted of a felony for causing death or injury to a child; or (b) on more than one occasion, a child has been removed from the home after being adjudged CHIPS and there is a finding by the juvenile court that sexual or physical abuse has been inflicted by the parent.

2. The Bill

The bill provides that child abuse is established as a ground for involuntary TPR by proving that the parent has exhibited a pattern of physically or sexually abusive behavior which poses a substantial threat to the health of the child and that either: (a) the parent has been convicted of a felony for causing death or injury to any child; or (b) any child has previously been removed from the parent’s home pursuant to a CHIPS dispositional order after the child was adjudged CHIPS as a victim of physical or sexual abuse, or for being at substantial risk of becoming the victim of physical or sexual abuse based on information that another child in the home has been the victim of such abuse.

X. INVOLUNTARY TPR BASED ON FAILURE TO ASSUME PARENTAL RESPONSIBILITY

1. Current Law

Under current law, the parental rights of the father of a nonmarital child, that is, a child who is neither conceived nor born while his or her parents are intermarried, who has not been adopted or whose parents have not subsequently intermarried and for whom paternity has not been adjudicated prior to the filing of the TPR petition, may be terminated if: (a) the person or persons who may be the father of the child have been given notice about the TPR petition but have failed to appear or otherwise submit to the jurisdiction of the juvenile court and have never had a substantial parental relationship with the child; or (b) that although paternity has been adjudicated, the father did not establish a substantial parental relationship with the child prior to the filing of the TPR petition even though he had reason to believe he was the father of the child and has not assumed parental responsibility for the child.

2. The Bill

The bill expands this ground for involuntary TPR to include: (a) mothers as well as fathers; (b) marital children as well as nonmarital children; and (c) fathers for whom paternity was adjudicated prior to the filing of the TPR petition.

Y. INVOLUNTARY TPR BASED ON INTENTIONAL OR RECKLESS HOMICIDE OF THE CHILD'S OTHER PARENT

1. Current Law

Under current law, first-degree intentional homicide by the parent of the child's other parent is a ground for involuntary TPR.

2. The Bill

The bill adds first-degree reckless homicide by the parent of the child's other parent as a ground for involuntary TPR.

Z. INVOLUNTARY TPR BASED ON COMMISSION OF A SERIOUS FELONY AGAINST ONE OF THE PERSON'S CHILDREN

The bill creates an additional ground for involuntary TPR based on commission of a serious felony against one of the person's children. This ground must be established by proving that the person whose parental rights are sought to be terminated has been convicted of a "serious felony" (as defined in the bill) and that one of the person's children was the victim of that serious felony. In addition to applying when the person commits a serious felony against one of the person's children other than the child who is the subject of the TPR petition, this ground also applies in those cases in which the child who is the subject of the TPR petition was the victim of such a crime and survives.

ZA. INVOLUNTARY TPR BASED ON PRIOR INVOLUNTARY TPR TO ANOTHER CHILD

The bill creates an additional ground for involuntary TPR, based on prior involuntary TPR to another child.

This new ground must be established by proving both of the following:

1. The child who is the subject of the TPR petition has been adjudged CHIPS because of abandonment or sexual or physical abuse or because a 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.
2. Within the 3 years prior to the date the child who is the subject of the TPR petition was adjudged CHIPS, a juvenile court has ordered the involuntary TPR of another of the person's children.

ZB. APPEALS OF ORDERS TERMINATING PARENTAL RIGHTS

1. Current Law

Currently, orders granting or denying involuntary TPR are final orders that are appealable like other circuit court final orders.

2. The Bill

The bill provides as follows:

- a. A notice of intent to appeal an involuntary TPR judgment or order must be filed with the trial court within 30 days after the entry of the TPR judgment or order, rather than 15 days.
- b. The appellant has 30 days from the date of service of the transcript to file the official notice of appeal and docketing statement, rather than 15 days.
- c. The court of appeals must give TPR appeals preference and must decide a TPR appeal within 30 days after the filing of the appellant's reply brief or statement that a reply brief will not be filed, rather than 45 days after the filing of the record on appeal.
- d. A petition for the supreme court to review the decision of the court of appeals in a TPR case must be filed within 30 days after the date of the decision of the court of appeals, rather than 15 days.
- e. With respect to a parent who consented to TPR or did not contest an involuntary TPR and, unless an exception applies, a motion for relief from judgment on such grounds as fraud, mistake or newly discovered evidence must be filed within **30 days** after the entry of the TPR judgment or order, rather than 40 days.

ZC. PETITIONING A COURT, WHEN AN INVOLUNTARY TPR PETITION IS FILED, FOR AN ORDER PROHIBITING VISITATION OR CONTACT WITH A CHILD

1. Current Law

Current law provides that a juvenile court may, in a dispositional order under s. 48.355, stats., set reasonable rules of parental visitation if a child is adjudged CHIPS [s. 48.355 (3), stats.] and may prohibit a parent from visiting a child if a child is placed in sustaining care after a TPR order [s. 48.428 (6), stats.]. In addition, current law provides that a child abuse restraining order and injunction ordering a person to avoid a child's residence and to avoid contacting the child may be granted if a person has engaged in or may engage in abuse of the child [s. 813.122, stats.]. If the

respondent to a petition for a child abuse restraining order or injunction is the child's parent, current law specifies that the court may provide that the parent has reasonable visitation rights, unless the court finds that visitation would endanger the child's physical, mental or emotional health.

Current statutes do not explicitly provide that a juvenile court may enter an order denying visitation or contact with a child who is the subject of an involuntary TPR petition while the case is pending.

2. The Bill

The bill provides that:

a. If a petition for involuntary TPR is filed, the person filing the TPR petition may also petition the juvenile court for a temporary order and an injunction prohibiting the person whose parental rights are sought to be terminated from visiting or contacting the child.

b. The juvenile court may issue the temporary order ex parte or may refuse to issue the temporary order and hold a hearing on whether to issue an injunction. The bill specifies that the temporary order is in effect until a hearing is held on the issuance of an injunction and that the hearing on the issuance of an injunction must be held before or on the same day as the initial hearing on the TPR petition.

c. The juvenile court may grant an injunction prohibiting the respondent from visiting or contacting the child if the juvenile court determines that the prohibition would be in the best interests of the child.

d. Such an injunction may not remain in effect beyond the date the juvenile court either dismisses the TPR petition or issues an order terminating parental rights.

ZD. DISCLOSURE OF INFORMATION TO CERTAIN VOLUNTARY REPORTERS OF CHILD ABUSE OR NEGLECT

1. Current Law

Under current law, certain individuals, such as physicians, nurses, teachers and social workers (mandatory reporters), must report to the county department or to the sheriff or city, village or town police department cases of children seen in the course of professional duties whom they suspect have been abused or neglected or threatened with abuse or neglect. Any other individual may, but is not required to, report suspected or threatened child abuse or neglect and, if a report is made, is considered to be a voluntary reporter. Currently, the county department or licensed child welfare agency under contract with the county department investigating a report of suspected or threatened child abuse or neglect must, within 60 days after receipt of a report from a mandatory reporter, inform the mandatory reporter of what action was taken to protect the health and welfare of the child who is the subject of the report. Current law does not provide for disclosure of information to voluntary reporters.

2. The Bill

The bill provides that:

- a. Those voluntary reporters who are relatives of a child, as defined in s. 48.981 (1) (fm), stats., other than the child's parent, may request in writing that a county department or a licensed child welfare agency under contract with the county department disclose information to them regarding what action was taken to protect the health and welfare of the child who is the subject of the report.
- b. A county department or a licensed child welfare agency that receives such a request must, within 60 days after it receives the report or within 20 days after it receives the written request, whichever is later, inform such a voluntary reporter in writing of: (1) what action, if any, was taken to protect the health and welfare of the child, unless the county department or child welfare agency has obtained a juvenile court order prohibiting such disclosure; and (2) the duty to keep the information confidential and the penalties for failing to do so.
- c. The county department or licensed child welfare agency may petition the juvenile court ex parte for an order prohibiting such disclosure.
- d. If a county department or licensed child welfare agency files such a petition, the deadline for disclosure is suspended until the juvenile court issues its decision.
- e. The juvenile court may hold an ex parte hearing in camera, that is, hearing from one side only in the judge's chambers, and must issue an order granting the petition if the juvenile court determines that disclosure would not be in the best interests of the child.

ZE. RELEASE OF CERTAIN INFORMATION, INCLUDING HIV TEST RESULTS, TO SUBSTITUTE CARE PROVIDERS

1. Current Law

Under current law, the results of HIV tests may not be disclosed without the consent of the person who was tested (or, if the person who was tested is under 14 years of age, without the consent of the person's parent), except under statutorily specified circumstances. One of these circumstances is that, if the test was administered to a child for whom placement in a foster home, group home or a child caring institution (CCI) is recommended under s. 48.33 (4), stats., (out-of-home placement recommended in a predispositional report for a child adjudged CHIPS), the results may be disclosed to an agency directed by a juvenile court to prepare either a court report under s. 48.33 (1), stats., (predispositional report for a child adjudged CHIPS) or a permanency plan under s. 48.38, stats. Under s. 252.15 (5) (a) 19., stats., that agency is then authorized to redisclose the HIV test results to the child's foster parent or the operator of the group home or CCI in which the child is placed, as provided in s. 48.371, stats.

Current s. 48.371, stats., requires that, at the time a child is placed in a foster home, group home or CCI under a CHIPS dispositional order or a change in placement order (or, if the information is not available at that time, within 30

days after the date of the placement), the agency that prepared the child's permanency plan must provide the foster parent or operator of the group home or CCI with information in the court report under s. 48.33, stats., or permanency plan submitted under s. 48.38, stats., relating to all of the following:

- a. The results of HIV tests if: (1) the child's parent or guardian has consented to the test under s. 252.15 (2) (a) 4. b., stats., (in pertinent part, consent from the parent or guardian is required if the person tested is under 14 years of age, and consent of the guardian is required if the person tested has been adjudicated incompetent under ch. 880, stats.); (2) the child's parent or guardian has consented to the release of test results under s. 252.15 (5) (a) 19., stats.; and (3) the agency notifies the foster parent or operator of the group home or CCI about the confidentiality requirements under s. 252.15 (6), stats., (redisclosure prohibited except to a person on a list of persons specified in the statutes).
- b. The results of tests for viral hepatitis, type B (hepatitis B).
- c. Findings or opinions of the juvenile court or agency that prepared the court report or permanency plan relating to any mental, emotional, cognitive, developmental or behavioral disability of the child.

2. The Bill

The bill amends current law as follows:

- a. By additionally providing for disclosure of all 3 types of information listed in items 1, a to c, above, concerning children placed in a treatment foster home (which, along with foster homes, group homes and CCI's, are commonly referred to as "substitute care").
- b. By additionally providing for disclosure of HIV and hepatitis B test results regarding children placed in substitute care under other circumstances under ch. 48, rather than restricting disclosure to cases in which children have been placed in substitute care by a CHIPS dispositional order or a change in placement order.
- c. By providing for disclosure of HIV test results to the substitute care provider without the consent of the child or the child's parent or guardian.
- d. By also providing that the disclosure of HIV test results may be to the following: (1), stats., the agency directed by a court to prepare a court report under various provisions in ch. 48, rather than restricting disclosure to the agency directed to prepare a court report under s. 48.33 (1), stats., (predispositional report for a child adjudged to be CHIPS); (2) to an agency responsible for preparing a court report under various provisions in ch. 48; (3) to an agency responsible for preparing a permanency plan under various provisions of ch. 48, rather than restricting disclosure to the agency directed to prepare a permanency plan under s. 48.38, stats.; (4) to an agency that placed the child or arranged for the placement of the child in substitute care; and (5) by any of those agencies to any other of those agencies.
- e. By requiring the agency that placed the child or arranged for the placement of the child with the substitute care provider to provide HIV and

hepatitis B test results to the substitute care provider, rather than requiring the agency that prepared the child's permanency plan to do so.

f. By requiring that, at the time the agency provides the HIV test results to the substitute care provider, the agency notify the substitute care provider about the confidentiality requirements under s. 252.15 (6), stats.

g. With respect to the disclosure of HIV and hepatitis B test results, by requiring disclosure not at the time a child is placed in substitute care, or within 30 days after the date of the placement if the information was not available at the time of placement, but rather at the time of placement and, if information is subsequently received, as soon as possible, but not later than 2 working days after the agency receives such information.

h. With respect to the disclosure of information in the court report or permanency plan relating to findings or opinions of the juvenile court or agency that prepared the court report or permanency plan relating to the mental, emotional, cognitive, developmental or behavioral disability of the child, by requiring disclosure not at the time a child is placed in such substitute care, or within 30 days after the date of the placement if the information was not available at the time of placement, but rather at the time of placement or, if the information is not available at that time, as soon as possible after the court report or permanency plan has been submitted, but not later than 7 days after such date.

ZF. REQUEST FOR A STUDY ON THE USE, EFFECTIVENESS AND FUNDING OF SYSTEMS AND PROGRAMS DIRECTED AT PREVENTION OF CHILD ABUSE AND NEGLECT

1. Background

Due to time constraints and the multiplicity of issues facing the joint legislative council's 1994-95 special committee on children in need of protection or services, the committee did not act on the prevention aspects of its charge, even though there was a consensus to do so.

2. The Bill

The bill requests the joint legislative council to study all of the following:

a. The use and effectiveness of systems and programs directed at, and resources allocated to, the prevention of child abuse and neglect to determine the effectiveness of those systems, programs and resources in preventing child abuse and neglect in the state.

b. The need for new or revised systems and programs and new mechanisms for providing and allocating funding for preventing child abuse and neglect.

1 **SECTION 1.** 46.40 (7m) of the statutes is created to read:
2 **46.40 (7m)** USE BY COUNTY OF COMMUNITY AIDS FUNDS TO PAY PRIVATE ATTORNEYS
3 FOR CERTAIN PROCEEDINGS UNDER THE CHILDREN'S CODE. Upon application by a county
4 department under s. 46.215, 46.22 or 46.23 to the department for permission to use

1 funds allocated to that county department under sub. (2) to employ private counsel
2 for the purposes specified in this subsection and a determination by the department
3 that use of funds for those purposes does not affect any federal grants or federal
4 funding allocated under this section, the department and the county department
5 shall execute a contract authorizing the county department to expend, as agreed
6 upon in the contract, funds allocated to that county department under sub. (2) to
7 permit the county department to employ private counsel to represent the interests
8 of the state or county in proceedings under ch. 48 relating to child abuse or neglect
9 cases, proceedings to terminate parental rights and any ch. 48 cases or proceedings
10 involving the Indian child welfare act, 25 USC 1901 to 1963.

NOTE: This SECTION authorizes counties to use certain community aids funds to employ private practice attorneys for ch. 48 proceedings relating to child abuse and neglect, TPR or any ch. 48 proceedings involving the Indian child welfare act (ICWA).

Under current law "community aids" are state and federal funds which are distributed by DHSS to counties for the provision of human services. Section 46.40, stats., sets forth the basic community aids funding allocations.

This bill specifies that DHSS and a county may, after application by the county and a determination by DHSS that use of community aids funds for the purpose of employing private counsel for certain ch. 48 proceedings does not affect any federal grants or federal funding relating to community aids, enter into a contract relating to the use of a certain amount of community aids funds to employ private counsel (i.e., private practice attorneys) to represent the interests of the state or county in proceedings under ch. 48 relating to child abuse and neglect, TPR or any ch. 48 proceedings involving the ICWA. The intent of this new authorization is to permit counties which do not have any or enough government attorneys with sufficient expertise in TPR, the ICWA or other child abuse or neglect-related cases to use certain community aids funds to employ experienced private practice attorneys to handle these proceedings.

11 **SECTION 2.** 48.01 (1) (ag) of the statutes is created to read:

12 48.01 (1) (ag) To recognize that children have certain basic needs which must
13 be provided for, including the need for adequate food, clothing and shelter; the need
14 to be free from physical, sexual or emotional injury or exploitation; the need to
15 develop physically, mentally and emotionally to their potential; and the need for a
16 safe and permanent family. It is further recognized that, under certain
17 circumstances, in order to ensure that the needs of a child are provided for, the court

1 may determine that it is in the best interests of the child for the child to be removed
2 from his or her parents, consistent with any applicable law relating to the rights of
3 parents.

NOTE: This SECTION creates a new provision in the statement of legislative purpose section of the children’s code [s. 48.01, stats.], recognizing that children have basic needs, including all of the following:

1. The need for adequate food, clothing and shelter.
2. The need to be free from physical, sexual or emotional injury or exploitation.
3. The need to develop physically, mentally and emotionally to their potential.
4. The need for a safe and permanent family.

In keeping with the increased focus of this new purpose section on the best interests of the child, this new provision recognizes that, under certain circumstances, in order to ensure that the needs of a child are provided for, it may be necessary for the juvenile court to remove a child from his or her parents, consistent with any applicable law relating to the rights of parents [i.e., there is a sufficient basis under law for the court assigned to exercise jurisdiction under the children’s code (juvenile court) to intervene in the family].

4 **SECTION 3.** 48.01 (1) (b) of the statutes is repealed.

NOTE: This SECTION repeals current s. 48.01 (1) (b), stats., relating to providing for the “wholesome mental, and physical development of children”, because the content of that paragraph is incorporated into new sub. (1) (ag), as created in this bill.

5 **SECTION 4.** 48.01 (1) (bg) of the statutes is created to read:

6 48.01 (1) (bg) 1. To ensure that children are protected against the harmful
7 effects resulting from the absence of parents or parent substitutes, from the inability,
8 other than financial inability, of parents or parent substitutes to provide care and
9 protection for their children and from the destructive behavior of parents or parent
10 substitutes in providing care and protection for their children.

11 2. To ensure that children are provided good substitute parental care in the
12 event of the absence, temporary or permanent inability, other than financial
13 inability, or unfitness of parents to provide care and protection for their children.

NOTE: This SECTION creates new provisions in s. 48.01, stats., recognizing that children must be ensured of all of the following:

1. Protection against the harmful effects resulting from: (a) the absence of parents or parent substitutes; (b) the inability [other than “financial inability” — i.e., poverty] of parents or parent substitutes to provide care and protection for their children; and (c) the destructive behavior of parents or parent substitutes in providing care and protection for their children.

2. Good substitute parental care in the event of the absence, temporary or permanent inability [other than financial inability] or unfitness of parents to provide care and protection for their children.

As with the other new or modified legislative purpose provisions in the bill, this new language is intended to focus attention on: (1) the best interests of the child in any formal or informal proceedings or determinations under ch. 48; and (2) the need for juvenile courts in proceedings and determinations under ch. 48, to take a closer look at, and make more timely decisions regarding, the fitness or unfitness of parents to care for and protect their children.

1 **SECTION 5.** 48.01 (1) (br) of the statutes is created to read:

2 48.01 (1) (br) To encourage innovative and effective prevention, intervention
3 and treatment approaches, including collaborative community efforts and the use of
4 community-based programs, as significant strategies in planning and
5 implementing legislative, executive and local government policies and programs
6 relating to children and their families and substitute families.

NOTE: This SECTION creates a new provision in s. 48.01 (1), stats., emphasizing the significance of prevention and intervention approaches in legislative, executive and local government programs, policies and planning strategies for dealing with children under the children's code.

7 **SECTION 6.** 48.01 (1) (dm) of the statutes is created to read:

8 48.01 (1) (dm) To divert children from formal proceedings under this chapter
9 to the extent that this is consistent with protection of children and the public safety.

NOTE: This SECTION creates a new provision in s. 48.01, stats., to emphasize the diversion of children from formal proceedings under the children's code to the extent that this is consistent with protection of children and the public safety.

10 **SECTION 7.** 48.01 (1) (e) of the statutes is repealed.

NOTE: This SECTION repeals current s. 48.01 (1) (e), stats., relating to responding to children's needs for care and treatment through community-based programs because the content of that paragraph is incorporated into new sub. (1) (ag), as created in this bill.

11 **SECTION 8.** 48.01 (1) (g) of the statutes is amended to read:

12 48.01 (1) (g) ~~To provide children in the state with permanent and stable family~~
13 relationships While recognizing that the paramount goal of this chapter is to protect
14 children, to preserve the unity of the family, whenever appropriate, by strengthening
15 family life through assisting parents in fulfilling their parental responsibilities. The

1 courts and agencies responsible for child welfare should assist parents in changing
2 any circumstances in the home which might harm the child or which may require the
3 child to be placed outside the home. The courts should recognize that they have the
4 authority, in appropriate cases, not to reunite a child with his or her family. The
5 courts and agencies responsible for child welfare should also recognize that
6 instability and impermanence in family relationships are contrary to the welfare of
7 children and should therefore recognize the importance of eliminating the need for
8 children to wait unreasonable periods of time for their parents to correct the
9 conditions that prevent their return to the family.

NOTE: This SECTION amends s. 48.01 (1) (g), stats., to do all of the following:

1. Specify that one of the legislative purposes of ch. 48 is to preserve the unity of the family, whenever appropriate, by strengthening family life through assisting parents in fulfilling their parental responsibilities.

2. Stress to the juvenile court judges that they have the authority, in appropriate cases, not to reunite a child with his or her family. The committee determined that, in some cases, parents comply in a minimal way with court-ordered requirements for the return of their child [or children] and that the child [or children] are, in fact, returned to the parents based on this minimal compliance [which often occurs just prior to the court hearing to review the out-of-home placement]. Because reunification in such cases is often contrary to the best interests of the child, the committee hopes that this new provision reemphasizes to juvenile courts that such minimal compliance may not be sufficient, considering the best interests of the child, to reunite the parent and that child. The best interests of the child must always be the paramount consideration.

10 **SECTION 9.** 48.01 (1) (gr) of the statutes is amended to read:

11 48.01 (1) (gr) To allow for the termination of parental rights at the earliest
12 possible time after rehabilitation and reunification efforts are discontinued in
13 accordance with this chapter and termination of parental rights is in the best interest
14 of the child.

NOTE: This SECTION adds the phrase "in accordance with this chapter" to s. 48.01 (1) (gr), stats., to clarify that the rehabilitation and reunification efforts prior to termination of parental rights (TPR) should at least be at a level in accordance with ch. 48, stats., before they can be discontinued and TPR proceedings commenced. Committee members expressed concern that the current language in that paragraph could be interpreted to permit lesser efforts prior to TPR.

15 **SECTION 10.** 48.01 (1) (gt) of the statutes is created to read:

1 48.01 (1) (gt) To reaffirm that the duty of a parent to support and maintain his
2 or her child continues during any period in which the child may be removed from the
3 custody of the parent.

NOTE: This SECTION creates a new provision in s. 48.01, stats., which emphasizes that a parent's duty to support and maintain his or her minor child continues during any period in which the minor child may be removed from the custody of the parent under ch. 48, stats.

4 **SECTION 11.** 48.01 (2) of the statutes is renumbered 48.01 (2) (intro.) and
5 amended to read:

6 48.01 (2) (intro.) This chapter shall be liberally construed to effect the
7 objectives contained in this section. The best interests of the child shall always be
8 of paramount consideration, ~~but the court shall also consider the interest of the~~
9 ~~parents or guardian of the child, the interest of the person or persons with whom the~~
10 ~~child has been placed for adoption and the interests of the public.~~ In proceedings
11 involving an American Indian child, the best interests of the child must be
12 determined consistent with the Indian child welfare act, 25 USC 1901 to 1963. In
13 this subsection, "American Indian child" means any unmarried person who is under
14 18 years of age and is one of the following:

NOTE: This SECTION deletes certain language in current s. 48.01 (2), stats., to more strongly emphasize that the best interests of the child must always be of the paramount consideration under ch. 48, stats. Deleted is language specifying that the juvenile court must "also consider the interest of the parents or guardian of the child, the interest of the person or persons with whom the child has been placed for adoption and the interests of the public". This SECTION adds language to current s. 48.01 (2), stats., to clarify that, in proceedings involving a child who is an American Indian, the best interests of the child must be determined consistent with the federal Indian child welfare act, 25 USC 1901 to 1963.

The definition of "American Indian child" in this SECTION and in SECTION 12 (which completes the definition) is based on the definition of "Indian child" in 25 USC 1903 (4).

15 **SECTION 12.** 48.01 (2) (a) and (b) of the statutes are created to read:

16 48.01 (2) (a) A member of an Indian tribe, as defined in 25 USC 1903 (8).

1 (b) Eligible for membership in an Indian tribe and is the biological child of a
2 member of an Indian tribe.

NOTE: See the NOTE following SECTION 11 of this bill.

3 **SECTION 13.** 48.02 (1) of the statutes, as affected by 1995 Wisconsin Act 77, is
4 renumbered 48.02 (1d).

NOTE: Renumbers the definition of “adult” in order to insert the definition of
“abuse” in the general definitions section of ch. 48.

5 **SECTION 14.** 48.02 (1) of the statutes is created to read:

6 48.02 (1) “Abuse”, other than when used in referring to abuse of alcohol
7 beverages or other drugs, means any of the following:

- 8 (a) Physical injury inflicted on a child by other than accidental means.
9 (b) Sexual intercourse or sexual contact under s. 940.225, 948.02 or 948.025.
10 (c) A violation of s. 948.05.
11 (d) Permitting, allowing or encouraging a child to violate s. 944.30.
12 (e) A violation of s. 948.055.
13 (f) A violation of s. 948.10.
14 (g) Emotional damage.

NOTE: Defines “abuse” in the general definitions section of ch. 48 as meaning any
of the following:

1. Physical injury [as defined in s. 48.02 (14m), stats., as created by this bill] inflicted on a child by other than accidental means.
2. Sexual intercourse or sexual contact under s. 940.225, stats., (the general sexual assault statute), s. 948.02, stats., [sexual assault of a child under the age of 13 (first degree) or under the age of 16 (2nd degree)] or s. 948.025, stats., (repeated acts of sexual assault against the same child).
3. A violation of s. 948.05, stats., (sexual exploitation of child).
4. Permitting, allowing or encouraging a child to violate s. 944.30, stats., (prostitution).
5. A violation of s. 948.055, stats., (causing a child to view or listen to sexual activity).
6. A violation of s. 948.10, stats., (for purposes of sexual arousal or gratification, either causing a child to expose genitals or pubic area or exposing genitals or pubic area to a child).
7. Emotional damage [as defined in s. 48.02 (5j), stats., as created by this bill].

15 **SECTION 15.** 48.02 (5j) of the statutes is created to read:

1 48.02 (5j) “Emotional damage” means harm to a child’s psychological or
2 intellectual functioning for which the child’s parent, guardian or legal custodian has
3 neglected, refused or been unable to obtain the necessary treatment or to take
4 necessary steps to ameliorate the symptoms. “Emotional damage” shall be evidenced
5 by one or more of the following characteristics exhibited to a substantial degree:
6 anxiety; depression; withdrawal; outward aggressive behavior; or a substantial and
7 observable change in behavior, emotional response or cognition that is not within the
8 normal range for the child’s age and stage of development.

NOTE: 1. Defines “emotional damage” in the general definitions section of ch. 48
as meaning harm to a child’s psychological or intellectual functioning for which the child’s
parent, guardian or legal custodian has neglected, refused or been unable either to obtain
the necessary treatment or to take necessary steps to ameliorate the symptoms.

2. Requires that emotional damage be evidenced by one or more of the following
characteristics exhibited to a substantial degree:

- a. Anxiety.
- b. Depression.
- c. Withdrawal.
- d. Outward aggressive behavior.
- e. Substantial and observable change in behavior, emotional response or cognition
that is not within the normal range for the child’s age and stage of development.

9 **SECTION 16.** 48.02 (14m) of the statutes is created to read:

10 48.02 (14m) “Physical injury” means bodily harm, as defined in s. 939.22 (4).
11 “Physical injury” does not include reasonable discipline of a child by a person
12 responsible for the child’s welfare, as defined in s. 939.45 (5) (a) 3.

13 **SECTION 17.** 48.02 (14r) of the statutes is created to read:

14 48.02 (14r) “Reasonable discipline” means discipline that involves only such
15 force as a reasonable person believes is necessary. “Reasonable discipline” does not
16 include the use of force which is intended to cause, or which creates an unreasonable
17 risk of, lacerations, fractured bones, burns, internal injuries, severe or frequent
18 bruising, great bodily harm, as defined in s. 939.22 (14), or death.

NOTE: 1. Defines “physical injury” in the general definitions section of ch. 48 and that definition is then incorporated in the definition of “abuse” under s. 48.02 (1), stats., as created by this bill.

2. Provides that “physical injury” means “bodily harm”, which is defined in s. 939.22 (4), stats., as “physical pain or injury, illness or any impairment of physical condition”, but provides an exception for reasonable discipline by a “person responsible for the child’s welfare”, which is defined in s. 939.45 (5) (a) 3., stats., as “includ[ing] the child’s parent or guardian; an employe of a public or private residential home, institution or agency in which the child resides or is confined or that provides services to the child; or any other person legally responsible for the child’s welfare in a residential setting”.

3. Provides that reasonable discipline may involve only such force as a reasonable person believes is necessary and specifies that reasonable discipline does not include the use of force which is intended to cause lacerations, fractured bones, burns, internal injuries, severe or frequent bruising, great bodily harm, as defined in s. 939.22 (14), stats., or death or creates an unreasonable risk of such injuries or death. [“Great bodily harm” is defined in s. 939.22 (14), stats., as “bodily injury which creates a substantial risk of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury”.]

1 **SECTION 18.** 48.023 (intro.) of the statutes is amended to read:

2 **48.023 Guardianship.** (intro.) ~~A~~ Except as limited by an order of the court
3 under s. 48.977 (5) (b), a person appointed by the court to be the guardian of a child
4 under this chapter has the duty and authority to make important decisions in
5 matters having a permanent effect on the life and development of the child and the
6 duty to be concerned about the child’s general welfare, including but not limited to:

NOTE: Clarifies that the duties and authority of a person appointed by the juvenile court to be guardian of a child under ch. 48 to make decisions relating to the child’s life, development and general welfare may be limited by order of the juvenile court.

7 **SECTION 19.** 48.065 (3) (g) of the statutes is created to read:

8 48.065 (3) (g) Conduct hearings, make findings or issue orders in proceedings
9 under s. 48.977.

NOTE: Prohibits a juvenile court commissioner from conducting hearings, making findings or issuing orders in guardianship proceedings under s. 48.977, stats., as created in this bill.

10 **SECTION 20.** 48.09 (5) of the statutes is amended to read:

11 48.09 (5) By the district attorney or, if designated by the county board of
12 supervisors, by the corporation counsel, in any matter arising under s. 48.13 or
13 48.977. If the county board transfers this authority to or from the district attorney

1 on or after May 11, 1990, the board may do so only if the action is effective on
2 September 1 of an odd-numbered year and the board notifies the department of
3 administration of that change by January 1 of that odd-numbered year.

NOTE: Provides that the district attorney or, if designated by the county board, the corporation counsel, shall represent the interests of the public in guardianship proceedings under s. 48.977, stats., as created in this bill. [Under current s. 48.09 (6), stats., a county board also has authority to designate any other appropriate person to represent the interests of the public in such matters.]

4 **SECTION 21.** 48.13 (3) of the statutes is amended to read:

5 48.13 (3) Who has been the victim of ~~sexual or physical~~ abuse, as defined in s.
6 48.02 (1) (a), (b), (c), (d), (e) or (f), including injury ~~which~~ that is self-inflicted or
7 inflicted by another ~~by other than accidental means~~;

NOTE: Current law does not define sexual or physical abuse for purposes of CHIPS jurisdiction. This bill provides a definition of "abuse" for purposes of CHIPS jurisdiction by cross-referencing the paragraphs in the definition of "abuse" in s. 48.02 (1) (a) to (f), stats., as created by this bill, which include "physical injury" [as defined in s. 48.02 (14m), stats., as created by this bill], including a provision that the "physical injury" be inflicted by other than accidental means, and which list various sex crimes.

8 **SECTION 22.** 48.13 (3m) of the statutes is amended to read:

9 48.13 (3m) Who is at substantial risk of becoming the victim of ~~sexual or~~
10 ~~physical~~ abuse, as defined in s. 48.02 (1) (a), (b), (c), (d), (e) or (f), including injury that
11 is self-inflicted or inflicted by another ~~by other than accidental means~~, based on
12 reliable and credible information that another child in the home has been the victim
13 of ~~sexual or physical~~ such abuse;

NOTE: Current law does not define sexual or physical abuse for purposes of CHIPS jurisdiction. This bill provides a definition of "abuse" for purposes of CHIPS jurisdiction by cross-referencing the paragraphs in the definition of "abuse" in s. 48.02 (1) (a) to (f), stats., as created by this bill, which include "physical injury" [as defined in s. 48.02 (14m), stats., as created by this bill], including a provision that the "physical injury" be inflicted by other than accidental means, and which list various sex crimes.

14 **SECTION 23.** 48.13 (4) of the statutes, as affected by 1995 Wisconsin Act 77, is
15 amended to read:

1 48.13 (4) Whose parent or guardian signs the petition requesting jurisdiction
2 under this subsection and ~~states that he or she is unable or needs assistance~~ to care
3 for or provide necessary special treatment or care for the child;

NOTE: Amends this ground for CHIPS jurisdiction as follows:

1. In addition to providing a ground for jurisdiction if a parent or guardian is *unable* to care for or provide necessary special treatment or care for a child, provides a ground for jurisdiction if the parent or guardian *needs assistance* in doing so.

2. Provides that this ground for jurisdiction is not established simply by the parent's or guardian's *statement* that he or she is unable to care for or provide necessary special treatment or care for a child but, rather, is established only if the parent or guardian *proves* that he or she is unable or needs assistance to do so.

4 **SECTION 24.** 48.13 (9) of the statutes is amended to read:

5 48.13 (9) Who is at least age 12, signs the petition requesting jurisdiction under
6 this subsection and ~~attests in court that he or she is in need of special care and~~
7 treatment or care which the parent, guardian or legal custodian is unwilling,
8 neglecting, unable or needs assistance to provide;

NOTE: 1. Provides a ground for CHIPS jurisdiction if a child 12 years of age or over signs the petition and the parent, guardian or legal custodian is *unwilling, neglecting, unable or needs assistance* to provide needed special treatment or care rather than being *unwilling* to do so.

2. Changes the phrase "special care or treatment" to "special treatment or care" which is currently defined in s. 48.02 (17m), stats.

9 **SECTION 25.** 48.13 (11) of the statutes is amended to read:

10 48.13 (11) Who is suffering emotional damage for which the parent ~~or~~ guardian
11 ~~is unwilling or legal custodian is neglecting, refusing or unable~~ to provide treatment,
12 ~~which is evidenced by one or more of the following characteristics, exhibited to a~~
13 severe degree: anxiety, depression, withdrawal or outward aggressive behavior;

NOTE: Makes the following changes:

1. Deletes from this ground for CHIPS jurisdiction the requirements that "emotional damage" be evidenced by anxiety, depression, withdrawal or outward aggressive behavior exhibited to a severe degree. The definition of "emotional damage" in s. 48.02 (5j), stats., as created by this bill, includes a provision that these characteristics must be exhibited to a substantial degree but also defines as "emotional damage" a "substantial and observable change in behavior, emotional response or cognition that is not within the normal range for the child's age and stage of development".

2. Adds grounds for jurisdiction over a child who is suffering emotional damage if a parent or guardian is *neglecting, refusing or unable* to provide treatment rather than merely being *unwilling* to do so.

3. Adds grounds for jurisdiction over a child who is suffering emotional damage if a *legal custodian* is neglecting, refusing or unable to provide treatment.

1 **SECTION 26.** 48.13 (11m) of the statutes is amended to read:

2 48.13 (11m) Who is suffering from an alcohol and other drug abuse
3 impairment, exhibited to a severe degree, for which the parent ~~or~~, guardian or legal
4 custodian is unwilling neglecting, refusing or unable to provide treatment;

NOTE: 1. Adds grounds for CHIPS jurisdiction if a child is suffering from an alcohol or other drug abuse impairment if a parent or guardian is *neglecting, refusing or unable* to provide treatment rather than being *unwilling* to do so.

2. Adds grounds for jurisdiction for alcohol or other drug abuse impairment if a *legal custodian* is neglecting, refusing or unable to provide treatment.

5 **SECTION 27.** 48.14 (2) (b) of the statutes is amended to read:

6 48.14 (2) (b) The appointment and removal of a guardian of the person for a
7 child under ss. 48.427, 48.428, 48.43, 48.831, 48.832 ~~and~~, 48.839 (4) (a) and 48.977
8 and ch. 880 and for a child found to be in need of protection or services under s. 48.13
9 because the child is without parent or guardian.

NOTE: Section 48.14 (2) (b), stats., sets forth a list of matters over which the juvenile court has exclusive jurisdiction (no other court, for example, a regular branch of the circuit court, can deal with these matters). Currently the juvenile court has exclusive jurisdiction over the appointment and removal of a guardian *of the person* for a child under all of the following provisions:

1. Section 48.427, stats., relating to dispositions in TPR proceedings.
2. Section 48.428, stats., relating to sustaining care.
3. Section 48.43, stats., relating to court orders in TPR cases.
4. Section 48.831, stats., relating to appointment of a guardian for a child without a living parent for an adoptability finding.
5. Section 48.832, stats., relating to transfer of guardianship upon revocation of a guardian's license.
6. Section 48.839 (4) (a), stats., relating to transfer of guardianship of a child from a foreign jurisdiction if the guardian does not file a TPR or adoption petition.
7. Chapter 880, stats., the general guardianship chapter.
8. For a child adjudged CHIPS under 48.13 (1), stats., because the child is without a parent or guardian.

This SECTION adds a reference to s. 48.977, stats., as created in this bill, relating to the appointment of relatives as guardians for certain children in need of protection or services under certain circumstances.

10 **SECTION 28.** 48.185 (1) of the statutes, as affected by 1995 Wisconsin Act 77,
11 is amended to read:

1 48.185 (1) ~~Venue~~ Subject to sub. (2), venue for any proceeding under ss. 48.13,
2 48.135 and 48.14 (1) to (9) may be in any of the following: the county where the child
3 resides, the county where the child is present or, in the case of a violation of a state
4 law or a county, town or municipal ordinance, the county where the violation
5 occurred. Venue for proceedings brought under subch. VIII is as provided in this
6 subsection except where the child has been placed and is living outside the home of
7 the child's parent pursuant to a dispositional order, in which case venue is as
8 provided in sub. (2). Venue for a proceeding under s. 48.14 (10) is as provided in s.
9 801.50 (5s).

10 **SECTION 29.** 48.185 (2) of the statutes is amended to read:

11 48.185 (2) In an action under s. 48.41, venue shall be in the county where the
12 birth parent or child resides at the time that the petition is filed. Venue for any
13 proceeding under s. 48.363 ~~or~~, 48.365 or 48.977, or any ~~other~~ proceeding under subch.
14 VIII when the child has been placed outside the home pursuant to a dispositional
15 order under s. 48.345, shall be in the county where the dispositional order was issued,
16 unless the child's county of residence has changed, or the parent of the child has
17 resided in a different county of this state for 6 months. In either case, the court may,
18 upon a motion and for good cause shown, transfer the case, along with all appropriate
19 records, to the county of residence of the child or parent.

NOTE: Amends s. 48.185 (1) and (2), stats., to provide that venue for a guardianship proceeding as created by this bill is in the county where the CHIPS dispositional order was issued, unless the child's county of residence has changed or the child's parent has resided in a different county of this state for 6 months.

20 **SECTION 30.** 48.205 (1) (b) of the statutes is amended to read:

21 48.205 (1) (b) Probable cause exists to believe that the parent, guardian or legal
22 custodian of the child or other responsible adult is neglecting, refusing, unable or
23 unavailable, ~~unwilling or unable~~ to provide adequate supervision and care and that

1 services to ensure the child's safety and well-being are not available or would be
2 inadequate; or

NOTE: Provides that, with respect to one of the possible criteria for holding a child in physical custody, there must be probable cause to believe that the child's parent, guardian or legal custodian or other responsible adult is *neglecting, refusing, unable or unavailable* to provide adequate supervision and care rather than being *unavailable, unwilling or unable* to do so.

3 **SECTION 31.** 48.21 (1) (a) of the statutes, as affected by 1995 Wisconsin Act 77,
4 is amended to read:

5 48.21 (1) (a) If a child who has been taken into custody is not released under
6 s. 48.20, a hearing to determine whether the child shall continue to be held in custody
7 under the criteria of ss. 48.205 to 48.209 shall be conducted by the judge or juvenile
8 court commissioner within ~~24~~ 48 hours of the time the decision to hold the child was
9 made, excluding Saturdays, Sundays and legal holidays. By the time of the hearing
10 a petition under s. 48.25 shall be filed, except that no petition need be filed where a
11 child is taken into custody under s. 48.19 (1) (b) or (d) 2. or 7. or where the child is
12 a runaway from another state, in which case a written statement of the reasons for
13 holding a child in custody shall be substituted if the petition is not filed. If no hearing
14 has been held within ~~24~~ 48 hours, excluding Saturdays, Sundays and legal holidays,
15 or if no petition or statement has been filed at the time of the hearing, the child shall
16 be released except as provided in par. (b). A parent not present at the hearing shall
17 be granted a rehearing upon request.

NOTE: Provides that a detention hearing must be held within 48 hours, excluding Saturdays, Sundays and legal holidays, after the decision was made to hold the child, rather than 24 hours, excluding Saturdays, Sundays and legal holidays.

18 **SECTION 32.** 48.21 (1) (b) of the statutes is amended to read:

19 48.21 (1) (b) If no petition has been filed by the time of the hearing, a child may
20 be held in custody with approval of the judge or juvenile court commissioner for an

1 additional ~~48~~ 72 hours from the time of the hearing, excluding Saturdays, Sundays
2 and legal holidays, only if, as a result of the facts brought forth at the hearing, the
3 judge or juvenile court commissioner determines that probable cause exists to
4 believe that the child is an imminent danger to himself or herself or to others, or that
5 probable cause exists to believe that the parent, guardian or legal custodian of the
6 child or other responsible adult is ~~unwilling~~ neglecting, refusing, unable or
7 unavailable to provide adequate supervision and care. The extension may be
8 granted only once for any petition. In the event of failure to file a petition within the
9 ~~48-hour~~ extension period provided for in this paragraph, the judge or juvenile court
10 commissioner shall order the child's immediate release from custody.

NOTE: Expands the ~~48-hour~~ extension period to a 72-hour extension period,
excluding Saturdays, Sundays and legal holidays.

11 **SECTION 33.** 48.235 (1) (c) of the statutes is amended to read:

12 48.235 (1) (c) The court shall appoint a guardian ad litem for any child who is
13 the subject of a proceeding to terminate parental rights, whether voluntary or
14 involuntary, ~~and~~ for a child who is the subject of a contested adoption proceeding and
15 for a child who is the subject of a proceeding under s. 48.977.

NOTE: Requires a juvenile court to appoint a guardian ad litem (GAL) for a child
who is the subject of a guardianship proceeding under s. 48.977, stats., as created by this
bill.

16 **SECTION 34.** 48.235 (3) (title) of the statutes is amended to read:

17 48.235 (3) (title) ~~RESPONSIBILITIES~~ DUTIES AND RESPONSIBILITIES.

18 **SECTION 35.** 48.235 (3) of the statutes is renumbered 48.235 (3) (a).

19 **SECTION 36.** 48.235 (3) (b) of the statutes is created to read:

20 48.235 (3) (b) In addition to any other duties and responsibilities required of
21 a guardian ad litem, a guardian ad litem appointed for a child who is the subject of
22 a proceeding under s. 48.13 shall do all of the following:

1 1. Personally meet with the child, personally interview the child if the child is
2 old enough to communicate, determine the child's goals and concerns regarding his
3 or her placement and assess the appropriateness and safety of the child's
4 environment in each placement.

5 2. Personally, or through a trained designee, conduct, when applicable,
6 interviews with the child's parents, general guardian, legal custodian, foster
7 parents, caseworkers, therapists, counselors, school personnel and mental health
8 professionals and, if any injuries or abuse have occurred or are alleged, review
9 photographs and available videotapes or audiotapes of interviews with the child and
10 contact appropriate health care facilities and health care providers for more
11 information relating to those injuries or that abuse.

12 3. Personally, or through a trained designee, determine whether there are
13 alternatives to initial or continued out-of-home placement of the child, including
14 in-home services or removal of the perpetrator of any abuse or alleged abuse from
15 the child's home.

16 4. Personally, or through a trained designee, identify appropriate community
17 resources and advocate for those resources, when appropriate, to protect the best
18 interests of the child.

19 5. Make clear and specific recommendations to the court concerning the best
20 interest of the child at every stage of the proceeding, including all placement
21 decisions, and ask that clear and specific orders be entered for the provision of
22 treatment and services for the child and his or her family and for the evaluation,
23 assessment and protection of the child and his or her family.

NOTE: This SECTION sets forth specific duties and responsibilities applicable to a guardian ad litem (GAL) appointed in a CHIPS case. Current s. 48.235 (3), stats., provides that a GAL must be an advocate for the best interests of "the person for whom

the appointment is made” (e.g., the child in a CHIPS case), but does not set forth in detail any of the duties or responsibilities of the GAL in advocating for the best interests of the child. For example, the special committee received substantial testimony that some GALs in CHIPS cases do not meet with the child they are appointed to represent, arguing that current law does not require, or is not clear as to requiring, such a meeting with the child. The list of duties and responsibilities specified in this SECTION is not intended to be an exhaustive list of the duties and responsibilities of GALs appointed in CHIPS cases.

1 **SECTION 37.** 48.235 (4) (a) 7g. of the statutes is created to read:

2 48.235 (4) (a) 7g. Petition for the appointment of a guardian under s. 48.977
3 (2), the revision of a guardianship order under s. 48.977 (6) or the removal of a
4 guardian under s. 48.977 (7).

NOTE: Permits the GAL of a child found to be in need of protection or services to petition for the appointment of a guardian for the child under s. 48.977 (2), stats., as created by this bill; to petition for the revision of a guardianship order under s. 48.977 (6), stats., as created by this bill; and to petition for the removal of a guardian under s. 48.977 (7), stats., as created by this bill.

5 **SECTION 38.** 48.235 (4) (a) 7m. of the statutes is created to read:

6 48.235 (4) (a) 7m. Bring an action or motion for the determination of the child’s
7 paternity under s. 767.45.

NOTE: Permits the GAL of a child found to be in need of protection or services to bring an action or motion for the determination of the child’s paternity.

8 **SECTION 39.** 48.245 (2) (b) of the statutes, as affected by 1995 Wisconsin Act 77,
9 is amended to read:

10 48.245 (2) (b) Informal disposition may not include any form of residential
11 placement and may not exceed 6 months, except as provided under sub. (2r).

12 **SECTION 40.** 48.245 (2r) of the statutes is created to read:

13 48.245 (2r) If an informal disposition is based on allegations that a child is in
14 need of protection or services, the intake worker may, after giving written notice to
15 the child and the child’s parent, guardian and legal custodian and their counsel, if
16 any, extend the informal disposition for up to an additional 6 months unless the child
17 or the child’s parent, guardian or legal custodian objects to the extension. If the child

1 or the child's parent, guardian or legal custodian objects to the extension, the intake
2 worker may recommend to the district attorney or corporation counsel that a petition
3 be filed under s. 48.13. An extension under this subsection may be granted only once
4 for any informal disposition.

NOTE: This SECTION relates to extension of an informal disposition for a child when the informal disposition is based on allegations that the child is in need of protection or services (CHIPS).

Under current law, a juvenile court intake worker may enter into a written agreement which imposes an informal disposition if: (1) the intake worker determines that the best interests of neither the child nor the public require the filing of a petition for circumstances relating to s. 48.12 (delinquency), 48.125 (violation of a civil law or ordinance), 48.13 (CHIPS), 48.135 (proceedings under ch. 51 (mental health act) or ch. 55 (protective services) or 48.14, stats., (other matters relating to children); (2) the facts persuade the intake worker that jurisdiction of the juvenile court would exist if sought; and (3) the child and the child's parent, guardian and legal custodian consent to the informal disposition.

Under current law, an informal disposition may not exceed 6 months unless the informal disposition is based on allegations that a child is CHIPS based on habitual truancy. In that case, the informal disposition may not exceed one year. This bill permits an intake worker to extend for up to an additional 6 months an informal disposition that is based on allegations that a child is CHIPS, other than allegations that the child is CHIPS based on habitual truancy. [The bill does not affect the provision for a one-year informal disposition when a child is alleged to be CHIPS based on habitual truancy.]

The bill requires that the intake worker give written notice to the child and the child's parent, guardian and legal custodian prior to extending an informal disposition. The bill provides that the intake worker may not extend an informal disposition if the child or the child's parent, guardian or legal custodian objects to the extension. The bill also provides that if there is an objection to the extension, the intake worker may recommend that a CHIPS petition be filed.

5 **SECTION 41.** 48.27 (3) (a) of the statutes is renumbered 48.27 (3) (a) 1. and
6 amended to read:

7 48.27 (3) (a) 1. The court shall also notify, under s. 48.273, the child, any parent,
8 guardian and legal custodian of the child, any foster parent, treatment foster parent
9 or other physical custodian described in s. 48.62 (2) of the child and any person
10 specified in par. (b), if applicable, of all hearings involving the child except hearings
11 on motions for which notice need only be provided to the child and his or her counsel.
12 Where parents entitled to notice have the same place of residence, notice to one shall
13 constitute notice to the other. The first notice to any interested party, foster parent,

1 treatment foster parent or other physical custodian described in s. 48.62 (2) shall be
2 written and may have a copy of the petition attached to it. Thereafter, notice of
3 hearings may be given by telephone at least 72 hours before the time of the hearing.
4 The person giving telephone notice shall place in the case file a signed statement of
5 the time notice was given and the person to whom he or she spoke.

6 **SECTION 42.** 48.27 (3) (a) 2. of the statutes is created to read:

7 48.27 (3) (a) 2. Failure to give notice under subd. 1. to a foster parent, treatment
8 foster parent or other physical custodian described in s. 48.62 (2) does not deprive the
9 court of jurisdiction in the action or proceeding. If a foster parent, treatment foster
10 parent or other physical custodian described in s. 48.62 (2) is not given notice under
11 subd. 1., that person may request a rehearing on the matter during the pendency of
12 an order resulting from the hearing. If the request is made, the court shall order a
13 rehearing.

NOTE: Expands current s. 48.27 (3) (a), stats., which requires, in general, notice of all hearings under the children's code involving a child to be given to specified persons (i.e., the child and any parent, guardian and legal custodian of the child as well as certain persons who may be the father of the child), to require that notice to be given to the child's foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2), stats. Section 48.62 (2), stats., sets forth those persons who provide care and maintenance for children but who are not required to obtain a foster care or treatment foster care license (e.g., a relative of the child providing "kinship" care). The bill also specifies that: (1) failure to give notice to a foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2), stats., does not deprive the juvenile court of jurisdiction in the action or proceeding; and (2) if a foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2), stats., is not given the required notice of a hearing and that person requests a rehearing on the matter during the pendency of an order resulting from the hearing, the juvenile court must order that a rehearing on the matter be held. Under current law, failure to give notice (or adequate notice) may result in dismissal of an action or proceeding for lack of juvenile court jurisdiction and the necessity of recommencing the action or proceeding, with the accompanying delays.

14 **SECTION 43.** 48.293 (4) of the statutes is created to read:

15 48.293 (4) In addition to the discovery procedures permitted under subs. (1) to
16 (3), the discovery procedures permitted under ch. 804 shall apply in all proceedings
17 under this chapter.

NOTE: Provides that the discovery procedures which are applicable to civil proceedings in general also apply to proceedings under ch. 48.

1 **SECTION 44.** 48.299 (1) (a) of the statutes, as affected by 1995 Wisconsin Act 77,
2 is amended to read:

3 48.299 (1) (a) The general public shall be excluded from hearings under this
4 chapter and from hearings by courts exercising jurisdiction under s. 48.16 unless a
5 public fact-finding hearing is demanded by a child through his or her counsel.
6 However, the court shall refuse to grant the public hearing in a proceeding other than
7 a proceeding under s. 48.375 (7), if a parent or guardian objects. ~~All hearings under~~
8 ~~s. 48.375 (7) shall be held in chambers, unless a public fact-finding hearing is~~
9 ~~demanded by the child through her counsel. If~~

10 (ag) In a proceeding other than a proceeding under s. 48.375 (7), if a public
11 hearing is not held, only the parties, and their counsel, if any, the child's foster
12 parent, treatment foster parent or other physical custodian described in s. 48.62 (2),
13 witnesses and other persons requested by a party and approved by the court may be
14 present, except that the court may exclude a foster parent, treatment foster parent
15 or other physical custodian described in s. 48.62 (2) from any portion of the hearing
16 if that portion of the hearing deals with sensitive personal information of the child
17 or the child's family or if the court determines that excluding the foster parent,
18 treatment foster parent or other physical custodian would be in the best interests of
19 the child. Except in a proceeding under s. 48.375 (7), any other person the court finds
20 to have a proper interest in the case or in the work of the court, including a member
21 of the bar, may be admitted by the court.

22 **SECTION 45.** 48.299 (1) (ar) of the statutes is created to read:

1 48.299 (1) (ar) All hearings under s. 48.375 (7) shall be held in chambers, unless
2 a public fact-finding hearing is demanded by the child through her counsel. In a
3 proceeding under s. 48.375 (7), the child's foster parent, treatment foster parent or
4 other physical custodian described in s. 48.62 (2) may be present if requested by a
5 party and approved by the court.

NOTE: Expands, and further divides into new paragraphs, current s. 48.299 (1) (a), stats., to specify that, except in a proceeding under s. 48.375 (7), stats., [hearing on parental consent for abortion], if a public hearing is not held in a proceeding under the children's code, a child's foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2), stats., may be present at the hearing, except that the juvenile court may exclude a foster parent, treatment foster parent or other physical custodian from any portion of the hearing if that portion of the hearing deals with sensitive personal information of the child or the child's family or if the juvenile court determines that the exclusion would be in the best interests of the child. In a proceeding under s. 48.375, stats., the bill provides that the foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2), stats., may not be present unless requested by a party and approved by the juvenile court. Current law permits to be present only the parties to the proceeding, their counsel, witnesses, other persons requested by a party and approved by the juvenile court and, in cases not involving a proceeding under s. 48.375, stats., other persons whom the juvenile court finds to have a proper interest in the case or the work of the juvenile court.

The change in renumbered and amended s. 48.299 (1) (ag), stats., relating to "only the parties and their counsel" is to clarify that the phrase "their counsel" applies only to the parties and not to the child's foster or treatment foster parent or other physical custodian described in s. 48.62 (2), stats.

6 **SECTION 46.** 48.299 (4) (a) of the statutes, as affected by 1995 Wisconsin Act 77,
7 is amended to read:

8 48.299 (4) (a) Chapters 901 to 911 shall govern the presentation of evidence at
9 the fact-finding hearings under ss. 48.31 and, 48.42 and 48.977 (4) (d).

NOTE: Provides that the general rules of evidence in chs. 901 to 911, stats., apply to a fact-finding hearing for a guardianship proceeding under s. 48.977, stats., as created by this bill.

10 **SECTION 47.** 48.299 (4) (b) of the statutes, as affected by 1995 Wisconsin Act 77,
11 is amended to read:

12 48.299 (4) (b) Except as provided in s. 901.05, neither common law nor
13 statutory rules of evidence are binding at a hearing for a child held in custody under
14 s. 48.21, a runaway home hearing under s. 48.227 (4), a dispositional hearing, or a

1 hearing about changes in placement, revision of dispositional orders or, extension of
2 dispositional orders or termination of guardianship orders entered under s. 48.977
3 (4) (h) 2. or (6). At those hearings, the court shall admit all testimony having
4 reasonable probative value, but shall exclude immaterial, irrelevant or unduly
5 repetitious testimony or evidence that is inadmissible under s. 901.05. Hearsay
6 evidence may be admitted if it has demonstrable circumstantial guarantees of
7 trustworthiness. The court shall give effect to the rules of privilege recognized by
8 law. The court shall apply the basic principles of relevancy, materiality and probative
9 value to proof of all questions of fact. Objections to evidentiary offers and offers of
10 proof of evidence not admitted may be made and shall be noted in the record.

NOTE: Provides that the more relaxed rules of evidence in s. 48.299 (4) (b), stats., apply to hearings relating to termination of the guardianship orders created in this bill. Under the current provisions of s. 48.299 (4) (b), stats., the rules of evidence in s. 48.299 (4) (b), stats., also apply to dispositional hearings involving the guardianship proceedings created in this bill and to hearings related to revision of dispositional orders appointing a guardian under the provisions of this bill.

11 **SECTION 48.** 48.299 (6) of the statutes is renumbered 48.299 (6) (intro.) and
12 amended to read:

13 48.299 (6) (intro.) If a man who has been given notice under s. 48.27 (3) (b) 1.
14 appears at any hearing for which he received the notice, alleges that he is the father
15 of the child and states that he wishes to establish the paternity of the child, the all
16 of the following apply:

17 (a) The court shall refer the matter to the state or to the attorney responsible
18 for support enforcement under s. 59.458 (1) for a determination, under s. 767.45, of
19 whether an action should be brought for the purpose of determining the paternity of
20 the child.

21 (d) The court may stay the proceedings under this chapter pending the outcome
22 of the paternity proceedings under ss. 767.45 to 767.60 if the court determines that

1 the paternity proceedings will not unduly delay the proceedings under this chapter
2 and the determination of paternity is necessary to the court's disposition of the child
3 if the child is found to be in need of protection or services. ~~As part of the proceedings~~
4 ~~under this chapter, the court may order that a record be made of any testimony of the~~
5 ~~child's mother relating to the child's paternity. A record made under this subsection~~
6 ~~is admissible in a proceeding to determine the child's paternity under ss. 767.45 to~~
7 ~~767.60.~~

8 **SECTION 49.** 48.299 (6) (b), (c) and (e) of the statutes are created to read:

9 48.299 (6) (b) The state or the attorney responsible for support enforcement
10 who receives a referral under par. (a) shall perform the duties specified under s.
11 767.45 (5) (c) and (6r).

12 (c) The court having jurisdiction over actions affecting the family shall give
13 priority under 767.475 (7m) to an action brought under s. 767.45 whenever the
14 petition filed under s. 767.45 indicates that the matter was referred by the court
15 under par. (a).

16 (e) 1. In this paragraph, "genetic test" means a test that examines genetic
17 markers present on blood cells, skin cells, tissue cells, bodily fluid cells or cells of
18 another body material for the purpose of determining the statistical probability that
19 a man who is alleged to be a child's father is the child's biological father.

20 2. The court shall, at the hearing, orally inform any man specified in sub. (6)
21 (intro.) that he may be required to pay for any testing ordered by the court under this
22 paragraph or under s. 885.23.

23 3. In addition to ordering testing as provided under s. 885.23, if the court
24 determines that it would be in the best interests of the child, the court may order any
25 man specified in sub. (6) (intro.) to submit to one or more genetic tests which shall

1 be performed by an expert qualified as an examiner of genetic markers present on
2 the cells and of the specific body material to be used for the tests, as appointed by the
3 court. A report completed and certified by the court-appointed expert stating genetic
4 test results and the statistical probability that the man alleged to be the child's father
5 is the child's biological father based upon the genetic tests is admissible as evidence
6 without expert testimony and may be entered into the record at any hearing. The
7 court, upon request by a party, may order that independent tests be performed by
8 other experts qualified as examiners of genetic markers present on the cells of the
9 specific body materials to be used for the tests.

10 4. If the genetic tests show that an alleged father is not excluded and that the
11 statistical probability that the alleged father is the child's biological father is 99.0%
12 or higher, the court may determine that for purposes of a proceeding under this
13 chapter, other than a proceeding under subch. VIII, the man is the child's biological
14 parent.

15 5. A determination by the court under subd. 4. is not a judgment of paternity
16 under ch. 767 or an adjudication of paternity under subch. VIII.

NOTE: In cases in which a man who has been given notice of a hearing in a CHIPS proceeding appears at a hearing for which he received notice, alleges that he is the father of the child and states that he wishes to have the paternity of the child established, current law requires the juvenile court to refer the matter to the state or the IV-D attorney to determine if a paternity action should be brought in family court under ch. 767, stats., to determine the paternity of the child. Current law also provides that if the juvenile court determines that the paternity proceedings will not unduly delay the CHIPS proceedings and that determination of paternity is necessary to the CHIPS disposition if the child is adjudicated CHIPS, the juvenile court may stay the CHIPS proceedings pending the outcome of the paternity proceedings under ch. 767, stats. Current s. 885.23, stats., provides that, whenever it is relevant in a civil action to determine the parentage or identity of any child, person or corpse, the court may order "any party to the action and any person involved in the controversy to submit to one or more blood tests as provided in s. 767.48".

This SECTION does all of the following:

1. Provides that if a matter is referred by the juvenile court under the required referral provision, then the IV-D attorney receiving the referral must: (a) give priority to such cases; (b) notify the family court when a petition is filed that the case was referred by the juvenile court under the required referral provision; and (c) as soon as possible, but

no later than 30 days after the referral, provide information to the juvenile court as required in s. 767.45 (5) (c), stats., as created by this bill.

2. Requires the family court to give such cases priority.

3. Provides that, in addition to a court's authority under s. 885.23, stats., to order blood tests of certain individuals, in cases in which a man appears at a CHIPS hearing for which he received notice, alleges that he is the father of the child and states that he wishes to establish the paternity of the child, the juvenile court must orally inform the man at the hearing that he may be required to pay for any genetic testing ordered by the court; and if it would be in the best interests of the child to do so, the juvenile court may: (a) order the man to submit to genetic testing to determine the probability that the man is the child's biological father; and (b) if the genetic testing shows that the statistical probability is 99.0% or higher that the man is the child's biological father, determine that for purposes of a proceeding under ch. 48, stats., other than a proceeding under subch. VIII [termination of parental rights], the man is the child's biological parent.

4. Provides that such a determination by the juvenile court is not a judgment of paternity under ch. 767, stats., or an adjudication of paternity under subch. VIII of the children's code.

1 **SECTION 50.** 48.299 (7) of the statutes is created to read:

2 48.299 (7) If a man who has been given notice under s. 48.27 (3) (b) 1. appears
3 at any hearing for which he received the notice but does not allege that he is the
4 father of the child and state that he wishes to establish the paternity of the child or
5 if no man to whom such notice was given appears at a hearing, the court may refer
6 the matter to the state or to the attorney responsible for support enforcement under
7 s. 59.458 (1) for a determination, under s. 767.45, of whether an action should be
8 brought for the purpose of determining the paternity of the child.

NOTE: Provides that if a notice of a hearing in a CHIPS proceeding was given to an alleged father who does not appear at the hearing or, if an alleged father appears but does not allege that he is the father of the child and state that he wishes to have paternity established, the juvenile court may refer the matter to the state or to the IV-D attorney who may then bring a paternity action.

9 **SECTION 51.** 48.299 (8) of the statutes is created to read:

10 48.299 (8) As part of the proceedings under this chapter, the court may order
11 that a record be made of any testimony of the child's mother relating to the child's
12 paternity. A record made under this subsection is admissible in a proceeding to
13 determine the child's paternity under ss. 767.45 to 767.60.

NOTE: Moves this provision which is included in current s. 48.299 (6), stats., to s. 48.299 (8), stats., as created by this bill.

1 **SECTION 52.** 48.31 (2) of the statutes, as affected by 1995 Wisconsin Act 77, is
2 amended to read:

3 48.31 (2) The hearing shall be to the court unless the child, parent, guardian
4 or legal custodian exercises the right to a jury trial by demanding a jury trial at any
5 time before or during the plea hearing. If a jury trial is demanded in a proceeding
6 under s. 48.13, the jury shall consist of 6 persons. If a jury trial is demanded in a
7 proceeding under s. 48.42, the jury shall consist of 12 persons unless the parties
8 agree to a lesser number. Chapters 756 and 805 shall govern the selection of jurors.
9 If the hearing involves a child victim or witness, as defined in s. 950.02, the court may
10 order the taking and allow the use of a videotaped deposition under s. 967.04 (7) to
11 (10) and, with the district attorney, shall comply with s. 971.105. At the conclusion
12 of the hearing, the court or jury shall make a determination of the facts, except that
13 in a case alleging a child to be in need of protection or services under s. 48.13, the
14 court shall make the determination under s. 48.13 (intro.) relating to whether the
15 child is in need of protection or services which can be ordered by the court. If the court
16 finds that the child is not within the jurisdiction of the court or, in a case alleging a
17 child to be in need of protection or services under s. 48.13, that the child is not in need
18 of protection or services which can be ordered by the court or if the court or jury finds
19 that the facts alleged in the petition have not been proved, the court shall dismiss
20 the petition with prejudice.

NOTE: Under current law, a child who is the subject of a CHIPS petition or the child's parent, guardian or legal custodian may demand a jury trial to determine whether the allegations of the CHIPS petition are proved. This bill provides that the juvenile court, not the jury, determines whether the child needs protection or services which the juvenile court can order, leaving to the jury the task of determining whether one of the underlying grounds for jurisdiction specified in s. 48.13, such as abandonment, abuse or neglect, has been proved.

This SECTION also provides that if a jury trial is demanded in a CHIPS proceeding the jury shall consist of 6 persons and that if a jury trial is demanded in a TPR proceeding the jury shall consist of 12 persons unless the parties agree to a lesser number.

1 **SECTION 53.** 48.31 (4) of the statutes, as affected by 1995 Wisconsin Act 77, is
2 amended to read:

3 48.31 (4) The court or jury shall make findings of fact and the court shall make
4 conclusions of law relating to the allegations of a petition filed under s. 48.13 or 48.42,
5 except that the court shall make findings of fact relating to whether the child is in
6 need of protection or services which can be ordered by the court. In cases alleging
7 a child to be in need of protection or services under s. 48.13 (11), the court shall not
8 find that the child is suffering ~~serious~~ emotional damage unless a licensed physician
9 specializing in psychiatry or a licensed psychologist appointed by the court to
10 examine the child has testified at the hearing that in his or her opinion the condition
11 exists, and adequate opportunity for the cross-examination of the physician or
12 psychologist has been afforded. The judge may use the written reports if the right
13 to have testimony presented is voluntarily, knowingly and intelligently waived by
14 the guardian ad litem or legal counsel for the child and the parent or guardian. In
15 cases alleging a child to be in need of protection and or services under s. 48.13 (11m),
16 the court shall not find that the child is in need of treatment and education for needs
17 and problems related to the use or abuse of alcohol beverages or controlled
18 substances and its medical, personal, family or social effects unless an assessment
19 for alcohol and other drug abuse that conforms to the criteria specified under s.
20 48.547 (4) has been conducted by an approved treatment facility.

NOTE: Deletes the word "serious" before "emotional damage" in s. 48.31 (4), stats.,
because s. 48.02 (5j), stats., as created by this bill, defines "emotional damage" for
purposes of ch. 48, stats., and requires substantiality of symptoms.

The bill also provides that the juvenile court, not the jury, determines whether the
child needs protection or services which the juvenile court can order, leaving to the jury
the task of determining whether one of the underlying grounds for jurisdiction specified
in s. 48.13, such as abandonment, abuse or neglect, has been proved.

21 **SECTION 54.** 48.356 (1) and (2) of the statutes are amended to read:

1 48.356 (1) Whenever the court orders a child to be placed outside his or her
2 home or denies a parent visitation because the child has been adjudged to be in need
3 of protection or services under s. 48.345, 48.357, 48.363 or 48.365, the court shall
4 orally inform the parent or parents who appear in court of any grounds for
5 termination of parental rights under s. 48.415 which may be applicable and of the
6 conditions necessary for the child to be returned to the home or for the parent to be
7 granted visitation.

8 (2) In addition to the notice required under sub. (1), any written order which
9 places a child outside the home or denies visitation under sub. (1) shall notify the
10 parent or parents of the information specified under sub. (1).

NOTE: Expands the duties of a court assigned to exercise jurisdiction under the children's code (juvenile court) to provide that when a juvenile court denies visitation under an order under s. 48.345, stats., (CHIPS dispositional order), 48.357, stats., (change in placement order), 48.363, stats., (revision of dispositional order) or 48.365, stats., (extension of dispositional order), the juvenile court must orally inform the parent or parents who appear in court and include in any written order denying visitation notification of the following: (1) any grounds for involuntary TPR that may be applicable; and (2) the conditions necessary for the parent to be granted visitation.

11 **SECTION 55.** 48.357 (1) and (2m) of the statutes are amended to read:

12 48.357 (1) The person or agency primarily responsible for implementing the
13 dispositional order may request a change in the placement of the child, whether or
14 not the change requested is authorized in the dispositional order and shall cause
15 written notice to be sent to the child or the child's counsel or guardian ad litem,
16 parent, foster parent, treatment foster parent or other physical custodian described
17 in s. 48.62 (2), guardian and legal custodian. The notice shall contain the name and
18 address of the new placement, the reasons for the change in placement, a statement
19 describing why the new placement is preferable to the present placement and a
20 statement of how the new placement satisfies objectives of the treatment plan
21 ordered by the court. Any person receiving the notice under this subsection or notice

1 of the specific foster or treatment foster placement under s. 48.355 (2) (b) 2. may
2 obtain a hearing on the matter by filing an objection with the court within 10 days
3 of receipt of the notice. Placements shall not be changed until 10 days after such
4 notice is sent to the court unless the parent, guardian or legal custodian and the
5 child, if 12 or more years of age, sign written waivers of objection, except that
6 placement changes which were authorized in the dispositional order may be made
7 immediately if notice is given as required in this subsection. In addition, a hearing
8 is not required for placement changes authorized in the dispositional order except
9 where an objection filed by a person who received notice alleges that new information
10 is available which affects the advisability of the court's dispositional order. If a
11 hearing is held under this subsection and the change in placement would remove a
12 child from a foster home, treatment foster home or other placement with a physical
13 custodian described in s. 48.62 (2), the court shall permit the foster parent may,
14 treatment foster parent or other physical custodian described in s. 48.62 (2) to make
15 a written or oral statement during the hearing or to submit a written statement prior
16 to the hearing, relating to the child and the requested change in placement.

17 **(2m)** The child, the parent, guardian, or legal custodian of the child or any
18 person or agency primarily bound by the dispositional order, other than the person
19 or agency responsible for implementing the order, may request a change in
20 placement under this subsection. The request shall contain the name and address
21 of the place of the new placement requested and shall state what new information
22 is available which affects the advisability of the current placement. This request
23 shall be submitted to the court. In addition, the court may propose a change in
24 placement on its own motion. The court shall hold a hearing on the matter prior to
25 ordering any change in placement under this subsection if the request states that

1 new information is available which affects the advisability of the current placement,
2 unless written waivers of objection to the proposed change in placement are signed
3 by all parties entitled to receive notice under sub. (1) and the court approves. If a
4 hearing is scheduled, the court shall notify the child, the parent, foster parent,
5 guardian, and legal custodian of the child, any foster parent, treatment foster parent
6 or other physical custodian described in s. 48.62 (2) of the child and all parties who
7 are bound by the dispositional order at least 3 days prior to the hearing. A copy of
8 the request or proposal for the change in placement shall be attached to the notice.
9 If all the parties consent, the court may proceed immediately with the hearing. If a
10 hearing is held under this subsection and the change in placement would remove a
11 child from a foster home, treatment foster home or other placement with a physical
12 custodian described in s. 48.62 (2), the court shall permit the foster parent may,
13 treatment foster parent or other physical custodian described in s. 48.62 (2) to make
14 a written or oral statement during the hearing or to submit a written statement prior
15 to the hearing, relating to the child and the requested change in placement.

NOTE: Revises s. 48.357 (1) and (2m), stats., to:

1. Require notification of treatment foster parents or certain other physical custodians of a child when certain parties request a change in placement of the child. Current law requires notice only to a foster parent and not to a treatment foster parent or other physical custodian.

2. Permit a foster parent, treatment foster parent or certain other physical custodian to make a written or oral statement during the change in placement hearing. Current law refers only to "foster parents" and only permits them to submit a written statement prior to the hearing. This written statement alternative is retained under this bill. The new provision permitting foster parents, treatment foster parents or certain other physical custodians to make written or oral statements at hearings is not intended in any way to affect or eliminate the right to cross-examine those persons who appear as witnesses at a hearing.

16 **SECTION 56.** 48.361 (2) (a) 1. of the statutes is amended to read:

17 48.361 (2) (a) 1. If a child's parent neglects, refuses or is unable to provide or
18 refuses to provide court-ordered alcohol and other drug abuse services for the child

1 through his or her health insurance or other 3rd-party payments, notwithstanding
2 s. 48.36 (3), the judge may order the parent to pay for the court-ordered alcohol and
3 drug abuse services. If the parent consents to provide court-ordered alcohol and
4 other drug abuse services for a child through his or her health insurance or other
5 3rd-party payments but the health insurance provider or other 3rd-party payer
6 refuses to provide the court-ordered alcohol and other drug abuse services the court
7 may order the health insurance provider or 3rd-party payer to pay for the
8 court-ordered alcohol and other drug abuse services in accordance with the terms
9 of the parent's health insurance policy or other 3rd-party payment plan.

NOTE: Provides that, with respect to court-ordered alcohol and other drug abuse services for a child, a judge may order the parent to pay for such services if the child's parent *neglects, refuses or is unable* to provide such services through his or her health insurance or other 3rd-party payments rather than if the child's parent *refuses or is unable* to do so.

10 **SECTION 57.** 48.362 (3) of the statutes is amended to read:

11 48.362 (3) If a child's parent neglects, refuses or is unable to provide ~~or refuses~~
12 ~~to provide~~ court-ordered special treatment or care for the child through his or her
13 health insurance or other 3rd-party payments, notwithstanding s. 48.36 (3), the
14 judge may order the parent to pay for the court-ordered special treatment or care.
15 If the parent consents to provide court-ordered special treatment or care for a child
16 through his or her health insurance or other 3rd-party payments but the health
17 insurance provider or other 3rd-party payer refuses to provide the court-ordered
18 special treatment or care, the judge may order the health insurance provider or
19 3rd-party payer to pay for the court-ordered special treatment or care in accordance
20 with the terms of the parent's health insurance policy or other 3rd-party payment
21 plan.

NOTE: Provides that, with respect to court-ordered special treatment or care for a child, a judge may order the parent to pay for such services if the child's parent *neglects,*

refuses or is unable to provide such services through his or her health insurance or other 3rd-party payments rather than if the child's parent *refuses or is unable* to do so.

1 **SECTION 58.** 48.363 (1) of the statutes is amended to read:

2 48.363 (1) A child, the child's parent, guardian or legal custodian, any person
3 or agency bound by a dispositional order or the district attorney or corporation
4 counsel in the county in which the dispositional order was entered may request a
5 revision in the order that does not involve a change in placement, including a revision
6 with respect to the amount of child support to be paid by a parent, or the court may
7 on its own motion propose such a revision. The request or court proposal shall set
8 forth in detail the nature of the proposed revision and what new information is
9 available that affects the advisability of the court's disposition. The request or court
10 proposal shall be submitted to the court. The court shall hold a hearing on the matter
11 if the request or court proposal indicates that new information is available which
12 affects the advisability of the court's dispositional order and prior to any revision of
13 the dispositional order, unless written waivers of objections to the revision are signed
14 by all parties entitled to receive notice and the court approves. If a hearing is held,
15 the court shall notify the ~~parent~~, child, the child's parent, guardian and legal
16 custodian, all parties bound by the dispositional order, the child's foster parent,
17 treatment foster parent or other physical custodian described in s. 48.62 (2), and the
18 district attorney or corporation counsel in the county in which the dispositional order
19 was entered at least 3 days prior to the hearing. A copy of the request or proposal
20 shall be attached to the notice. If the proposed revision is for a change in the amount
21 of child support to be paid by a parent, the court shall order the child's parent to
22 provide a statement of income, assets, debts and living expenses to the court and the
23 person or agency primarily responsible for implementing the dispositional order by

1 a date specified by the court. The clerk of court shall provide, without charge, to any
2 parent ordered to provide a statement of income, assets, debts and living expenses
3 a document setting forth the percentage standard established by the department
4 under s. 46.25 (9) and listing the factors that a court may consider under s. 46.10 (14)
5 (c). If all parties consent, the court may proceed immediately with the hearing. No
6 revision may extend the effective period of the original order.

NOTE: Revises s. 48.363 (1), stats., relating to revision of a child's dispositional order that does not involve a change in placement, to require the juvenile court, if a hearing on the revision is held, to notify the child's foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2), stats., at least 3 days prior to the revision hearing. Current law requires only the child's parent, the child, the child's guardian, the child's legal custodian, all parties bound by the dispositional order and the district attorney or corporation counsel in the county in which the dispositional order was entered to be so notified.

7 **SECTION 59.** 48.365 (2) of the statutes is amended to read:

8 48.365 (2) No order may be extended without a hearing. The court shall notify
9 the child or the child's guardian ad litem or counsel, the child's parent, guardian,
10 legal custodian, all the parties present at the original hearing, the child's foster
11 parent, treatment foster parent or other physical custodian described in s. 48.62 (2),
12 and the district attorney or corporation counsel in the county in which the
13 dispositional order was entered of the time and place of the hearing.

NOTE: Revises s. 48.365 (2), stats., relating to extension of dispositional orders, to require the juvenile court to notify the child's foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2), stats., of the time and place of the hearing. Under current law (which requires a hearing before an extension may be ordered), the juvenile court is required to provide notice of an extension hearing to the child or the child's guardian ad litem or counsel, the child's parent, guardian and legal custodian, all parties present at the original dispositional hearing and the district attorney and corporation counsel in the county in which the dispositional order was entered.

14 **SECTION 60.** 48.365 (2m) (ag) of the statutes is created to read:

15 48.365 (2m) (ag) In addition to any evidence presented under par. (a), the court
16 shall permit a foster parent, treatment foster parent or other physical custodian

1 described in s. 48.62 (2) of the child to make a written or oral statement during the
2 hearing, or to submit a written statement prior to the hearing, relevant to the issue
3 of extension.

NOTE: Creates s. 48.365 (2m) (ag), stats., to permit a foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2), stats., to make a written or oral statement during an extension hearing, or to submit a written statement prior to an extension hearing, relevant to the issue of extension of a dispositional order.

4 **SECTION 61.** 48.368 of the statutes is renumbered 48.368 (1).

5 **SECTION 62.** 48.368 (2) of the statutes is created to read:

6 48.368 (2) If a child's placement with a guardian appointed under s. 48.977 (2)
7 is designated by the court under s. 48.977 (3) as a permanent foster home or
8 treatment foster home placement for the child while a dispositional order under s.
9 48.345, a revision order under s. 48.363 or an extension order under s. 48.365 is in
10 effect with respect to the child, such dispositional order, revision order or extension
11 order shall remain in effect until the earliest of the following occurs:

12 (a) The guardianship terminates under s. 48.977 (7).

13 (b) A court enters a change in placement order under s. 48.357.

14 (c) A court order terminates such dispositional order, revision order or
15 extension order.

16 (d) The child attains the age of 18 years.

NOTE: Current s. 48.355 (4) (a), stats., provides that, except as provided in s. 48.368, stats., CHIPS dispositional orders, revision orders and extension orders terminate at the end of one year unless the juvenile court specifies a shorter period of time. This bill adds an exception to s. 48.368, stats., specifying that if a child's placement with a guardian appointed under s. 48.977 (2), stats., as created by this bill, is designated by the juvenile court as a permanent foster home or treatment foster home placement for a child while a dispositional order under s. 48.345, stats., a revision order under s. 48.363, stats., or an extension order under s. 48.365, stats., is in effect with respect to the child, that dispositional order, revision order or extension order shall remain in effect until the earliest of the following occurs: (1) the guardianship terminates under s. 48.977 (7), stats., as created by this bill; (2) a juvenile court enters a change in placement order under s. 48.357, stats.; (3) a juvenile court order terminates that dispositional order, revision order or extension order; or (4) the child attains the age of 18 years.

Federal regulations regarding provisions required in a state plan in order for the state to be eligible for federal IV-E funding for foster care payments provide an exception to the requirement of periodic hearings if a child is placed in a court-sanctioned permanent foster family home placement with a specific care giver [45 CFR 1356.21 (e) (intro.) and (1)].

1 **SECTION 63.** 48.371 (intro.) (except 48.371 (title)) of the statutes is repealed.

2 **SECTION 64.** 48.371 (1) and (2) of the statutes are renumbered 48.371 (1) (a) and
3 (b) and amended to read:

4 48.371 (1) (a) Results of a test or a series of tests of the child to determine the
5 presence of HIV, as defined in s. 968.38 (1) (b), antigen or nonantigenic products of
6 HIV, or an antibody to HIV, ~~if the child's parent or a temporary or permanent~~
7 ~~guardian appointed by the court has consented to the test under s. 252.15 (2) (a) 4.~~
8 ~~b. and release of the test results as provided under s. 252.15 (5) (a) 19. and, including~~
9 ~~results included in a court report or permanency plan. At the time that the test~~
10 ~~results are provided, the agency directed to prepare the permanency plan notifies~~
11 ~~shall notify the foster parent, treatment foster parent or operator of the group home~~
12 or child caring institution of the confidentiality requirements under s. 252.15 (6).

13 (b) Results of any tests of the child to determine the presence of viral hepatitis,
14 type B, including results included in a court report or permanency plan. The foster
15 parent, treatment foster parent or operator of a group home or child caring
16 institution receiving information under this ~~subsection~~ paragraph shall keep the
17 information confidential.

18 **SECTION 65.** 48.371 (1) (intro.) of the statutes is created to read:

19 48.371 (1) (intro.) If a child is placed in a foster home, treatment foster home,
20 group home or child caring institution, including a placement under s. 48.205 or
21 48.21, the agency, as defined in s. 48.38 (1) (a), that placed the child or arranged for
22 the placement of the child shall provide the following information to the foster

1 parent, treatment foster parent or operator of the group home or child caring
2 institution at the time of placement or, if the information has not been provided to
3 the agency by that time, as soon as possible after the date on which the agency
4 receives that information, but not more than 2 working days after that date:

5 **SECTION 66.** 48.371 (3) of the statutes is amended to read:

6 48.371 (3) Findings At the time of placement of a child in a foster home,
7 treatment foster home, group home or child caring institution or, if the information
8 is not available at that time, as soon as possible after the date on which the court
9 report or permanency plan has been submitted, but no later than 7 days after that
10 date, the agency, as defined in s. 48.38 (1) (a), responsible for preparing the child's
11 permanency plan shall provide to the foster parent, treatment foster parent or
12 operator of the group home or child caring institution information contained in the
13 court report submitted under s. 48.33 (1), 48.365 (2g), 48.425 (1), 48.831 (2) or 48.837
14 (4) (c) or permanency plan submitted under s. 48.355 (2e), 48.38, 48.43 (1) (c) or (5)
15 (c), 48.63 (4) or 48.831 (4) (e) relating to findings or opinions of the court or agency
16 that prepared the court report or permanency plan relating to any mental,
17 emotional, cognitive, developmental or behavioral disability of the child. The foster
18 parent, treatment foster parent or operator of a group home or child caring
19 institution receiving information under this subsection shall keep the information
20 confidential.

NOTE: Amends current law as follows:

1. By *additionally* providing for disclosure of the information required to be disclosed under s. 48.371, stats., regarding children placed in a *treatment foster home*.

2. By *additionally* providing for disclosure of the information required to be disclosed under s. 48.371, stats., regarding children placed in substitute care *under other circumstances under ch. 48, stats.*, such as children placed in substitute care under a voluntary agreement under s. 48.63, stats., children in an adoptive placement in a foster home or treatment foster home, children placed in substitute care pending a termination of parental rights dispositional hearing or children held in physical custody under s. 48.205, stats., or continued in physical custody under s. 48.21, stats., rather than

restricting disclosure to cases in which children have been placed in substitute care by a CHIPS dispositional order or a change in placement order.

3. By providing for disclosure of HIV test results to the foster parent, treatment foster parent or operator of the group home or CCI *without the consent* of the child or the child's parent or guardian.

4. By requiring the *agency that placed the child or arranged for the placement of the child* with the substitute care provider to provide HIV and hepatitis B test results to the substitute care provider rather than requiring the agency that prepared the child's court report or permanency plan to do so.

5. By requiring that, at the time the agency provides the HIV test results to the foster parent, treatment foster parent or operator of the group home or CCI, the agency *notify* the substitute care provider about the confidentiality requirements under s. 252.15 (6), stats.

6. With respect to the disclosure of HIV and hepatitis B test results, by requiring disclosure not at the time a child is placed in substitute care, or within 30 days after the date of the placement if the information was not available at the time of placement, but rather *at the time of placement* and, *if information is subsequently received*, as soon as possible, but not later than 2 working days after the agency receives such information.

7. With respect to the disclosure of information in the court report or permanency plan relating to findings or opinions of the court or agency that prepared the court report or permanency plan relating to the mental, emotional, cognitive, developmental or behavioral disability of the child, by requiring disclosure not at the time a child is placed in such substitute care, or within 30 days after the date of the placement if the information was not available at the time of placement, but rather *at the time of placement* or, if the information is not available at that time, *as soon as possible after the court report or permanency plan has been submitted*, but not later than 7 days after such date.

1 **SECTION 67.** 48.375 (4) (b) 3. of the statutes is amended to read:

2 48.375 (4) (b) 3. The minor provides the person who intends to perform or
3 induce the abortion with a written statement, signed and dated by the minor, that
4 a parent who has legal custody of the minor, or the minor's guardian or legal
5 custodian, if one has been appointed, or an adult family member of the minor, or a
6 foster parent or treatment foster parent, if the minor has been placed in a foster home
7 or treatment foster home and the minor's parent has signed a waiver granting the
8 department, a county department, the foster parent or the treatment foster parent
9 the authority to consent to medical services or treatment on behalf of the minor, has
10 ~~abused, as defined in s. 48.981 (1) (a),~~ inflicted abuse on the minor. The person who
11 intends to perform or induce the abortion shall place the statement in the minor's

1 medical record. The person who intends to perform or induce the abortion shall
2 report the abuse as required under s. 48.981 (2).

NOTE: Reflects the creation of a definition of "abuse" in the general definitions section of ch. 48, stats., (s. 48.02 (1), stats., as created by this bill).

3 **SECTION 68.** 48.38 (5) (c) 2. of the statutes is amended to read:

4 48.38 (5) (c) 2. The extent of compliance with the permanency plan by the
5 agency and any other service providers, the child's parents ~~and~~, the child and the
6 child's guardian, if any.

NOTE: Currently, in a 6-month permanency plan review, the juvenile court (or juvenile court-appointed panel if the juvenile court elects not to review the plan) must, in addition to other listed determinations, make a determination relating to the extent of compliance with the permanency plan by the child's parents and the child. This SECTION requires that there also be a determination of the extent of compliance with the plan *by the child's guardian, if any.*

7 **SECTION 69.** 48.396 (2) (dm) of the statutes is created to read:

8 48.396 (2) (dm) Upon request of a court having jurisdiction over actions
9 affecting the family, an attorney responsible for support enforcement under s. 59.458
10 (1) or a party to a paternity proceeding under ss. 767.45 to 767.60, the party's
11 attorney or the guardian ad litem for the child who is the subject of that proceeding
12 to review or be provided with information from the records of the court assigned to
13 exercise jurisdiction under this chapter and ch. 938 relating to the paternity of a child
14 for the purpose of determining the paternity of the child or for the purpose of
15 rebutting the presumption of paternity under s. 891.405 or 891.41, the court
16 assigned to exercise jurisdiction under this chapter and ch. 938 shall open for
17 inspection by the requester its records relating to the paternity of the child or disclose
18 to the requester those records.

NOTE: Section 48.396, stats., provides that records of the juvenile court are not open to inspection or their contents disclosed except by order of the juvenile court or as permitted under s. 48.396 or 48.375 (7) (e), stats. This SECTION adds another exception by requiring a juvenile court, upon request of a family court, a IV-D attorney or the parties to a paternity proceeding under ch. 767, stats., their attorneys or the child's GAL,

to open for inspection by the requester its records relating to the paternity of a child or to disclose to the requester those records.

1 **SECTION 70.** 48.415 (1) (a) (intro.) of the statutes is amended to read:

2 48.415 (1) (a) (intro.) Abandonment ~~may~~, which, subject to par. (c), shall be
3 established by a showing proving that:

NOTE: Amends current law with respect to abandonment as a ground for involuntary TPR to require that abandonment be established by proving the elements specified in s. 48.415 (1) (a), stats. Similar changes were made in all other subsections of s. 48.415, stats., for all other grounds for involuntary TPR.

4 **SECTION 71.** 48.415 (1) (a) 1m. of the statutes is created to read:

5 48.415 (1) (a) 1m. The child has been left by the parent without provision for
6 the child's care or support in a place or manner that exposes the child to substantial
7 risk of great bodily harm, as defined in s. 939.22 (14), or death;

NOTE: Under current law, s. 48.415 (1) (a), stats., provides that abandonment may be established by a showing of one of the 3 bases specified in s. 48.415 (1) (a) 1. to 3., stats., namely that:

1. The child has been left without provision for its care or support, the petitioner has investigated the circumstances surrounding the matter and for 60 days the petitioner has been unable to find either parent.

2. The child has been placed, or continued in a placement, outside the parent's home by a juvenile court order containing the notice required by s. 48.356 (2), stats., and the parent has failed to visit or communicate with the child for a period of 6 months or longer.

3. The child has been left by the parent with a relative or other person, the parent knows or could discover the whereabouts of the child and the parent has failed to visit or communicate with the child for a period of one year or longer.

The creation of s. 48.415 (1) (a) 1m., stats., provides an additional basis for establishing abandonment for a child who has been left without provision for its care or support in a place or manner that exposes the child to substantial risk of great bodily harm, as defined in s. 939.22 (14), stats., (bodily injury which creates a substantial risk of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury), or death.

8 **SECTION 72.** 48.415 (1) (a) 2. of the statutes, as affected by 1995 Wisconsin Act
9 77, is amended to read:

10 48.415 (1) (a) 2. The child has been placed, or continued in a placement, outside
11 the parent's home by a court order containing the notice required by s. 48.356 (2) or

1 938.356 (2) and the parent has failed to visit or communicate with the child for a
2 period of ~~6~~ 3 months or longer; or

NOTE: Provides that an element of this basis for establishing abandonment as a ground for involuntary TPR is that, with respect to a child who has been placed, or continued in a placement, outside the parent's home by a juvenile court order, the parent has failed to visit or communicate with the child for a period of 3 months or longer, rather than 6 months or longer.

3 **SECTION 73.** 48.415 (1) (a) 3. of the statutes is amended to read:

4 48.415 (1) (a) 3. The child has been left by the parent with ~~a relative or other~~
5 any person other than the child's other parent, the parent knows or could discover
6 the whereabouts of the child and the parent has failed to visit or communicate with
7 the child for a period of ~~one year~~ 6 months or longer.

NOTE: Provides that an element of this basis for establishing abandonment as a ground for involuntary TPR is that the child has been left by the parent with any person other than the child's other parent, rather than with a relative or other person (which may include the child's other parent), and has failed to visit or communicate with the child for a period of 6 months or longer, rather than one year or longer.

8 **SECTION 74.** 48.415 (1) (c) of the statutes is repealed and recreated to read:

9 48.415 (1) (c) Abandonment is not established under par. (a) 2. or 3. if the
10 parent proves all of the following by a preponderance of the evidence:

11 1. That the parent had good cause for having failed to visit with the child
12 throughout the time period specified in par. (a) 2. or 3., whichever is applicable.

13 2. That the parent had good cause for having failed to communicate with the
14 child throughout the time period specified in par. (a) 2. or 3., whichever is applicable.

15 3. If the parent proves good cause under subd. 2., including good cause based
16 on evidence that the child's age or condition would have rendered any communication
17 with the child meaningless, that one of the following occurred:

18 a. The parent communicated about the child with the person or persons who
19 had physical custody of the child during the time period specified in par. (a) 2. or 3.,

1 whichever is applicable, or, if par. (a) 2. is applicable, with the agency responsible for
2 the care of the child during the time period specified in par. (a) 2.

3 b. The parent had good cause for having failed to communicate about the child
4 with the person or persons who had physical custody of the child or the agency
5 responsible for the care of the child throughout the time period specified in par. (a)
6 2. or 3., whichever is applicable.

NOTE: Deletes the provision allowing rebuttal of the presumption that abandonment has occurred based on evidence that the parent has not disassociated himself or herself from the child or relinquished responsibility for the child's care and well-being.

Provides that abandonment is not established under s. 48.415 (1) (a) 2. or 3., stats., if the parent proves by a preponderance of the evidence that he or she:

1. Had good cause for having failed to visit with the child throughout the time period specified in s. 48.415 (1) (a) 2. or 3., stats., whichever is applicable.

2. Had good cause for having failed to communicate with the child throughout the time period specified in s. 48.415 (1) (a) 2. or 3., stats., whichever is applicable.

3. *If* the parent proves good cause for having failed to communicate with the child, including good cause based on evidence that the child's age or condition would have rendered any communication with the child meaningless, that the parent either:

(a) Communicated about the child with the person or persons who had physical custody of the child during the time period specified in s. 48.415 (1) (a) 2. or 3., stats., whichever is applicable, or, if s. 48.415 (1) (a) 2., stats., is applicable, with the agency responsible for the care of the child during the time period specified in s. 48.415 (1) (a) 2., stats.

(b) Had good cause for having failed to communicate about the child with such person or persons or agency.

7 **SECTION 75.** 48.415 (2) (intro.) of the statutes is amended to read:

8 48.415 (2) CONTINUING NEED OF PROTECTION OR SERVICES. (intro.) Continuing
9 need of protection or services ~~may, which shall~~ be established by a showing of proving
10 all of the following:

NOTE: Amends current law with respect to continuing need of protection or services as a ground for involuntary TPR to require that continuing need of protection or services be established by proving the elements specified in s. 48.415 (2), stats.

11 **SECTION 76.** 48.415 (2) (b) of the statutes is renumbered 48.415 (2) (b) 2.

12 **SECTION 77.** 48.415 (2) (b) 1. of the statutes is created to read:

13 48.415 (2) (b) 1. In this paragraph, "diligent effort" means an earnest and
14 conscientious effort to take good faith steps to provide the services ordered by the

1 court which takes into consideration the characteristics of the parent or child, the
2 level of cooperation of the parent and other relevant circumstances of the case.

NOTE: Defines “diligent effort” for purposes of the requirement that there be proof that the agency responsible for the care of the child and the family has made a “diligent effort” to provide court-ordered services in order to establish continuing need of protection or services as a ground for involuntary TPR.

3 **SECTION 78.** 48.415 (2) (c) of the statutes is amended to read:

4 48.415 (2) (c) That the child has been outside the home for a cumulative total
5 period of ~~one year or longer pursuant to such orders or, if the child had not attained~~
6 ~~the age of 3 years at the time of the initial order placing the child outside of the home,~~
7 ~~that the child has been outside the home for a cumulative total period of 6 months~~
8 or longer pursuant to such orders; and that the parent has failed to demonstrate
9 substantial progress toward meeting the conditions established for the return of the
10 child to the home and there is a substantial likelihood that the parent will not meet
11 these conditions within the 12-month period following the fact-finding hearing
12 under s. 48.424.

NOTE: Amends the ground for involuntary TPR based on continuing need of protection or services for a child who is 3 years of age or over at the time of the initial juvenile court order placing the child outside the home by reducing the period of time that such a child must spend in a court-ordered out-of-home placement from one year to 6 months, thus providing for uniform application of the 6-month provision to all children.

13 **SECTION 79.** 48.415 (3) (intro.) of the statutes is amended to read:

14 48.415 (3) CONTINUING PARENTAL DISABILITY. (intro.) Continuing parental
15 disability ~~may, which shall~~ be established by a showing proving that:

NOTE: Amends current law with respect to continuing parental disability as a ground for involuntary TPR to require that continuing parental disability be established by proving the elements specified in s. 48.415 (3), stats.

16 **SECTION 80.** 48.415 (4) of the statutes is amended to read:

1 48.415 (4) (title) CONTINUING DENIAL OF PERIODS OF PHYSICAL PLACEMENT OR
2 VISITATION. Continuing denial of periods of physical placement ~~may~~ or visitation,
3 which shall be established by ~~a showing that~~ proving all of the following:

4 (a) ~~The~~ That the parent has been denied periods of physical placement by court
5 order in an action affecting the family; ~~and~~ or has been denied visitation under an
6 order under s. 48.345, 48.357, 48.363, 48.365, 938.345, 938.357, 938.363 or 938.365
7 containing the notice required by s. 48.356 (2) or 938.356 (2).

8 (b) ~~At~~ That at least ~~1~~ one year has elapsed since the order denying periods of
9 physical placement or visitation was issued and the court has not subsequently
10 modified its order so as to permit periods of physical placement or visitation.

NOTE: Amends current law with respect to continuing denial of periods of physical placement as a ground for involuntary TPR to require that continuing denial of periods of physical placement be established by proving the elements specified in s. 48.415 (4), stats.

Expands the ground for involuntary TPR based on continuing denial of periods of physical placement to also provide for periods in which a juvenile court has denied visitation under an order under s. 48.345 or 938.345, stats. (CHIPS dispositional order), 48.357 or 938.357, stats. (change in placement order), 48.363 or 938.363, stats. (revision of dispositional order), or 48.365 or 938.365, stats. (extension of dispositional order), if the order contained the notice required by s. 48.356 (2), stats., that is, a warning about continuing denial of visitation as a ground for involuntary TPR and the conditions necessary for the parent to be granted visitation.

11 **SECTION 81.** 48.415 (5) (intro.) and (b) of the statutes are amended to read:

12 48.415 (5) CHILD ABUSE. (intro.) Child abuse ~~may~~, which shall be established
13 by ~~a showing~~ proving that the parent has exhibited a pattern of physically or sexually
14 abusive behavior which is a substantial threat to the health of the child who is the
15 subject of the petition and ~~a showing of~~ proving either of the following:

16 (b) ~~That, on more than one occasion,~~ a child has previously been removed from
17 the parent's home by ~~the~~ pursuant to a court order under s. 48.345 after an
18 adjudication that the child is in need of protection or services ~~and a finding by the~~

1 court that ~~sexual or physical abuse was inflicted by the parent under s. 48.13 (3) or~~
2 ~~(3m).~~

NOTE: Provides that child abuse is established as a ground for involuntary TPR by proving that the parent has exhibited a pattern of *physically or sexually* abusive behavior which poses a substantial threat to the health of the child and that either: (1) the parent has been convicted of a felony for causing death or injury to any child; or (2) any child has *previously* been removed from the home pursuant to a juvenile court order under s. 48.345, stats., (CHIPS dispositional order) after the child was adjudicated CHIPS under s. 48.13 (3), stats., (victim of physical injury or specified sex crimes) or s. 48.13 (3m), stats., (substantial risk of becoming the victim of physical injury or specified sex crimes based on information that another child in the home has been the victim of such abuse).

3 **SECTION 82.** 48.415 (6) (a) (intro.) and 1. of the statutes are consolidated,
4 renumbered 48.415 (6) (a) and amended to read:

5 48.415 (6) (a) Failure to assume parental responsibility ~~may, which shall be~~
6 ~~established by a showing proving that a child is a nonmarital child who has not been~~
7 ~~adopted or whose parents have not subsequently intermarried under s. 767.60, that~~
8 ~~paternity was not adjudicated prior to the filing of the petition for termination of~~
9 ~~parental rights and:~~ 1. ~~The the parent or the person or persons who may be the father~~
10 ~~parent of the child have been given notice under s. 48.42 but have failed to appear~~
11 ~~or otherwise submit to the jurisdiction of the court and that such parent or person~~
12 ~~or persons who may be the parent of the child have never had a substantial parental~~
13 ~~relationship with the child; ~~or,~~~~

14 **SECTION 83.** 48.415 (6) (a) 2. of the statutes is repealed.

NOTE: Under current law, the parental rights of the father of a nonmarital child, that is, a child who is neither conceived nor born while his or her parents are intermarried, who has not been adopted or whose parents have not subsequently intermarried and for whom *paternity has not been adjudicated prior to the filing of the TPR petition* may be terminated if: (1) the person or persons who may be the father of the child have been given notice about the TPR petition but have failed to appear or otherwise submit to the jurisdiction of the court and have never had a substantial parental relationship with the child; or (2) that although paternity has been adjudicated, the father did not establish a substantial parental relationship with the child prior to the filing of the TPR petition although the father had reason to believe he was the father of the child and has not assumed parental responsibility for the child.

This bill expands this ground for involuntary TPR to include: (1) mothers as well as fathers; (2) marital children as well as nonmarital children; and (3) fathers for whom paternity was adjudicated prior to the filing of the TPR petition.

1 **SECTION 84.** 48.415 (6) (b) of the statutes is amended to read:

2 48.415 (6) (b) In this subsection, “substantial parental relationship” means the
3 acceptance and exercise of significant responsibility for the daily supervision,
4 education, protection and care of the child. In evaluating whether the person has had
5 a substantial parental relationship with the child, the court may consider such
6 factors, including, but not limited to, whether the person has ever expressed concern
7 for or interest in the support, care or well-being of the child ~~or the mother during her~~
8 ~~pregnancy and,~~ whether the person has neglected or refused to provide care or
9 support for the child and whether, with respect to a person who is or may be the father
10 of the child, the person has ever expressed concern for or interest in the support, care
11 or well-being of the mother during her pregnancy.

NOTE: Reflects the amendment of s. 48.415 (6) (a), stats., adding provision for mothers.

12 **SECTION 85.** 48.415 (7) of the statutes is amended to read:

13 48.415 (7) INCESTUOUS PARENTHOOD. Incestuous parenthood ~~may,~~ which shall
14 be established by ~~a showing~~ proving that the person whose parental rights are
15 sought to be terminated is also related, either by blood or adoption, to the child’s other
16 parent in a degree of kinship closer than 2nd cousin.

NOTE: Amends current law with respect to incestuous parenthood as a ground for involuntary TPR to require that incestuous parenthood be established by proving the elements specified in s. 48.415 (7), stats.

17 **SECTION 86.** 48.415 (8) of the statutes is amended to read:

18 48.415 (8) (title) INTENTIONAL OR RECKLESS HOMICIDE OF PARENT. Intentional or
19 reckless homicide of a parent ~~may,~~ which shall be established by ~~a showing~~ proving
20 that a parent of the child has been a victim of first-degree intentional homicide in

1 violation of s. 940.01 ~~or of~~, first-degree reckless homicide in violation of s. 940.02 or
2 2nd-degree intentional homicide in violation of s. 940.05 and that the person whose
3 parental rights are sought to be terminated has been convicted of that intentional
4 or reckless homicide.

NOTE: Adds first-degree reckless homicide by the parent of the child's other parent as a ground for involuntary TPR. Also amends current law to provide that intentional or reckless homicide of a parent as a ground for involuntary TPR be established by proving the elements specified in s. 48.415 (8), stats.

5 **SECTION 87.** 48.415 (9) (a) of the statutes, as created by 1995 Wisconsin Act 108,
6 is amended to read:

7 48.415 **(9)** (a) Parenthood as a result of sexual assault ~~may~~, which shall be
8 established by a showing proving that the child was conceived as a result of a sexual
9 assault in violation of s. 940.225 (1), (2) or (3), 948.02 (1) or (2) or 948.025. Conception
10 as a result of sexual assault as specified in this paragraph may be proved by a
11 judgment of conviction or other evidence produced at a fact-finding hearing under
12 s. 48.424 indicating that the person who may be the father of the child committed,
13 during a possible time of conception, a sexual assault as specified in this paragraph
14 against the mother of the child.

NOTE: Amends current law with respect to parenthood as a result of sexual assault as a grounds for involuntary TPR to require that parenthood as a result of sexual assault be established by proving the elements specified in s. 48.415 (9), stats.

15 **SECTION 88.** 48.415 (9m) of the statutes is created to read:

16 48.415 **(9m)** COMMISSION OF A SERIOUS FELONY AGAINST ONE OF THE PERSON'S
17 CHILDREN. (a) Commission of a serious felony against one of the person's children,
18 which shall be established by proving that a child of the person whose parental rights
19 are sought to be terminated was the victim of a serious felony and that the person
20 whose parental rights are sought to be terminated has been convicted of that serious
21 felony.

1 (b) In this subsection, “serious felony” means any felony under s. 940.01,
2 940.02, 940.03, 940.05, 940.225 (1) or (2), 948.02 (1) or (2), 948.025, 948.03 (2) (a) or
3 (3) (a), 948.05, 948.06 or 948.08 or under s. 948.21 if death is a consequence or a crime
4 under federal law or the law of any other state that is comparable to a crime specified
5 in this paragraph.

NOTE: Adds a ground for involuntary TPR based on commission of a serious felony against one of the person’s children which must be established by proving that the person whose parental rights are sought to be terminated has been convicted of a serious felony and that one of the person’s children was the victim of that serious felony. These serious felonies are as follows: s. 940.01, stats., (first-degree intentional homicide), 940.02, stats., (first-degree reckless homicide), 940.03, stats., (felony murder), 940.05, stats., (2nd-degree intentional homicide), 940.225 (1), stats., (first-degree sexual assault), 940.225 (2), stats., (2nd-degree sexual assault), 948.02 (1), stats., (first-degree sexual assault of a child--child under age 13), 948.02 (2), stats., (2nd-degree sexual assault of a child--child under age 16), 948.025, stats., (engaging in repeated sexual assault of the same child), 948.03 (2) (a), stats., (intentionally causing great bodily harm to a child) or (3) (a), stats., (recklessly causing great bodily harm to a child), 948.05, stats., (sexual exploitation of a child, including a person responsible for the child’s welfare knowingly permitting, allowing or encouraging a child to engage in sexually exploitative conduct), 948.06, stats., (incest with a child, including, under certain circumstances, a person responsible for the child’s welfare failing to take action to prevent incest) or 948.08, stats., (soliciting a child for prostitution) or s. 948.21, stats., if death is the consequence (intentionally neglecting a child), or a similar crime under federal law or the laws of any other state. In addition to applying when the person commits a serious felony against one of the person’s children other than the child who is the subject of the petition, this ground also applies in those cases in which the child who is the subject of the petition was the victim of such a crime and survives.

6 **SECTION 89.** 48.415 (10) of the statutes is created to read:

7 48.415 (10) PRIOR INVOLUNTARY TERMINATION OF PARENTAL RIGHTS TO ANOTHER
8 CHILD. Prior involuntary termination of parental rights to another child, which shall
9 be established by proving all of the following:

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

12 (b) That, within 3 years prior to the date the court adjudged the child who is
13 the subject of the petition to be in need of protection or services as specified in par.

14 (a), a court has ordered the termination of parental rights with respect to another

1 child of the person whose parental rights are sought to be terminated on one or more
2 of the grounds specified in this section.

NOTE: Adds a ground for involuntary TPR based on the involuntary TPR of another child when the following conditions are met:

1. The child who is the subject of the petition has been adjudicated CHIPS under s. 48.13 (2), stats., (abandonment), (3), stats., (sexual or physical abuse) or (10), stats., (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); and

2. Within the 3 years prior to the date the child was adjudicated CHIPS, a juvenile court has ordered the involuntary TPR of another of the person's children.

3 **SECTION 90.** 48.42 (1m) (title) and (a) of the statutes are created to read:

4 48.42 (1m) (title) VISITATION OR CONTACT RIGHTS. (a) If the petition filed under
5 sub. (1) includes a statement of the grounds for involuntary termination of parental
6 rights under sub. (1) (c) 2., the petitioner may, at the time the petition under sub. (1)
7 is filed, also petition the court for a temporary order and an injunction prohibiting
8 the person whose parental rights are sought to be terminated from visiting or
9 contacting the child who is the subject of the petition under sub. (1). Any petition
10 under this paragraph shall allege facts sufficient to show that prohibiting visitation
11 or contact would be in the best interests of the child.

NOTE: Allows a person petitioning for involuntary TPR to also petition for a temporary order and injunction prohibiting visitation or contact with the child who is the subject of the TPR petition.

12 **SECTION 91.** 48.42 (1m) (b) of the statutes is created to read:

13 48.42 (1m) (b) The court may issue the temporary order ex parte or may refuse
14 to issue the temporary order and hold a hearing on whether to issue an injunction.
15 The temporary order is in effect until a hearing is held on the issuance of an
16 injunction. The court shall hold a hearing on the issuance of an injunction on or
17 before the date of the hearing on the petition to terminate parental rights under s.
18 48.422 (1).

NOTE: Provides that a juvenile court may issue a temporary order prohibiting visitation or contact ex parte. Provides that a hearing on the issuance of an injunction must be held on or before the day of the initial hearing on the TPR petition.

1 **SECTION 92.** 48.42 (1m) (c) of the statutes is created to read:

2 48.42 **(1m)** (c) The court may grant an injunction prohibiting the respondent
3 from visiting or contacting the child if the court determines that the prohibition
4 would be in the best interests of the child. An injunction under this subsection is
5 effective according to its terms but may not remain in effect beyond the date the court
6 dismisses the petition for termination of parental rights under s. 48.427 (2) or issues
7 an order terminating parental rights under s. 48.427 (3).

NOTE: Provides that the juvenile court may grant an injunction if prohibiting visitation or contact would be in the best interests of the child. Provides that the injunction may not remain in effect beyond the date the juvenile court's decision is made with respect to the TPR petition.

8 **SECTION 93.** 48.42 (3) (d) of the statutes is amended to read:

9 48.42 **(3)** (d) Advise the parties that if the court terminates parental rights, a
10 notice of intent to pursue relief from the judgment must be filed in the trial court
11 within ~~15~~ 30 days after the judgment is entered for the right to pursue such relief to
12 be preserved.

NOTE: Reflects the treatment of s. 808.04 (7m), stats., by this bill.

13 **SECTION 94.** 48.42 (4) (c) 3. of the statutes is amended to read:

14 48.42 **(4)** (c) 3. That if the court terminates parental rights, a notice of intent
15 to pursue relief from the judgment must be filed in the trial court within ~~40~~ 30 days
16 after judgment is entered for the right to pursue such relief to be preserved.

NOTE: Provides that the notice given to the parties in a TPR case must notify the person that if the juvenile court terminates parental rights, a notice of intent to pursue relief from the judgment must be filed within 30 days after the date judgment is entered, rather than 40 days. This amendment makes s. 48.42 (4) (c) 3., stats., consistent with ss. 48.42 (3) (d), stats., and 808.04 (7m), stats., as amended by this bill.

17 **SECTION 95.** 48.425 (1) (f) of the statutes is amended to read:

1 48.425 (1) (f) If the report recommends that the parental rights of both of the
2 child's parents or the child's only living or known parent are to be terminated, the
3 report shall contain a statement of the likelihood that the child will be adopted. This
4 statement shall be prepared by an agency designated in s. 48.427 (3) (3m) (a) 1. to 4.
5 and include a presentation of the factors which might prevent adoption, those which
6 would facilitate it, and the agency which would be responsible for accomplishing the
7 adoption.

NOTE: Revises a reference to s. 48.427 (3), stats., in current law to reflect the renumbering in that subsection by this bill.

8 **SECTION 96.** 48.425 (1) (g) of the statutes is amended to read:

9 48.425 (1) (g) If an agency designated under s. 48.427 (3) (3m) (a) 1. to 4.
10 determines that it is unlikely that the child will be adopted, or if adoption would not
11 be in the best interests of the child, the report shall include a plan for placing the child
12 in a permanent family setting, including. The plan shall include a recommendation
13 as to the agency to be named guardian of the child or a recommendation that the
14 person appointed as the guardian of the child under s. 48.977 (2) continue to be the
15 guardian of the child.

NOTE: Amends s. 48.425 (1) (g), stats., relating to the contents of a juvenile court report required to be filed by an agency when a TPR petition is filed [or when the juvenile court orders a report under s. 48.424 (4) (b), stats.], to do all of the following:

1. Revise a reference to s. 48.427 (3), stats., in current law to reflect the renumbering in that subsection by this bill.

2. Specify that if an agency designated by the court in a TPR disposition under s. 48.427 (3m) (a) 1. to 4., stats., (as affected by the bill) determines that it is unlikely that the child will be adopted, or if adoption would not be in the best interests of the child, *the plan* for placing the child in a permanent family setting [a required part of the report if such a determination is made] *must include either of the following*:

a. A recommendation as to the agency to be named guardian of the child [current law].

b. A recommendation that the person appointed as the guardian of the child under new s. 48.977 (2), stats., as created by this bill, continue to be the guardian of the child.

16 **SECTION 97.** 48.427 (1m) of the statutes is created to read:

1 48.427 (1m) In addition to any evidence presented under sub. (1), the court
2 shall permit the foster parent, treatment foster parent or other physical custodian
3 described in s. 48.62 (2) of the child to make a written or oral statement during the
4 fact-finding or dispositional hearing or to submit a written statement prior to
5 disposition, relevant to the issue of disposition.

NOTE: Revises s. 48.427, stats., relating to dispositions in TPR proceedings, to require the juvenile court to permit the foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2), stats., of the child to make a written or oral statement during the fact-finding or dispositional hearing, or to submit a written statement prior to disposition, relevant to the issue of disposition.

6 **SECTION 98.** 48.427 (3) (intro.) of the statutes is renumbered 48.427 (3) and
7 amended to read:

8 48.427 (3) The court may enter an order terminating the parental rights of one
9 or both parents.

10 **(3m)** If the rights of both parents or of the only living parent are terminated
11 and if a guardian has not been appointed under s. 48.977, the court shall either:

12 **SECTION 99.** 48.427 (3p) of the statutes is created to read:

13 48.427 (3p) If the rights of both parents or of the only living parent are
14 terminated and if a guardian has been appointed under s. 48.977, the court may
15 enter one of the orders specified in sub. (3m).

NOTE: With respect to cases in which a juvenile court enters an order terminating the parental rights of one or both parents and the child is left without a parent: (a) provides that if a guardian has not been appointed for a child under s. 48.977, stats., as created by this bill, the court *is required to enter* one of the dispositions regarding transfer of guardianship and custody of the child as set forth in current statutes; and (b) provides that if a guardian has been appointed for a child under s. 48.977, stats., as created by this bill, the juvenile court *may enter* one of those dispositions.

16 **SECTION 100.** 48.428 (2) of the statutes is renumbered 48.428 (2) (a) and
17 amended to read:

18 48.428 (2) (a) ~~When~~ Except as provided in par. (b), when a court places a child
19 in sustaining care after an order under s. 48.427 (4), the court shall transfer legal

1 custody of the child to the county department or a licensed child welfare agency,
2 transfer guardianship of the child to an agency listed in s. 48.427 ~~(3)~~ (3m) (a) 1. to
3 4. and place the child in the home of a licensed foster parent or licensed treatment
4 foster parent with whom the child has resided for 6 months or longer. Pursuant to
5 such a placement, this licensed foster parent or licensed treatment foster parent
6 shall be a sustaining parent with the powers and duties specified in sub. (3).

7 **SECTION 101.** 48.428 (2) (b) of the statutes is created to read:

8 48.428 **(2)** (b) When a court places a child in sustaining care after an order
9 under s. 48.427 (4) with a person who has been appointed as the guardian of the child
10 under s. 48.977 (2), the court may transfer legal custody of the child to the county
11 department or a licensed child welfare agency, transfer guardianship of the child to
12 an agency listed in s. 48.427 (3m) (a) 1. to 4. and place the child in the home of a
13 licensed foster parent or licensed treatment foster parent with whom the child has
14 resided for 6 months or longer. Pursuant to such a placement, that licensed foster
15 parent or licensed treatment foster parent shall be a sustaining parent with the
16 powers and duties specified in sub. (3).

NOTE: These SECTIONS amend s. 48.428 (2), stats., relating to the authority of the juvenile court to place a child in sustaining care, to do all of the following:

1. Renumber s. 48.428 (2), stats., to s. 48.428 (2) (a), stats., and create s. 48.428 (2) (b), stats.

2. Revise a reference to s. 48.427 (3), stats., in current law to reflect the renumbering in that subsection by this bill.

3. Create an exception to the mandatory transfer of legal custody and guardianship when a sustaining care order is entered [s. 48.428 (2) (a), stats., as renumbered in the bill] to provide that, if a guardian has been appointed for the child under s. 48.977 (2), stats., as created by this bill, such a transfer of legal custody and guardianship is permissive.

17 **SECTION 102.** 48.43 (1) (a) of the statutes is amended to read:

18 48.43 **(1)** (a) The identity of any agency or individual that has received
19 guardianship of the child or will receive guardianship or custody of the child upon

1 termination and the identity of the agency which will be responsible for securing the
2 adoption of the child or establishing the child in a permanent family setting.

NOTE: Revises s. 48.43 (1) (a), stats., relating to a required item in the contents of an order for TPR, to specify that the order must contain the identity of any agency or individual that has received guardianship of the child or will receive guardianship or custody of the child upon TPR. Current law only refers to “will receive” and does not refer to an agency or individual that has already received guardianship of the child, such as a guardian under s. 48.977 (2), stats., as created by this bill.

3 **SECTION 103.** 48.43 (4) of the statutes is amended to read:

4 48.43 (4) A certified copy of the order terminating parental rights shall be
5 furnished by the court to the agency given guardianship for placement for adoption
6 of the child or to the person or agency given custodianship or guardianship for
7 placement of the child in sustaining care and to the person appointed as the guardian
8 of the child under s. 48.977 (2). The court shall, upon request, furnish a certified copy
9 of the child’s birth certificate and a transcript of the testimony in the termination of
10 parental rights hearing to the same person or agency.

NOTE: Revises s. 48.43 (4), stats., relating to the requirement that the juvenile court furnish a certified copy of the TPR order to certain persons and entities, to include the person appointed as the guardian of the child under s. 48.977 (2), stats., as created by this bill, as one of those persons required to be furnished with a certified copy of the order.

11 **SECTION 104.** 48.43 (5) (b) of the statutes is amended to read:

12 48.43 (5) (b) The court shall hold a hearing to review the permanency plan
13 within 30 days after receiving a report under par. (a). At least 10 days before the date
14 of the hearing, the court shall provide notice of the time, date and purpose of the
15 hearing to the agency that prepared the report, the child’s guardian, the child, if he
16 or she is 12 years of age or over, and the child’s foster parent, ~~the child’s treatment~~
17 ~~foster parent,~~ other physical custodian described in s. 48.62 (2) or the operator of the
18 facility in which the child is living.

NOTE: Revises s. 48.43 (5) (b), stats., relating to the hearing to review a child’s permanency plan subsequent to a TPR, to require that notice of the time, date and

purpose of the hearing be given to any other physical custodian described in s. 48.62 (2), stats., of the child. Current law requires notice to be given to the child's foster parent, treatment foster parent, or the operator of the facility in which the child is living, but does not refer to any other physical custodian described in s. 48.62 (2), stats.

1 **SECTION 105.** 48.43 (5) (c) of the statutes is amended to read:

2 48.43 (5) (c) Following the hearing, the court shall make all of the
3 determinations specified under s. 48.38 (5) (c), except the determinations relating to
4 the child's parents. The court may amend the order under sub. (1) to transfer the
5 child's guardianship and custody to any agency specified under s. 48.427 ~~(3)~~ (3m) (a)
6 1. to 4. which consents to the transfer, if the court determines that the transfer is in
7 the child's best interest. If an order is amended, the agency that prepared the
8 permanency plan shall revise the plan to conform to the order and shall file a copy
9 of the revised plan with the court. Each plan filed under this paragraph shall be
10 made a part of the court order.

NOTE: Revises a reference to s. 48.427 (3), stats., in current law to reflect the renumbering in that subsection by this bill.

11 **SECTION 106.** 48.46 (2) of the statutes is amended to read:

12 48.46 (2) A parent who has consented to the termination of his or her parental
13 rights under s. 48.41 or who did not contest the petition initiating the proceeding in
14 which his or her parental rights were terminated may move the court for relief from
15 the judgment on any of the grounds specified in s. 806.07 (1) (a), (b), (c), (d) or (f). Any
16 such motion shall be filed within 40 30 days after the entry of the judgment or order
17 terminating parental rights, unless the parent files a timely notice of intent to
18 pursue relief from the judgment under s. 808.04 (7), in which case the motion shall
19 be filed within the time permitted by s. 809.30 (2) (h). A motion under this subsection
20 does not affect the finality or suspend the operation of the judgment or order
21 terminating parental rights. Motions under this subsection and appeals to the court

1 of appeals shall be the exclusive remedies for such a parent to obtain a new hearing
2 in a termination of parental rights proceeding.

NOTE: Provides that a parent who has consented to a TPR or who did not contest a TPR, may move the juvenile court for relief from the judgment granting TPR on such grounds as fraud, mistake or newly discovered evidence within 30, rather than 40, days after the entry of the TPR judgment or order.

3 **SECTION 107.** 48.62 (2) of the statutes is amended to read:

4 48.62 (2) A relative as defined in s. 48.02 (15) or as specified in s. 49.19 (1) (a)
5 or a guardian of a child, who provides care and maintenance for a child, is not
6 required to obtain the license specified in this section. The department, county
7 department or licensed child welfare agency as provided in s. 48.75 may issue a
8 license to operate a foster home or a treatment foster home to a relative who has no
9 duty of support under s. 49.90 (1) (a) and who requests a license to operate a foster
10 home or treatment foster home for a specific child who is either placed by court order
11 or who is the subject of a voluntary placement agreement under s. 48.63. The
12 department, a county department or a licensed child welfare agency may, at the
13 request of a guardian appointed under s. 48.977 or ch. 880, license the guardian's
14 home as a foster home or treatment foster home for the guardian's minor ward who
15 is living in the home and who is placed in the home by court order. Relatives with
16 no duty of support and guardians appointed under s. 48.977 or ch. 880 who are
17 licensed to operate foster homes or treatment foster homes are subject to the
18 department's licensing rules.

NOTE: Current s. 48.62 (2), stats., relating to licensing of foster homes, specifies all of the following, in pertinent part:

1. That the department of health and social services (DHSS), a county department of human services or social services (county department) or a licensed child welfare agency may, at the request of a guardian appointed under ch. 880, stats., license the guardian's home as a foster home or treatment foster home for the guardian's minor ward who is living in the home and who is placed in the home by an order of the juvenile court.

2. That relatives with no duty of support and guardians appointed under ch. 880, stats., who are licensed to operate foster homes or treatment foster homes are subject to the licensing rules.

This SECTION adds guardians appointed under s. 48.977, stats., as created by this bill, to the provisions in s. 48.62 (2), stats., which currently refer only to guardians appointed under ch. 880, stats.

1 **SECTION 108.** 48.831 (title) of the statutes is amended to read:

2 **48.831 (title) Appointment of guardian for child without a living parent**
3 **for adoptability finding.**

4 **SECTION 109.** 48.831 (1) of the statutes is amended to read:

5 48.831 (1) TYPE OF GUARDIANSHIP. This section may be used for the appointment
6 of a guardian of a child who does not have a living parent if a finding as to the
7 adoptability of a child is sought. Chapter Except as provided in s. 48.977, ch. 880
8 applies to the appointment of a guardian for a child who does not have a living parent
9 for all other purposes. An appointment of a guardian of the estate of a child who does
10 not have a living parent shall be conducted in accordance with the procedures
11 specified in ch. 880.

NOTE: Current s. 48.831 (1), stats., specifies that except for appointment of a guardian for a child without a living parent for purposes of an adoptability finding regarding the child (which appointment and procedure are done under s. 48.831, stats.), ch. 880, stats., applies to the appointment of a guardian for a child who does not have a living parent for all other purposes. This SECTION provides that, *except for guardianships under s. 48.977, stats., as created by this bill*, and guardianships under current s. 48.831, stats., ch. 880, stats., applies to the appointment of a guardian for a child who does not have a living parent for all other purposes.

12 **SECTION 110.** 48.977 of the statutes is created to read:

13 **48.977 Appointment of relatives as guardians for certain children in**
14 **need of protection or services. (1) DEFINITION.** In this section, “relative” means
15 a relative as defined in s. 48.02 (15) or as specified in s. 49.19 (1) (a) 2. a.

16 **(2) TYPE OF GUARDIANSHIP.** This section may be used for the appointment of a
17 relative of a child as a guardian of the person for the child if the court finds all of the
18 following:

1 (a) That the child has been adjudged to be in need of protection or services
2 under s. 48.13 (1), (2), (3), (3m), (4), (5), (8), (9), (10), (10m), (11) or (11m) or 938.13
3 (4) and been placed, or continued in a placement, outside of his or her home pursuant
4 to one or more court orders under s. 48.345, 48.357, 48.363, 48.365, 938.345, 938.357,
5 938.363 or 938.365 for a cumulative total period of one year or longer.

6 (b) That the person nominated as the guardian of the child is a relative of the
7 child with whom the child has been placed and that it is likely that the child will
8 continue to be placed with that relative for an extended period of time or until the
9 child attains the age of 18 years.

10 (c) That, if appointed, it is likely that the relative would be willing and able to
11 serve as the child's guardian for an extended period of time or until the child attains
12 the age of 18 years.

13 (d) That it is not in the best interests of the child that a petition to terminate
14 parental rights be filed with respect to the child.

15 (e) That the child's parent is neglecting, refusing or unable to carry out the
16 duties of a guardian or, if the child has 2 parents, both parents are neglecting,
17 refusing or unable to carry out the duties of a guardian.

18 (f) That the agency primarily responsible for providing services to the child
19 under a court order has made reasonable efforts to make it possible for the child to
20 return to his or her home but that reunification of the child with the child's parent
21 or parents is unlikely or contrary to the best interests of the child and that further
22 reunification efforts are unlikely to be made or are contrary to the best interests of
23 the child.

NOTE: Creates a new section in ch. 48 relating to the appointment of a relative as
a guardian for a child adjudged CHIPS because the child: (1) is without a parent or
guardian; (2) has been abandoned; (3) has been the victim of sexual or physical abuse; (4)

is at substantial risk of becoming the victim of sexual or physical abuse based on information that another child in the home has been the victim of such abuse; (5) has a parent or guardian who signs a petition requesting juvenile court jurisdiction and who is unable or needs assistance to care for, control or provide necessary special treatment or care for the child; (6) has been placed for care or adoption in violation of law; (7) is receiving inadequate care during the period of time a parent is missing, incarcerated, hospitalized or institutionalized; (8) is at least 12 years of age, signs a petition requesting juvenile court jurisdiction and is in need of special treatment or care which the parent, guardian or legal custodian is unwilling, neglecting, unable or needs assistance to provide; (9) has a parent, guardian or legal custodian who neglects, refuses or is unable, for reasons other than poverty, to provide necessary care so as to seriously endanger the physical health of the child; (10) has a parent, guardian or legal custodian who is at substantial risk of neglecting, refusing or being unable, for reasons other than poverty, to provide necessary care because that person has seriously endangered the physical health of another child in the home; (11) is suffering emotional damage for which the parent, guardian or legal custodian is neglecting, refusing or unable to provide treatment; or (12) 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. [In describing the grounds for CHIPS jurisdiction which are listed in this SECTION, the NOTE reflects the modifications of several of these grounds as set forth in this bill. This SECTION, however, also applies to a child adjudged CHIPS under any of the listed grounds prior to those modifications.]

In order to have a guardian appointed under this new section, the juvenile court must find all of the following:

1. That the child has been placed, or continued in a placement, outside of his or her home pursuant to one or more juvenile court orders under s. 48.345 or 938.345, stats. (disposition of child adjudged CHIPS), 48.357 or 938.357, stats. (change in placement), 48.363 or 938.363, stats. (revision of dispositional order), or 48.365, stats. (extension of dispositional order), for a *cumulative* period of one year or longer.

2. That *all* of the items set forth in s. 48.977 (2) (b) to (f), stats., as created by this bill, have been met, including that it is likely that the child will continue to be placed with his or her relative-guardian for an extended period of time or until the child attains the age of 18 years; that the relative 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 TPR petition be filed with respect to the child; that the child's parent is, or if the child has 2 parents that the parents are, neglecting, refusing or unable to carry out the duties of a guardian; and that the agency responsible for providing services to the child has made reasonable efforts to return the child to his or her home but that reunification with the child's parent or parents is unlikely or contrary to the best interests of the child.

1 **(3) DESIGNATION AS A PERMANENT PLACEMENT.** If a court appoints a guardian for
2 a child under sub. (2), the court may designate the child's placement with that
3 guardian as the child's permanent foster home or treatment foster home placement
4 for purposes of s. 48.368 (2).

NOTE: Permits a juvenile court to designate the child's placement with a guardian appointed under new s. 48.977 (2), stats., as the child's permanent foster home or treatment foster home placement for the purpose of making an exception in s. 48.368 (2), stats., as created by this bill, to the provision in s. 48.355 (4) (a), stats., that CHIPS dispositional orders, revisions of dispositional orders and extensions of dispositional

orders terminate at the end of one year unless the juvenile court specifies a shorter time period.

1 **(4) PROCEDURE AND DISPOSITION.** (a) *Who may file petition.* Any of the following
2 persons may file a petition for the appointment of a guardian for a child under sub.

3 (2):

4 1. The child or the child’s guardian or legal custodian.

5 2. The child’s guardian ad litem.

6 3. The child’s parent.

7 4. The relative with whom the child is placed if the relative is nominated as the
8 guardian of the child in the petition.

9 5. The department.

10 6. A county department.

11 7. A licensed child welfare agency that has been assigned primary
12 responsibility for providing services to the child under a court order.

13 8. The person representing the interests of the public under s. 48.09.

14 (b) *Contents of petition.* A proceeding for the appointment of a guardian for a
15 child under sub. (2) shall be initiated by a petition which shall be entitled “In the
16 interest of (child’s name), a person under the age of 18” and shall set forth all of
17 the following with specificity:

18 1. The name, birth date and address of the child.

19 2. The names and addresses of the child’s parent or parents, guardian and legal
20 custodian.

21 3. The date the child was adjudged in need of protection or services under s.
22 48.13 (1), (2), (3), (3m), (4), (5), (8), (9), (10), (10m), (11) or (11m) or 938.13 (4) and the
23 dates that the child has been placed, or continued in a placement, outside of his or

1 her home pursuant to one or more court orders under s. 48.345, 48.357, 48.363,
2 48.365, 938.345, 938.357, 938.363 or 938.365.

3 4. A statement of the facts and circumstances which the petition alleges
4 establish that the conditions specified in sub. (2) (b) to (f) are met.

5 5. A statement of whether the proceedings are subject to the uniform child
6 custody jurisdiction act under ch. 822.

7 6. A statement of whether the child may be subject to the federal Indian child
8 welfare act, 25 USC 1911 to 1963.

9 (c) *Service of petition and notice.* 1. The petitioner shall cause the petition and
10 notice of the time and place of the hearing under par. (d) to be served upon all of the
11 following persons:

12 a. The child if the child is 12 years of age or older.

13 b. The child's guardian and legal custodian.

14 c. The child's guardian ad litem.

15 d. The child's counsel.

16 e. The child's parent.

17 f. The persons to whom notice is required to be given under s. 48.27 (3) (b) 1.

18 g. The relative with whom the child is placed if the relative is nominated as the
19 guardian of the child in the petition.

20 h. The person representing the interests of the public under s. 48.09.

21 i. The agency primarily responsible for providing services to the child under a
22 court order.

23 2. Service shall be made by 1st class mail at least 7 days before the hearing or
24 by personal service at least 7 days before the hearing or, if with reasonable diligence
25 a party specified in subd. 1. cannot be served by mail or personal service, service shall

1 be made by publication of a notice published as a class 1 notice under ch. 985. In
2 determining which newspaper is likely to give notice as required under s. 985.02 (1),
3 the petitioner shall consider the residence of the party, if known, or the residence of
4 the relatives of the party, if known, or the last-known location of the party.

5 (d) *Fact-finding hearing.* The court shall hold a fact-finding hearing on the
6 petition within 30 days after the petition is filed, at which any party may present
7 evidence relevant to the issue of whether the conditions specified in sub. (2) (a) to (f)
8 have been met.

9 (e) *Court report.* The court shall order the person or agency primarily
10 responsible for providing services to the child under a court order to file with the
11 court a report containing the written summary under s. 48.38 (5) (e) and as much
12 information relating to the appointment of a guardian as is reasonably
13 ascertainable. The agency shall file the report at least 48 hours before the date of
14 the dispositional hearing under par. (f).

15 (f) *Dispositional hearing.* If the court, at the conclusion of the fact-finding
16 hearing, finds by clear and convincing evidence that the conditions specified in sub.
17 (2) (a) to (f) have been met, the court shall immediately proceed to a dispositional
18 hearing unless an adjournment is requested. Any party may present evidence,
19 including expert testimony, relevant to the disposition.

20 (g) *Dispositional factors.* In determining the appropriate disposition under this
21 section, the best interests of the child shall be the prevailing factor to be considered
22 by the court. In making a decision about the appropriate disposition, the court shall
23 consider any report submitted under par. (e) and shall consider, but not be limited
24 to, all of the following:

- 25 1. Whether the relative would be a suitable guardian of the child.

1 2. The willingness and ability of the relative to serve as the child's guardian for
2 an extended period of time or until the child attains the age of 18 years.

3 3. The wishes of the child.

4 (h) *Disposition*. After receiving any evidence relating to the disposition, the
5 court shall enter one of the following dispositions within 10 days after the
6 dispositional hearing:

7 1. A disposition dismissing the petition if the court determines that
8 appointment of the relative as the child's guardian is not in the best interests of the
9 child.

10 2. A disposition ordering that the relative with whom the child has been placed
11 be appointed as the child's guardian under sub. (5) (a) or limited guardian under sub.
12 (5) (b), if the court determines that such an appointment is in the best interests of
13 the child.

14 (i) *Effect of disposition on permanency plan review process*. After a disposition
15 under par. (h), the child's permanency plan shall continue to be reviewed under s.
16 48.38 (5), if applicable.

NOTE: Sets forth the procedures applicable to appointment of a relative as a guardian for certain children in need of protection or services, as specified in s. 48.977 (2), stats., as created by this bill, including: (1) who may file the petition; (2) the contents of the petition; (3) service of the petition and notice of the time and place of the fact-finding hearing; (4) requirement to hold a fact-finding hearing; (5) factors to be considered in the disposition; (6) the contents of a report to the juvenile court to be submitted by the person or agency primarily responsible for providing services to the child at least 48 hours prior to the dispositional hearing; (7) the possible dispositions relating to the guardianship petition; and (8) the effect of the disposition on the permanency plan review process [the bill specifies that the plan must continue to be reviewed under s. 48.38 (5), stats., if the child's case continues to be subject to the provisions of s. 48.38, stats., regarding permanency planning].

17 **(5) DUTIES AND AUTHORITY OF GUARDIAN.** (a) *Full guardianship*. Unless limited
18 under par. (b), a guardian appointed under sub. (2) shall have all of the duties and
19 authority specified in s. 48.023.

1 (b) *Limited guardianship.* The court may order that the duties and authority
2 of a guardian appointed under sub. (2) be limited. The duties and authority of a
3 limited guardian shall be as specified by the order of appointment under sub. (4) (h)
4 2. or any revised order under sub. (6). All provisions of the statutes concerning the
5 duties and authority of a guardian shall apply to a limited guardian appointed under
6 sub. (2) to the extent those provisions are relevant to the duties or authority of the
7 limited guardian, except as limited by the order of appointment.

NOTE: Creates provisions relating to the duties and authority of a guardian and a limited guardian appointed under s. 48.977 (2), stats., as created by this bill. A guardian shall have the duties and authority of a guardian specified in s. 48.023, stats. A limited guardian shall have such duties and authority as specified by the juvenile court's order of appointment or any revised order under s. 48.977 (6), stats., as created by this bill. This subsection specifies that all provisions of the statutes concerning the duties and authority of a guardian shall apply to a limited guardian under s. 48.977 (2), stats., as created by this bill, to the extent those provisions are relevant to the duties or authority of the limited guardian, except as limited by the order of appointment.

8 **(6) REVISION OF GUARDIANSHIP ORDER.** (a) Any person authorized to file a petition
9 under sub. (4) (a) may request a revision in a guardianship order entered under this
10 subsection or sub. (4) (h) 2., or the court may, on its own motion, propose such a
11 revision. The request or court proposal shall set forth in detail the nature of the
12 proposed revision, shall allege facts sufficient to show that there has been a
13 substantial change in circumstances since the last order affecting the guardianship
14 was entered and that the proposed revision would be in the best interests of the child
15 and shall allege any other information that affects the advisability of the court's
16 disposition.

17 (b) The court shall hold a hearing on the matter prior to any revision of the
18 guardianship order if the request or court proposal indicates that new information
19 is available which affects the advisability of the court's guardianship order, unless

1 written waivers of objections to the revision are signed by all parties entitled to
2 receive notice under sub. (4) (c) and the court approves the waivers.

3 (c) If a hearing is to be held, the court shall notify the persons entitled to receive
4 notice under sub. (4) (c) at least 7 days prior to the hearing of the date, place and
5 purpose of the hearing. A copy of the request or proposal shall be attached to the
6 notice. The court may order a revision if, at the hearing, the court finds that it has
7 been proved by clear and convincing evidence that there has been a substantial
8 change in circumstances and if the court determines that a revision would be in the
9 best interests of the child.

NOTE: Creates a separate revision of order section applicable to guardianship orders under s. 48.977, stats., as created by this bill. The revision request (or the juvenile court proposal if the juvenile court proposes a revision on its own motion) must set forth in detail the nature of the requested or proposed revision and must allege: (1) facts sufficient to show that there has been a *substantial change in circumstances* since the last order affecting guardianship was entered; (2) that the revision would be in the best interests of the child; and (3) any other information that affects the advisability of the juvenile court's disposition. The subsection specifies circumstances under which the juvenile court must hold a hearing on the matter, persons to be notified of the date, place and purpose of the hearing and the findings the juvenile court must make before ordering a revision.

10 **(7) TERMINATION OF GUARDIANSHIP.** (a) *Term of guardianship.* Unless the court
11 order entered under sub. (4) (h) 2. or (6) specifies that a guardianship under this
12 section be for a lesser period of time, a guardianship under this section shall continue
13 until the child attains the age of 18 years or until terminated by the court, whichever
14 occurs earlier.

15 (b) *Removal for cause.* 1. Any person authorized to file a petition under sub.
16 (4) (a) may request that a guardian appointed under sub. (2) be removed for cause
17 or the court may, on its own motion, propose such a removal. The request or court
18 proposal shall allege facts sufficient to show that the guardian is or has been
19 neglecting, is or has been refusing or is or has been unable to discharge the guardian's

1 trust and may allege facts relating to any other information that affects the
2 advisability of the court's disposition.

3 2. The court shall hold a hearing on the matter unless written waivers of
4 objections to the removal are signed by all parties entitled to receive notice under
5 sub. (4) (c) and the court approves the waivers.

6 3. If a hearing is to be held, the court shall notify the persons entitled to receive
7 notice under sub. (4) (c) at least 7 days prior to the hearing of the date, place and
8 purpose of the hearing. A copy of the request or court proposal shall be attached to
9 the notice. The court shall remove the guardian for cause if, at the hearing, the court
10 finds that it has been proved by clear and convincing evidence that the guardian is
11 or has been neglecting, is or has been refusing or is or has been unable to discharge
12 the guardian's trust and if the court determines that removal of the guardian would
13 be in the best interests of the child.

14 (c) *Resignation.* A guardian appointed under sub. (2) may resign at any time
15 if the resignation is accepted by the court.

16 (d) *Termination on request of parent.* 1. A parent of the child may request that
17 a guardianship order entered under sub. (4) (h) 2. or a revised order entered under
18 sub. (6) be terminated. The request shall allege facts sufficient to show that there
19 has been a substantial change in circumstances since the last order affecting the
20 guardianship was entered, that the parent is willing and able to carry out the duties
21 of a guardian and that the proposed termination of guardianship would be in the best
22 interests of the child.

23 2. The court shall hold a hearing on the matter unless written waivers of
24 objections to the termination are signed by all parties entitled to receive notice under
25 sub. (4) (c) and the court approves the waivers.

1 3. If a hearing is to be held, the court shall notify the persons entitled to receive
2 notice under sub. (4) (c) at least 7 days prior to the hearing of the date, place and
3 purpose of the hearing. A copy of the request shall be attached to the notice. The
4 court shall terminate the guardianship if, at the hearing, the court finds that it has
5 been proved by clear and convincing evidence that there has been a substantial
6 change in circumstances since the last order affecting the guardianship was entered
7 and the parent is willing and able to carry out the duties of a guardian and if the court
8 determines that termination of the guardianship would be in the best interests of the
9 child.

NOTE: Creates a new provision relating to termination of a guardianship ordered by the juvenile court under s. 48.977 (2), stats., as created by this bill, specifying all of the following:

1. That unless the juvenile court orders the guardianship to be for a lesser period of time, the guardianship must continue until the child reaches 18 years of age or until terminated by the juvenile court, whichever occurs earlier.

2. The guardian may be *removed for cause on the request of a party entitled to file a petition for guardianship*. The request (or the juvenile court's proposal if the juvenile court seeks removal on its own motion) must allege facts sufficient to show that the guardian is or has been neglecting, is or has been refusing or is or has been unable to discharge the guardian's trust. After a hearing on the matter (unless one is not necessary because written waivers of objections to the removal are signed by all parties entitled to receive notice), the juvenile court must remove the guardian for cause if, at the hearing, the juvenile court: (a) finds that the guardian is or has been neglecting, is or has been refusing or is or has been unable to discharge the guardian's trust; and (b) determines that removal of the guardian would be in the best interests of the child.

3. The guardian may *resign* at any time if the resignation is accepted by the juvenile court.

4. The guardianship may be *terminated on the request of the child's parent*. The request must allege facts sufficient to show that: (a) there has been a substantial change in circumstances since the last order affecting the guardianship was entered; (b) the parent is willing and able to carry out the duties of a guardian; and (c) the proposed termination of guardianship would be in the best interests of the child. After a hearing on the matter (unless one is not necessary because written waivers of objection to the termination are signed by all parties entitled to receive notice), the juvenile court must terminate the guardianship if, at the hearing, the juvenile court: (a) finds that there has been a substantial change in circumstances since the last order affecting the guardianship was entered and that the parent is willing and able to carry out the duties of a guardian; and (b) determines that termination of the guardianship would be in the best interests of the child.

10 **(8) RELATIONSHIP TO CH. 880.** (a) This section does not abridge the duties or
11 authority of a guardian appointed under ch. 880.

1 (b) Nothing in this section prohibits an individual from petitioning a court
2 under ch. 880 for appointment of a guardian.

3 **SECTION 111.** 48.981 (1) (a) of the statutes is repealed.

NOTE: Repeals the definition of “abuse” under s. 48.981, stats. (the child abuse and neglect reporting and investigation statute), to reflect the creation of the definition of “abuse” in the general definitions section of ch. 48 (s. 48.02 (1), stats., as created by this bill).

Under current s. 48.981 (1) (a), stats., “abuse” means any of the following:

1. “Physical injury”, as defined in current s. 48.981 (1) (e), stats., inflicted on a child by other than accidental means.
2. Sexual intercourse or sexual contact under s. 940.225, stats. (the general sexual assault statute), 948.02, stats. (sexual assault of a child), or 948.025, stats. (repeated acts of sexual assault against the same child).
3. A violation of s. 948.05, stats. (sexual exploitation of a child).
4. Permitting, allowing or encouraging a child to violate s. 944.30, stats. (prostitution).
5. Emotional damage, as defined in current s. 48.981 (1) (cm), stats.
6. A violation of s. 948.055, stats. (causing a child to view or listen to sexual activity).

The definition of “abuse” in s. 48.02 (1), as created by this bill, is identical to the definition in current s. 48.981 (1) (a), stats., with the following exceptions:

1. The definition of “physical injury”, which is a component of the definition of “abuse”, is changed by this bill. This bill repeals the definition of “physical injury” in current s. 48.981 (1) (e), stats., and creates a new definition of “physical injury” in s. 48.02 (14m), stats., as created by this bill.
2. The underlying definition of “emotional damage”, which is a component of the definition of “abuse”, is changed by this bill. The bill repeals the definition of “emotional damage” in current s. 48.981 (1) (cm), stats., and creates a new definition of “emotional damage” in s. 48.02 (5j), stats., as created by this bill.
3. A violation of s. 948.10, stats., (for purposes of sexual arousal or gratification, either causing a child to expose genitals or pubic area or exposing genitals or pubic area to a child) has been added.

4 **SECTION 112.** 48.981 (1) (b) of the statutes is repealed.

NOTE: Repeals the definition of “child” under s. 48.981, stats., as the term is defined in the same way in the current general definitions section of ch. 48 (s. 48.02 (2), stats.).

5 **SECTION 113.** 48.981 (1) (cm) of the statutes is repealed.

NOTE: Repeals the definition of “emotional damage” under s. 48.981, stats., to reflect creation of the definition of “emotional damage” in the general definitions section of ch. 48 (s. 48.02 (5j), stats., as created by this bill).

Under current s. 48.981 (1) (cm), stats., “emotional damage” means “...harm to a child’s psychological or intellectual functioning which is exhibited by severe anxiety, depression, withdrawal or outward aggressive behavior, or a combination of those behaviors, and for which the child’s parent, guardian or legal custodian has failed to obtain the treatment necessary to remedy the harm. “Emotional damage” may be demonstrated by a substantial and observable change in behavior, emotional response or cognition that is not within the normal range for the child’s age and stage of development.”.

Under s. 48.02 (5j), stats., as created by this bill, “emotional damage” means harm to a child’s psychological or intellectual functioning for which the child’s parent, guardian or legal custodian has neglected, refused or been unable to obtain the necessary treatment or to take necessary steps to ameliorate the symptoms. Section 48.02 (5j), stats., as created by this bill, further requires that the emotional damage be evidenced by one or more of the following characteristics exhibited to a substantial degree:

1. Anxiety.
2. Depression.
3. Withdrawal.
4. Outward aggressive behavior.
5. Substantial and observable change in behavior, emotional response or cognition that is not within the normal range for the child’s age and stage of development.

1 **SECTION 114.** 48.981 (1) (e) of the statutes is repealed.

NOTE: Repeals the definition of “physical injury” under s. 48.981, stats., to reflect creation of the definition of “physical injury” in the general definitions section of ch. 48 (s. 48.02 (14m), as created by this bill).

Under current s. 48.981 (1) (e), stats., “physical injury”, which is one of the components of the definition of “abuse” in current s. 48.981 (1) (a), stats., “...includes but is not limited to lacerations, fractured bones, burns, internal injuries, severe or frequent bruising or great bodily harm as defined under s. 939.22 (14).”. [“Great bodily harm” is defined in s. 939.22 (14), stats., as “bodily injury which creates a substantial risk of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury”.]

In contrast, the definition of “physical injury” in s. 48.02 (14m), stats., as created by this bill, provides that “physical injury” means “bodily harm”, as defined in s. 939.22 (4), stats., (“physical pain or injury, illness or any impairment of physical condition”) but includes an exception for reasonable discipline by a “person responsible for the child’s welfare”, as defined in s. 939.45 (5) (a) 3., stats.

2 **SECTION 115.** 48.981 (2m) (c) (intro.) of the statutes is amended to read:

3 48.981 **(2m)** (c) (intro.) Except as provided under pars. (d) and (e), the following
4 persons are not required to report as suspected or threatened abuse, as defined under
5 ~~sub. in s. 48.02 (1) (a)-2. (b)~~, sexual intercourse or sexual contact involving a child:

NOTE: Reflects the repeal of the definition of “abuse” in s. 48.981 (1) (a), stats., and the creation of a definition of “abuse” in s. 48.02 (1), stats., as created by this bill, including provision for sexual intercourse and sexual contact in s. 48.02 (1) (b), stats., as created by this bill.

6 **SECTION 116.** 48.981 (3) (c) 4. of the statutes is amended to read:

7 48.981 **(3)** (c) 4. The county department shall determine, within 60 days after
8 receipt of a report, whether abuse or neglect has occurred or is likely to occur. The
9 determination shall be based on a preponderance of the evidence produced by the

1 investigation. A determination that abuse or neglect has occurred may not be based
2 solely on the fact that the child's parent, guardian or legal custodian in good faith
3 selects and relies on prayer or other religious means for treatment of disease or for
4 remedial care of the child. In making a determination that emotional damage has
5 occurred, the county department shall give due regard to the culture of the subjects
6 and shall establish that the person alleged to be responsible for the emotional
7 damage is ~~unwilling~~ neglecting, refusing or unable to remedy the harm. This
8 subdivision does not prohibit a court from ordering medical services for the child if
9 the child's health requires it.

NOTE: Provides that, with respect to the duty of a county department conducting a child abuse or neglect investigation and making a determination as to whether emotional damage has occurred, the county department must establish that the person alleged to be responsible for the emotional damage is *neglecting, refusing or unable* to remedy the harm rather than merely being *unwilling* to do so.

10 **SECTION 117.** 48.981 (3) (c) 6m. of the statutes is created to read:

11 48.981 (3) (c) 6m. If a person who is not required under sub. (2) to report makes
12 a report and is a relative of the child, other than the child's parent, that person may
13 make a written request to the county department or licensed child welfare agency
14 under contract with the county department for information regarding what action,
15 if any, was taken to protect the health and welfare of the child who is the subject of
16 the report. A county department or licensed child welfare agency that receives a
17 written request under this subdivision shall, within 60 days after it receives the
18 report or 20 days after it receives the written request, whichever is later, inform the
19 reporter in writing of what action, if any, was taken to protect the health and welfare
20 of the child, unless a court order prohibits that disclosure, and of the duty to keep the
21 information confidential under sub. (7) (e) and the penalties for failing to do so under
22 sub. (7) (f). The county department or licensed child welfare agency may petition the

1 court ex parte for an order prohibiting that disclosure and, if the county department
2 or licensed child welfare agency does so, the time period within which the
3 information must be disclosed is tolled on the date the petition is filed and remains
4 tolled until the court issues a decision. The court may hold an ex parte hearing in
5 camera and shall issue an order granting the petition if the court determines that
6 disclosure of the information would not be in the best interests of the child.

NOTE: Does the following:

1. Provides that *voluntary reporters* who are relatives of a child, as defined in s. 48.981 (1) (fm), stats., other than the child's parent, may request in writing that a county department or a licensed child welfare agency under contract with the county department disclose information to them regarding what action, if any, was taken to protect the health and welfare of the child. The voluntary reporters who may request this information are the following: the child's grandparent, stepparent, brother, sister, first cousin, 2nd cousin, nephew, niece, uncle, aunt, stepgrandparent, stepbrother, stepsister, half brother, half sister, brother-in-law, sister-in-law, stepuncle or stepaunt.

2. Provides that a county department or a licensed child welfare agency that receives such a request must, within 60 days after it receives the report or 20 days after it receives the written request, whichever is later, inform such a voluntary reporter in writing of: (a) what action, if any, was taken to protect the health and welfare of the child, unless the county department or child welfare agency has obtained a juvenile court order prohibiting such disclosure; and (b) the duty to keep the information confidential and the penalties for failing to do so.

The special committee intends that the information provided to a voluntary reporter be the same information that is typically provided to mandatory reporters, that is, whether the report was substantiated or unsubstantiated and whether services were offered to the child.

3. Permits the county department or licensed child welfare agency to petition the juvenile court ex parte for an order prohibiting such disclosure and, if the county department or licensed child welfare agency does so, provides that the deadline for disclosure is suspended until the juvenile court issues its decision. This SECTION also provides that the juvenile court may hold an ex parte hearing in camera and must issue an order granting the petition if the juvenile court determines that such disclosure would not be in the best interests of the child.

7 **SECTION 118.** 48.981 (3) (cm) of the statutes is amended to read:

8 48.981 (3) (cm) *Contract with licensed child welfare agencies.* A county
9 department may contract with a licensed child welfare agency to fulfill its duties
10 specified under par. (c) 1., 2. b., 5., 6., 6m. and 8. The confidentiality provisions
11 specified in sub. (7) shall apply to any licensed child welfare agency with which a
12 county department contracts.

1 **SECTION 119.** 48.981 (7) (a) 1m. of the statutes is created to read:

2 48.981 (7) (a) 1m. A reporter described in sub. (3) (c) 6m. who makes a written
3 request to the county department or licensed child welfare agency under contract
4 with the county department for information regarding what action, if any, was taken
5 to protect the health and welfare of the child who is the subject of the report, unless
6 a court order under sub. (3) (c) 6m. prohibits disclosure of that information to that
7 reporter, except that the only information that may be disclosed is information in the
8 record regarding what action, if any, was taken to protect the health and welfare of
9 the child who is the subject of the report.

NOTE: Includes a voluntary reporter who is a relative, other than a parent, and who makes a written request for information regarding what action, if any, was taken to protect the health and welfare of the child who is the subject of the report in the list of persons to whom information in child abuse or neglect records may be disclosed, unless a juvenile court order prohibits disclosure of that information to that reporter, but limits the information that may be disclosed to such a voluntary reporter to information regarding what action, if any, was taken to protect the health and welfare of the child. By virtue of inclusion in this list, a voluntary reporter who receives such information is subject to the duty to keep the information confidential in s. 48.981 (7) (e), stats., and the penalties for failing to do so in s. 48.981 (7) (f), stats.

10 **SECTION 120.** 48.982 (1) (a) of the statutes is repealed.

NOTE: Repeals the definition of "abuse" in s. 48.982 (1) (a), stats., to reflect the creation of a definition of "abuse" in s. 48.02 (1), as created by this bill.

11 **SECTION 121.** 48.982 (1) (c) of the statutes is amended to read:

12 48.982 (1) (c) "~~Neglect~~" means ~~neglect, refusal or inability, for reasons other~~
13 ~~than poverty, by a parent, guardian, legal custodian or other person exercising~~
14 ~~temporary or permanent control over a child to provide necessary care, food, clothing,~~
15 ~~medical or dental care or shelter so as to seriously endanger the physical health of~~
16 ~~the child~~ has the meaning given in s. 48.981 (1) (d).

NOTE: Amends the definition of "neglect" in the child abuse and neglect prevention board statute to duplicate the definition of "neglect" in s. 48.981 (1) (d), stats., for the child abuse and neglect reporting and investigation statute.

1 **SECTION 122.** 252.15 (5) (a) 19. of the statutes, as affected by 1995 Wisconsin
2 Act 77, is amended to read:

3 252.15 **(5)** (a) 19. If the test was administered to a child who has been placed
4 in a foster home, treatment foster home, group home or child caring institution,
5 including a placement under s. 48.205, 48.21, 938.205 or 938.21 or for whom
6 placement in a foster home, treatment foster home, group home or child caring
7 institution is recommended under s. 48.33 (4), 48.425 (1) (g), 48.837 (4) (c) or 938.33
8 (3) or (4), to an agency directed by a court to prepare a court report under s. 48.33 (1),
9 48.424 (4) (b), 48.425 (3), 48.831 (2), 48.837 (4) (c) or 938.33 (1) or, to an agency
10 responsible for preparing a court report under s. 48.365 (2g), 48.425 (1), 48.831 (2),
11 48.837 (4) (c) or 938.365 (2g), to an agency responsible for preparing a permanency
12 plan under s. 48.355 (2e), 48.38, 48.43 (1) (c) or (5) (c), 48.63 (4), 48.831 (4) (e), 938.355
13 (2e) or 938.38 regarding the child or to an agency that placed the child or arranged
14 for the placement of the child in any of those placements and, by that agency, any of
15 those agencies, to any other of those agencies and, by the agency that placed the child
16 or arranged for the placement of the child in any of those placements, to the child's
17 foster parent or treatment foster parent or the operator of the group home or child
18 caring institution in which the child is placed, as provided in s. 48.371 or 938.371.

NOTE: Amends current law regarding confidentiality of HIV test results to permit disclosure of those test results as follows:

1. By *additionally* permitting disclosure if a child has been placed in a *treatment foster home*.

2. By *additionally* permitting disclosure regarding a child placed in a foster home, treatment foster home, group home or CCI or recommended for such a placement under s. 48.425 (1) (g), stats. [following TPR if it is unlikely a child will be adopted or adoption is not in the best interests of a child], or s. 48.837 (4) (c), stats. [child placed with nonrelative for adoption], rather than restricting disclosure to cases in which a child has been recommended for placement under s. 48.33 (4) or 938.33 (4), stats. [out-of-home placement recommended in predispositional report for a child adjudged to be CHIPS or delinquent].

3. By *additionally* providing that the disclosure may be made to all of the following:
(a) the agency *directed* by a juvenile court to prepare a court report under various

provisions in ch. 48 rather than restricting disclosure to the agency directed to prepare a court report under s. 48.33 (1) or 938.33 (1), stats. [predispositional report for a child adjudged to be CHIPS or delinquent]; (b) to an agency *responsible* for preparing a court report under various provisions in ch. 48; (c) to an agency *responsible* for preparing a permanency plan under various provisions of ch. 48 rather than restricting disclosure to the agency directed to prepare a permanency plan under s. 48.38 or 938.38, stats.; (d) to an agency that placed the child or arranged for the placement of the child in substitute care; and (e) by any of those agencies to any other of those agencies.

4. By providing that the *agency that placed the child or arranged for the placement of the child* in substitute care may disclose the HIV test results to the substitute care provider as provided in s. 48.371, stats., as affected by this bill, rather than the agency directed by the juvenile court to prepare a court report under s. 48.33 (1), stats., or the agency directed by a juvenile court to prepare a child's permanency plan under s. 48.38, stats., as provided in s. 48.371, 1993 stats.

1 **SECTION 123.** 756.096 (3) (e) of the statutes is created to read:

2 756.096 (3) (e) Notwithstanding par. (b), a jury in a proceeding under s. 48.13
3 shall consist of 6 persons and a jury in a proceeding under s. 48.42 shall consist of
4 12 persons unless the parties agree to a lesser number.

5 **SECTION 124.** 767.075 (1) (a) of the statutes is amended to read:

6 767.075 (1) (a) An action to establish paternity whenever there is a completed
7 application for legal services filed with the child support program under s. 46.25 or
8 whenever s. 767.45 (6m) or (6r) applies.

NOTE: Specifies that the state is a real party in interest in an action to establish paternity whenever a IV-D attorney receives a required referral from a juvenile court under s. 48.299 (6) (a), stats., as affected by this bill.

9 **SECTION 125.** 767.11 (8) (b) 1. of the statutes is amended to read:

10 767.11 (8) (b) 1. That a party engaged in abuse, as defined in s. 813.122 (1) (a),
11 of the child, as defined in s. ~~48.981 (1) (a) and (b) or 813.122 (1) (a)~~ 48.02 (2).

NOTE: With respect to the evidence a court considers in determining whether an initial mediation session should not be held in certain actions affecting the family, the amendment reflects the renumbering resulting from:

1. The repeal of the definition of “abuse” in s. 48.981 (1) (a), stats., the creation of a definition of “abuse” in s. 48.02 (1), stats., as created by this bill, and the incorporation of the definition of “abuse” in s. 48.02 (1), stats., as created by this bill, in the definition of “abuse” in s. 813.122 (1) (a), stats., as repealed and recreated by this bill.

2. The repeal of the definition of “child” in s. 48.981 (1) (b), stats., as that term is defined in the same way in current s. 48.02 (2), stats.

12 **SECTION 126.** 767.11 (10) (e) 1. of the statutes is amended to read:

1 767.11 (10) (e) 1. There is evidence that a party engaged in abuse, as defined
2 in s. 813.122 (1) (a), of the child, as defined in s. 48.981 (1) (a) and (b) ~~or 813.122 (1)~~
3 ~~(a) 48.02 (2)~~.

NOTE: With respect to the authority of a mediator to terminate mediation in certain actions affecting the family, the amendment reflects:

1. The repeal of the definition of "abuse" in s. 48.981 (1) (a), stats., the creation of a definition of "abuse" in s. 48.02 (1), stats., as created by this bill, and the incorporation of the definition of "abuse" in s. 48.02 (1), stats., as created by this bill, in the definition of "abuse" in s. 813.122 (1) (a), stats., as repealed and recreated by this bill.

2. The repeal of the definition of "child" in s. 48.981 (1) (b), stats., as that term is defined in the same way in current s. 48.02 (2), stats.

4 **SECTION 127.** 767.24 (2) (b) 2. c. of the statutes is amended to read:

5 767.24 (2) (b) 2. c. The parties will be able to cooperate in the future decision
6 making required under an award of joint legal custody. In making this finding the
7 court shall consider, along with any other pertinent items, any reasons offered by a
8 party objecting to joint legal custody. Evidence that either party engaged in abuse,
9 as defined in s. 813.122 (1) (a), of the child, as defined in s. 48.981 (1) (a) and (b) ~~or~~
10 ~~813.122 (1) (a) 48.02 (2)~~, or evidence of interspousal battery, as described under s.
11 940.19, or domestic abuse, as defined in s. 813.12 (1) (a), creates a rebuttable
12 presumption that the parties will not be able to cooperate in the future decision
13 making required. This presumption may be rebutted by clear and convincing
14 evidence that the abuse will not interfere with the parties' ability to cooperate in the
15 future decision making required.

NOTE: With respect to one of the findings a court must make under certain circumstances in determining whether to award joint legal custody, the amendment reflects the renumbering resulting from:

1. The repeal of the definition of "abuse" in s. 48.981 (1) (a), stats., the creation of a definition of "abuse" in s. 48.02 (1), stats., as created by this bill, and the incorporation of the definition of "abuse" in s. 48.02 (1), stats., as created by this bill, in the definition of "abuse" in s. 813.122 (1) (a), stats., as repealed and recreated by this bill.

2. The repeal of the definition of "child" in s. 48.981 (1) (b), stats., as that term is defined in the same way in current s. 48.02 (2), stats.

16 **SECTION 128.** 767.24 (5) (h) of the statutes is amended to read:

1 767.24 (5) (h) Whether there is evidence that a party engaged in abuse, as
2 defined in s. 813.122 (1) (a), of the child, as defined in s. 48.981 (1) (a) and (b) ~~or~~
3 ~~813.122 (1) (a)~~ 48.02 (2).

NOTE: With respect to the factors a court considers in custody and physical placement determinations, the amendment reflects:

1. The repeal of the definition of “abuse” in s. 48.981 (1) (a), stats., the creation of a definition of “abuse” in s. 48.02 (1), stats., as created by this bill, and the incorporation of the definition of “abuse” in s. 48.02 (1), stats., as created by this bill, in the definition of “abuse” in s. 813.122 (1) (a), stats., as repealed and recreated by this bill.

2. The repeal of the definition of “child” in s. 48.981 (1) (b), stats., as that term is defined in the same way in current s. 48.02 (2), stats.

4 **SECTION 129.** 767.45 (1) (i) of the statutes is amended to read:

5 767.45 (1) (i) A guardian ad litem appointed for the child under s. 48.235 or
6 767.045 (1) (c).

NOTE: Adds a GAL for a child appointed under ch. 48 to the list of persons who may bring an action or motion for the purpose of determining the paternity of a child or for the purpose of rebutting a presumption of paternity.

7 **SECTION 130.** 767.45 (5) (c) of the statutes is created to read:

8 767.45 (5) (c) If a matter is referred under s. 48.299 (6) (a) to an attorney
9 designated under sub. (6) (a), that attorney shall also include in the petition
10 notification to the court that the matter was referred under s. 48.299 (6) (a).

NOTE: Requires a IV-D attorney who receives a required referral from a juvenile court under s. 48.299 (6) (a), stats., as affected by this bill, to notify the family court in a paternity petition that the IV-D attorney received such a required referral, thus providing notice to the family court that s. 767.475 (7m), stats., as created by this bill, applies.

11 **SECTION 131.** 767.45 (6r) of the statutes is created to read:

12 767.45 (6r) (a) The attorney designated under sub. (6) (a) who receives a
13 referral under s. 48.299 (6) (a) shall do all of the following:

14 1. Give priority to matters referred under s. 48.299 (6) (a) or 938.299 (6) (a),
15 including priority in determining whether an action should be brought under this
16 section and, if the determination is that such an action should be brought, priority
17 in bringing the action and in establishing the existence or nonexistence of paternity.

1 2. As soon as possible, but no later than 30 days after the date on which the
2 referral is received, notify the court that referred the matter of one of the following:

3 a. The date on which an action has been brought under this section or the
4 approximate date on which such an action will be brought.

5 b. That a determination has been made that an action should not be brought
6 under this section or, if such a determination has not been made, the approximate
7 date on which a determination will be made as to whether such an action should be
8 brought.

9 c. That the man designated in s. 48.299 (6) (a) has previously been excluded as
10 the father of the child.

11 3. If an action is brought under this section, notify the court that referred the
12 matter as soon as possible of a judgment or order determining the existence or
13 nonexistence of paternity.

14 (b) The attorney designated under sub. (6) (a) who receives a referral under s.
15 48.299 (7) may bring an action under this section on behalf of the state and may give
16 priority to the referral and notify the referring court in the same manner as is
17 required under par. (a) when a matter is referred under s. 48.299 (6) (a).

NOTE: 1. Provides that if a matter is referred by the juvenile court under the required referral provision, the IV-D attorney receiving the referral must: (a) give priority to such cases; (b) as soon as possible, but no later than 30 days after the referral, notify the juvenile court of the date a paternity action has been or will be brought in family court, that a determination has been made that such an action should not be brought or, if a determination has not been made as to whether a paternity action should be brought, the approximate date by which the determination will be made or that the man has been excluded as the father of the child; (c) if a paternity action is brought, notify the family court in the paternity proceeding petition that the matter was referred by the juvenile court under the required referral provision; and (d) notify the juvenile court as soon as possible of the family court's decision on the paternity action.

2. Permits a IV-D attorney who receives a permissive referral from a juvenile court under s. 48.299 (7), stats., as created by this bill, to bring a paternity action in family court and notify the juvenile court of the status of the paternity action.

18 **SECTION 132.** 767.47 (1) (cm) of the statutes is created to read:

1 767.47 (1) (cm) Genetic test results under s. 48.299 (6) (e).

NOTE: Adds the results of genetic tests ordered by a juvenile court under s. 48.299 (6) (e), stats., as created by this bill, to the list of evidences relating to paternity which may be presented in a paternity determination proceeding under ch. 767, stats.

2 **SECTION 133.** 767.47 (10) of the statutes is amended to read:

3 767.47 (10) A record of the testimony of the child's mother relating to the child's
4 paternity, made as provided under s. 48.299 (6) (8), is admissible in evidence on the
5 issue of paternity.

NOTE: Provides the correct cross-reference to s. 48.299 (8), stats., as created by this bill. See the NOTE following SECTION 51 of this bill.

6 **SECTION 134.** 767.475 (7m) of the statutes is created to read:

7 767.475 (7m) The court shall give priority to an action brought under s. 767.45
8 whenever the petition under s. 767.45 (5) indicates that the matter was referred
9 under s. 48.299 (6) (a) by a court assigned to exercise jurisdiction under chs. 48 and
10 938.

NOTE: Requires a family court to give priority to a paternity proceeding if the paternity petition is filed by the IV-D attorney after referral of the matter by a juvenile court under the required referral provision of s. 48.299 (6), stats.

11 **SECTION 135.** 767.53 (1) of the statutes is renumbered 767.53 (1) (intro.) and
12 amended to read:

13 767.53 (1) (intro.) Access to the record of any pending or past proceeding
14 involving the paternity of the same child shall be allowed to ~~the~~ all of the following:

15 (a) The child's parents, ~~the~~

16 (b) The parties to that proceeding and their attorneys or their authorized
17 representatives.

18 **SECTION 136.** 767.53 (1) (c) of the statutes is created to read:

19 767.53 (1) (c) If the child is the subject of a proceeding under ch. 48, all of the
20 following:

- 1 1. The court assigned to exercise jurisdiction under chs. 48 and 938 in which
- 2 the proceeding is pending.
- 3 2. The parties to the proceeding under ch. 48 and their attorneys.
- 4 3. The person under s. 48.09 who represents the interests of the public in the
- 5 proceeding under ch. 48.
- 6 4. A guardian ad litem for the child and a guardian ad litem for the child's
- 7 parent.
- 8 5. Any governmental or social agency involved in the proceeding under ch. 48.

NOTE: Under current law, a family court's record of a paternity proceeding under ch. 767, stats., is closed except as provided in s. 767.53 (1) and (2), stats. This SECTION adds the following to the list of individuals and entities to whom such a record may be disclosed if the child is the subject of a proceeding under ch. 48: (a) the juvenile court in which the ch. 48 proceeding is pending; (b) the parties to the ch. 48 proceeding and their attorneys; (c) the person under s. 48.09, stats., who represents the interests of the public in the ch. 48 proceeding; (d) the child's GAL and the GAL for the child's parent; and (e) any governmental or social agency involved in the ch. 48 proceeding.

- 9 **SECTION 137.** 808.04 (7m) of the statutes is amended to read:
- 10 808.04 (7m) An appeal from a judgment or order terminating parental rights
- 11 or denying termination of parental rights shall be initiated by filing the notice
- 12 required by s. 809.107 (2) within ~~15~~ 30 days after the date of entry of the judgment
- 13 or order appealed from. Notwithstanding s. 809.82 (2) (b), this time period may not
- 14 be enlarged.

NOTE: Amends current law by extending the deadline for filing a notice of intent to appeal a TPR judgment or order from 15 days to 30 days.

- 15 **SECTION 138.** 808.075 (4) (a) 10. of the statutes is created to read:
- 16 808.075 (4) (a) 10. Revision of guardianship order under s. 48.977 (6).
- 17 **SECTION 139.** 808.075 (4) (a) 11. of the statutes is created to read:
- 18 808.075 (4) (a) 11. Termination of guardianship under s. 48.977 (7), including
- 19 removal of a guardian.

NOTE: Under current s. 808.075 (4) (a) 1. to 9., stats., a juvenile court may do any of the following during the pendency of an appeal:

1. Review an action by a guardian under s. 48.023, stats.
2. Review a nonsecure custody order under s. 48.207, stats.
3. Review a secure detention order under s. 48.208, stats., and conduct a secure detention status review under s. 48.209 (1) (e), stats.
4. Hold a hearing for a child held in custody under s. 48.21, stats.
5. Hold a hearing upon involuntary removal under s. 48.305, stats.
6. Revise a dispositional order under s. 48.363, stats.
7. Extend a dispositional order under s. 48.365, stats., unless s. 48.368, stats., applies.
8. Review a permanency plan under s. 48.38 (5), stats.
9. Release confidential information under s. 48.396 or 48.78, stats.

These 2 sections add revision of a guardianship order under s. 48.977 (6), stats., as created by this bill, and termination of a guardianship under s. 48.977 (7), stats., as created by this bill, to the list of acts which a juvenile court may perform despite the pendency of an appeal.

1 **SECTION 140.** 809.107 (5) of the statutes is amended to read:

2 809.107 (5) NOTICE OF APPEAL; TRANSMITTAL OF RECORD. Within ~~15~~ 30 days after
3 service of the transcript, the person filing a notice of intent to appeal under sub. (2)
4 shall file a notice of appeal and docketing statement as provided in s. 809.10 (1) (a)
5 and serve a copy of the notice on the persons required to be served under sub. (2).
6 The clerk of the trial court shall transmit the record to the court of appeals as soon
7 as the record is prepared but in no event more than 15 days after the filing of the
8 notice of appeal.

NOTE: Amends current law by extending the deadline for filing the official notice of appeal of a TPR judgment or order and the docketing statement from 15 days to 30 days after the date of service of the transcript by the court reporter.

9 **SECTION 141.** 809.107 (6) (e) of the statutes is amended to read:

10 809.107 (6) (e) Cases appealed under this section shall be given preference and
11 shall be taken in an order that ensures that a decision is issued within ~~45~~ 30 days
12 after the filing of the ~~record on appeal with the court of appeals~~ appellant's reply brief
13 or statement that a reply brief will not be filed.

NOTE: Provides that a court of appeals must decide a TPR appeal within 30 days after the filing of the appellant's reply brief or the appellant's statement that a reply brief will not be filed, rather than 45 days after the filing of the record on appeal.

1 **SECTION 142.** 809.107 (6) (f) of the statutes is amended to read:

2 809.107 (6) (f) A petition for review of an appeal in the supreme court, if any,
3 shall be filed within ~~15~~ 30 days after the date of the decision of the court of appeals.
4 The supreme court shall give preference to a petition for review of an appeal filed
5 under this paragraph.

NOTE: Provides that a petition for the supreme court to review an appeal of a TPR case must be filed within 30 days after the date of the decision of the court of appeals, rather than 15 days.

6 **SECTION 143.** 813.122 (1) (a) of the statutes is repealed and recreated to read:

7 813.122 (1) (a) “Abuse” has the meaning given in s. 48.02 (1) and, in addition,
8 includes a threat to engage in any conduct under s. 48.02 (1).

NOTE: Deletes the definition of “abuse” in the child abuse restraining order and injunction statute and substitutes the definition of “abuse” in s. 48.02 (1), stats., as created by this bill, plus the threat to engage in any conduct that is defined as “abuse” in s. 48.02 (1), stats.

9 **SECTION 144.** 813.122 (1) (e) of the statutes is repealed.

NOTE: Repeals the definition of “emotional damage” in the child abuse restraining order and injunction statute. “Emotional damage” as defined in s. 48.02 (5j), stats., as created by this bill, is incorporated in the definition of “abuse” in s. 48.02 (1), stats., as created by this bill, which is incorporated by reference in the definition of “abuse” in s. 813.122 (1) (a), stats., as repealed and recreated by this bill.

10 **SECTION 145.** 813.122 (1) (f) of the statutes is repealed.

NOTE: Repeals the definition of “physical injury” in the child abuse restraining order and injunction statute. “Physical injury” as defined in s. 48.02 (14m), stats., as created by this bill, is incorporated in the definition of “abuse” in s. 48.02 (1), stats., as created by this bill, which is incorporated by reference in the definition of “abuse” in s. 813.122 (1) (a), stats., as repealed and recreated by this bill.

11 **SECTION 146.** 813.122 (8) of the statutes is repealed.

NOTE: Repeals the provision in the child abuse restraining order and injunction statute which specifies that, in cases involving an allegation of emotional damage, the court may admit evidence of a substantial and observable change in behavior, emotional response or cognition that is not within the normal range for a child’s age and stage of development. Provision for this evidence is included in the definition of “emotional damage” which is incorporated in the definition of “abuse” in s. 48.02 (1), stats., as created by this bill, which is incorporated by reference in the definition of “abuse” in s. 813.122 (1) (a), stats., as repealed and recreated by this bill.

12 **SECTION 147.** 905.04 (4) (e) 1. a. of the statutes is amended to read:

1 905.04 (4) (e) 1. a. “Abuse” has the meaning given in s. ~~48.981~~ 48.02 (1) (a).

NOTE: With respect to the provision that specifies that there is no physician-patient, registered nurse-patient, chiropractor-patient, psychologist-patient, social worker-patient, marriage and family therapist-patient or professional counselor-patient privilege in certain cases of abuse or neglect, the amendment reflects the renumbering resulting from deleting the definition of “abuse” in s. 48.981 (1) (a), stats., and creating a definition of “abuse” in s. 48.02 (1), stats., as created by this bill.

2 **SECTION 148.** 939.45 (5) (b) of the statutes is amended to read:

3 939.45 (5) (b) When the actor’s conduct is reasonable discipline of a child by a
4 person responsible for the child’s welfare. Reasonable discipline may involve only
5 such force as a reasonable person believes is necessary. It is never reasonable
6 discipline to use force which is intended to cause lacerations, fractured bones, burns,
7 internal injuries, severe or frequent bruising, great bodily harm or death or creates
8 an unreasonable risk of lacerations, fractured bones, burns, internal injuries, severe
9 or frequent bruising, great bodily harm or death.

NOTE: With respect to the privilege that can be used as a defense to the prosecution of any crime that the actor’s conduct is reasonable discipline of a child by a person responsible for a child’s welfare [as defined in s. 939.45 (5) (a) 3., stats.], provides that it is never reasonable discipline to use force which is intended to cause lacerations, fractured bones, burns, internal injuries, severe or frequent bruising, great bodily harm [which is defined in s. 939.22 (14), stats.] or death or creates an unreasonable risk of such injuries or death, rather than providing that it is never reasonable discipline to use force which is intended to cause great bodily harm or death or creates an unreasonable risk of great bodily harm or death.

10 **SECTION 9110. Nonstatutory provisions; circuit courts.**

11 (1) ABANDONMENT.

12 (a) Subject to paragraph (b), no person may file a petition under section 48.42
13 (1) of the statutes for termination of parental rights on the grounds specified in
14 section 48.415 (1) (a) 2. of the statutes, as affected by this act, unless the parent
15 against whom the petition is filed has received the notice under section 48.356 (2) or
16 938.356 (2) of the statutes of the grounds for termination of parental rights under

1 section 48.415 (1) (a) 2. of the statutes, as affected by this act, and 3 months or longer
2 have elapsed since the date of that notice.

3 (b) Notwithstanding paragraph (a), if a parent has received the notice under
4 section 48.356 (2) or 938.356 (2) of the statutes of the grounds for termination of
5 parental rights under section 48.415 (1) (a) 2., 1993 stats., within the 6 months
6 preceding the effective date of this paragraph, no person may file a petition under
7 section 48.42 (1) of the statutes for termination of parental rights on the grounds
8 specified in section 48.415 (1) (a) 2., of the statutes, as affected by this act, until 6
9 months or longer have elapsed since the date of that notice.

10 (c) This subsection does not preclude a person from filing a petition under
11 section 48.42 (1) of the statutes for termination of parental rights on the grounds
12 specified in section 48.415 (1) (a) 2., 1993 stats., against a parent who has received
13 the notice under section 48.356 (2) or 938.356 (2) of the statutes of the grounds for
14 termination of parental rights under section 48.415 (1) (a) 2., 1993 stats., if 6 months
15 or longer have elapsed since the date of that notice.

NOTE: Specifies that no person may file a TPR petition based on the grounds specified in s. 48.415 (1) (a) 2., stats., as affected by this bill, (placement of the child outside the home by a juvenile court order containing the notice required under s. 48.356 (2) or 938.356 (2), stats., of those grounds and the parent has failed to visit or communicate with the child for 3 months or longer) unless the parent against whom the TPR petition is filed has received that notice and 3 months or longer have elapsed since the date of the notice, except that if the parent has received notice of the grounds specified in s. 48.415 (1) (a) 2., 1993 stats., (placement of the child outside the home by a juvenile court order containing the notice required under s. 48.356 (2) or 938.356 (2), stats., and the parent has failed to visit or communicate with the child for *6 months* or longer) within the 6 months preceding the effective date of this bill, then no person may file a TPR petition based on the grounds specified in s. 48.42 (1) (a) 2., stats., as affected by this bill, until 6 months, rather than 3 months, have elapsed since the date of the notice. This subsection also specifies that a person is not precluded from filing a TPR petition based on the grounds of abandonment under prior law if the parent against whom the TPR petition is filed has received notice of the grounds for TPR under prior law and 6 months or longer have elapsed since the date of that notice.

16 (2) CONTINUING NEED OF PROTECTION OR SERVICES.

1 (a) Subject to paragraph (b) may file a petition under section 48.42 (1) of the
2 statutes for termination of parental rights on the grounds specified in section 48.415
3 (2) (c) of the statutes, as affected by this act, unless the parent against whom the
4 petition is filed has received the notice under section 48.356 (2) or 938.356 (2) of the
5 statutes of the grounds for termination of parental rights under section 48.415 (2)
6 (c) of the statutes, as affected by this act, and 6 months or longer have elapsed since
7 the date of that notice.

8 (b) Notwithstanding paragraph (a), if a parent has received the notice under
9 section 48.356 (2) or 938.356 (2) of the statutes of the grounds for termination of
10 parental rights under section 48.415 (2) (c), 1993 stats., with respect to a child who
11 had attained the age of 3 years at the time of the initial order placing the child outside
12 the home within one year preceding the effective date of this paragraph, no person
13 may file a petition under section 48.42 (1) of the statutes for termination of parental
14 rights over the child on the grounds specified in section 48.415 (2) (c) of the statutes,
15 as affected by this act, until one year or longer has elapsed since the date of that
16 notice.

17 (c) This subsection does not preclude a person from filing a petition under
18 section 48.42 (1) of the statutes for termination of parental rights over a child who
19 had attained the age of 3 years at the time of the initial order placing the child outside
20 the home on the grounds specified in section 48.415 (2) (c), 1993 stats., against a
21 parent who has received the notice under section 48.356 (2) or 938.356 (2) of the
22 statutes of the grounds for termination of parental rights under section 48.415 (2)
23 (c), 1993 stats., if one year or longer has elapsed since the date of that notice.

NOTE: Specifies that no person may file a TPR petition based on the grounds specified in s. 48.415 (2) (c), stats., as affected by this bill, (placement of a child of any age outside the home by a juvenile court order containing the notice required under s. 48.356

(2), stats., of those grounds for 6 months or longer and the parent has failed to demonstrate substantial progress toward meeting the conditions established for the return of the child to the home) unless the parent against whom the TPR petition is filed has received that notice and 6 months or longer have elapsed since the date of the notice, except that if the parent has received notice of the grounds specified in s. 48.415 (1), (2) (c), 1993 stats., with respect to a child who had attained the age of 3 years at the time of the initial order placing the child outside the home (placement outside the home by a juvenile court order containing the notice required under s. 48.356 (2), stats., for one year or longer and the parent has failed to demonstrate substantial progress toward meeting the conditions established for the return of the child to the home) within one year preceding the effective date of this bill, then no person may file a TPR petition with respect to that child based on the grounds specified in s. 48.42 (2) (c), stats., as affected by this act, until one year, rather than 6 months, has elapsed since the date of the notice. This subsection also specifies that a person is not precluded from filing a petition for TPR over a child who had attained the age of 3 years at the time of the initial order placing the child outside the home based on the grounds of continuing CHIPS under prior law if the parent against whom the TPR petition is filed has received notice of the grounds for TPR under prior law and one year or longer has elapsed since the date of that notice.

1 **SECTION 9137. Nonstatutory provisions; legislature.**

2 (1) CHILD ABUSE AND NEGLECT PREVENTION STUDY. The joint legislative council is
3 requested to study the use and effectiveness of systems and programs directed at,
4 and resources allocated to, the prevention of child abuse and neglect to determine the
5 effectiveness of those systems, programs and resources in preventing child abuse
6 and neglect in this state and the need for new or revised systems and programs and
7 new mechanisms for providing and allocating funding for preventing child abuse and
8 neglect. During the 1997-98 legislative session, the joint legislative council shall
9 submit its findings, conclusions and recommendations to the legislature in the
10 manner provided under section 13.172 (2) of the statutes, to the joint committee on
11 finance and to the governor.

NOTE: This SECTION requests the joint legislative council to study all of the following:

1. The use and effectiveness of systems and programs directed at, and resources allocated to, the prevention of child abuse and neglect to determine the effectiveness of those systems, programs and resources in preventing child abuse and neglect in the state.

2. The need for new or revised systems and programs and new mechanisms for providing and allocating funding for preventing child abuse and neglect.

In the charge to the joint legislative council's 1994-95 special committee on children in need of protection or services, the committee was directed to study ch. 48 as it applies to children in need of protection or services in order to examine, in pertinent part: (1) the effectiveness of current law and the resources of the state and counties in

providing for the needs of such children and their families; and (2) methods of increasing the stability of funding for community-based, nonresidential programs for such children.

In its study, the committee received substantial testimony that, with reference to breaking the cycle of child abuse or neglect, a key and effective mechanism is to prevent the initial occurrence of child abuse or neglect. After a number of public hearings and a series of discussions in the committee, the committee expressed a consensus that: (1) the state's statutes should be based on a commitment to preventing abuse and neglect and breaking the cycle of child abuse and neglect when it has occurred; and (2) existing programs are too few and are inadequately or inappropriately funded to prevent the initial occurrence of abuse or neglect and to provide early intervention services in those cases where abuse or neglect has occurred. The committee heard testimony about a number of possible mechanisms to provide primary prevention and early intervention, including programs and initiatives (some of which currently exist, on a small scale, in this state) directed at all of the following:

1. Providing support and training (through social workers, nurses and others) for a single parent or family at risk of child abuse or neglect (determined by an assessment instrument) at the time of, or shortly after, a child's birth (or, in some cases, prior to birth) and, as needed, for several years thereafter.
2. Providing for home visitation by social workers, nurses or others in such at-risk families' homes.
3. Possible pooling and coordination of existing state resources focusing on the prevention of child abuse and neglect.
4. Strategies to develop public-private and federal, state and local partnerships to prevent child abuse and neglect.
5. Strategies to implement coordination between state institutions of higher education (with, among other things, their extensive research capacities) and the providers of services relating to child abuse and neglect.
6. Education and public awareness efforts such as media messages explaining the link between child abuse and neglect and delinquency and the need for parents and others to seek help when they are in danger of abusing or neglecting children.
7. Reducing poor parenting skills, isolation from positive community supports and family stress, which have been identified as causes or correlates of child abuse and neglect.
8. Establishing treatment programs for abused and neglected children and young adults to prevent them from becoming delinquents and criminals, and establishing programs for life skills training for children and young adults in general.
9. Increasing child care opportunities and other family-support services for these families.
10. Encouraging self-help groups and other neighborhood supports for these families.

Due to time constraints and the multiplicity of issues the committee had to consider, the committee did not act on the prevention aspects of its charge, even though there was a consensus to do so. The committee, therefore, requested that the joint legislative council establish the child abuse and neglect prevention study set forth in this bill. It is the intent of the committee in requesting this study that the study not focus on the existing statutes and rules relating to child abuse and neglect, but on the actual systems and programs used in this state and the need for new or revised systems and programs and for new or revised funding mechanisms relating to the prevention of child abuse and neglect.

1 (1) DISCOVERY IN PROCEEDINGS UNDER THE CHILDREN'S CODE. The treatment of
2 section 48.293 (4) of the statutes first applies to any proceeding under chapter 48 of
3 the statutes pending or commenced on the effective date of this subsection.

4 (2) INFORMAL DISPOSITIONS. The treatment of section 48.245 (2) (b) and (2r) of
5 the statutes first applies to informal dispositions entered into on the effective date
6 of this subsection.

NOTE: This SECTION specifies that the provisions of this bill permitting the
extension of an informal disposition under certain circumstances apply to cases in which
the original informal disposition was entered into on or after the effective date of the bill.

7 (3) FACT-FINDING AND JURY TRIALS IN PROCEEDINGS UNDER THE CHILDREN'S CODE.
8 The treatment of sections 48.31 (2) and (4) and 756.096 (3) (e) of the statutes first
9 applies to a petition under section 48.25 or 48.42 of the statutes filed on the effective
10 date of this subsection.

11 (4) DISCLOSURE OF INFORMATION TO VOLUNTARY CHILD ABUSE OR NEGLECT
12 REPORTERS. The treatment of section 48.981 (3) (c) 6m. and (cm) and (7) (a) 1m. of the
13 statutes first applies to reports under section 48.981 of the statutes received by a
14 county department of human services or social services or by a licensed child welfare
15 agency on the effective date of this subsection.

16 (5) TERMINATION OF PARENTAL RIGHTS.

17 (a) The treatment of section 48.415 (1) (a) 1m. and (c), (5) (intro.) and (b) and
18 (6) (a) (intro.), 1. and 2. and (b) of the statutes first applies to petitions for termination
19 of parental rights under section 48.42 (1) of the statutes filed on the effective date of
20 this paragraph.

NOTE: Specifies that the provisions of the bill creating a basis for establishing
abandonment as a ground for involuntary TPR by leaving a child in a place that exposes
the child to substantial risk of great bodily harm or death, the provisions deleting the
opportunity to rebut the presumption of abandonment based on the parent not
disassociating himself or herself from the child or relinquishing responsibility for the
child's care and well-being but adding that certain of the bases of abandonment are not

established if there was good cause for failure to visit or communicate with the child, the provisions relating to child abuse as a ground for involuntary TPR and the provisions regarding failure to assume parental responsibility as a ground for involuntary TPR first apply to TPR petitions filed on the effective date of this bill.

1 (b) Subject to SECTION 9110 of this act, the treatment of section 48.415 (1) (a)
2 2. and (2) (c) of the statutes first applies to court orders required to contain the notice
3 under section 48.356 (2) or 938.356 (2) of the statutes entered on the effective date
4 of this paragraph.

NOTE: Specifies that, subject to SECTION 9110 this bill, the provisions of this bill relating to the time period that a child must have been placed outside the home under a juvenile court order as part of the grounds for involuntary TPR based on abandonment with failure to visit or communicate or based on continuing need of protection or services first apply to a child placed outside the home under a juvenile court order on the effective date of the bill. See also the NOTES to SECTION 9110.

5 (c) The treatment of section 48.415 (1) (a) 3. of the statutes first applies to
6 petitions for termination of parental rights under section 48.42 (1) of the statutes
7 filed 6 months after the effective date of this paragraph.

NOTE: Specifies that the provisions of this bill relating to one of the bases for establishing abandonment as a ground for involuntary TPR, that is, a parent leaving a child with a person, other than the child's other parent, and then failing to visit or communicate with the child for 6 months, first apply to TPR petitions filed 6 months after the effective date of the bill.

8 (d) The treatment of sections 48.356 (1) and (2) and 48.415 (4) of the statutes
9 first applies to court orders denying a parent visitation under section 48.345, 48.357,
10 48.363 or 48.365 of the statutes entered on the effective date of this paragraph.

NOTE: Specifies that the provisions creating a ground for involuntary TPR based on a denial of visitation by a juvenile court and requiring the juvenile court to provide warnings about any applicable grounds for involuntary TPR and the conditions necessary for the parent to be granted visitation when it enters a CHIPS dispositional order, a change in placement order, a revision of dispositional order or an extension of dispositional order which denies visitation first apply to juvenile court orders entered on the effective date of the bill.

11 (e) The treatment of section 48.415 (8) of the statutes first applies to petitions
12 for termination of parental rights under section 48.42 (1) of the statutes filed on the
13 effective date of this paragraph but precludes consideration of a conviction under
14 section 940.02 of the statutes obtained before the effective date of this paragraph in

1 determining whether to terminate, or to find grounds to terminate, the parental
2 rights of a person under section 48.415 (8) of the statutes, as affected by this act.

NOTE: Specifies that the addition of a violation of s. 940.02, stats., (first-degree reckless homicide) of the child's other parent to the ground for involuntary TPR based on intentional or reckless homicide of the other parent first applies to TPR petitions filed on the effective date of this bill, but precludes consideration of a conviction for first-degree reckless homicide prior to the effective date of the bill.

3 (f) The treatment of section 48.415 (9m) of the statutes first applies to petitions
4 for termination of parental rights under section 48.42 (1) of the statutes filed on the
5 effective date of this paragraph, but precludes consideration of a conviction under
6 section 940.01, 940.02, 940.03, 940.05, 940.225 (1) or (2), 948.02 (1) or (2), 948.025,
7 948.03 (2) (a) or (3) (a), 948.05, 948.06 or 948.08 of the statutes or under section
8 948.21 of the statutes if death is a consequence or a conviction of a crime under
9 federal law or the law of any other state that is comparable to such crimes obtained
10 before the effective date of this paragraph in determining whether to terminate, or
11 to find grounds to terminate, the parental rights of a person under section 48.415
12 (9m) of the statutes, as created by this act.

NOTE: Specifies that creation of the new ground for involuntary TPR based on commission of a serious felony against one of the person's children first applies to TPR petitions filed on the effective date of this bill, but precludes consideration of a conviction prior to the effective date of the bill.

13 (g) The treatment of section 48.415 (10) of the statutes first applies to petitions
14 for termination of parental rights under section 48.42 (1) of the statutes filed on the
15 effective date of this paragraph but does not preclude consideration of prior orders
16 of a court terminating parental rights with respect to a child who is not the subject
17 of the petition in determining whether to terminate, or to find grounds to terminate,
18 the parental rights of a person under section 48.415 (10) of the statutes, as created
19 by this act.

NOTE: Specifies that creation of the new ground for involuntary TPR based on prior involuntary TPR with respect to another child first applies to TPR petitions filed on the

effective date of this bill, but does not preclude consideration of prior involuntary TPR orders with respect to another child entered prior to the effective date of the bill.

1 (h) The treatment of sections 48.42 (3) (d) and (4) (c) 3., 48.46 (2), 808.04 (7m),
2 809.107 (5) and (6) (e) and (f) of the statutes first applies to judgments or orders
3 entered under section 48.43 of the statutes on the effective date of this paragraph.

NOTE: Specifies that the provisions of this bill relating to appeals of, or motions for relief from, orders terminating parental rights or denying TPR first apply to cases in which the judgment or order terminating parental rights or denying TPR is entered on the effective date of the bill.

4 (6) JURISDICTION OVER CHILDREN IN NEED OF PROTECTION OR SERVICES. The
5 treatment of section 48.13 (3), (3m), (4), (9), (11) and (11m) of the statutes first applies
6 to a petition under section 48.255 of the statutes alleging a child to be in need of
7 protection or services that is filed on the effective date of this subsection.

NOTE: Specifies that the provisions of this bill amending the grounds for CHIPS jurisdiction first apply to CHIPS petitions filed on the effective date of this subsection.

8 (7) REASONABLE DISCIPLINE OF A CHILD. The treatment of section 939.45 (5) (b)
9 of the statutes first applies to offenses committed on the effective date of this
10 subsection.

NOTE: Specifies that the provisions of this bill amending the statute regarding the defense in a criminal prosecution based on the privilege of reasonable discipline of a child by a person responsible for a child's welfare first apply to offenses committed on the effective date of this subsection.

11 (8) CHILDREN TAKEN INTO CUSTODY. The treatment of section 48.21 (1) (a) and (b)
12 of the statutes first applies to children taken into custody on the effective date of this
13 subsection.

NOTE: Applies the provisions lengthening the deadline for the detention hearing and lengthening the deadline by which a petition must be filed for children who are held in custody to children who are taken into custody on or after the effective date of the bill.

14 **SECTION 9400. Effective date.**

15 (1) This act takes effect on July 1, 1996, or on the day after publication,
16 whichever is later.

17 (END)