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ABSTRACT

This memo addressed to members of the Special Committee on Women Offenders in the Correctional System sets forth the recommendations of the special committee's Working Group on Incarcerated Women and Their Children in Wisconsin. Part I discusses identification of problems relating to this population. Part II examines the working group's recommendations for change in statutes or in Department of Corrections rules, including the right to participate in court proceedings relating to an inmate's children, reasonable efforts standards for children in need of protective services and delinquency cases, permanency planning, grounds for involuntary termination of parental rights, visitation and communication with child of "primary caretaker" inmate-parent, information on convicted woman's parental status prior to sentencing, and development of a mother-infant program. The appendix includes the California Notice to Prisoner of Termination of Parental Rights Appearance of Prisoner in Court; the statutes on permanency planning and grounds for involuntary termination of parental rights; and sections of the Department of Corrections code on visitation and inmate telephone calls. (ABL)

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WOMEN OFFENDERS IN THE CORRECTIONAL SYSTEM
MEMO NO. 7
February 3, 1993

TO: MEMBERS OF THE SPECIAL COMMITTEE ON WOMEN OFFENDERS IN THE CORRECTIONAL SYSTEM

FROM: Don Salm, Senior Staff Attorney

SUBJECT: Recommendations of the Special Committee's Working Group on Incarcerated Women and Their Children

This Memo sets forth the recommendations of the Special Committee's Working Group on Incarcerated Women and Their Children, developed at the Working Group's January 22, 1993 meeting. Present at that meeting were: Special Committee Chairperson Rebecca Young; Frankie Fuller, Aide to Senator Alberta Darling; Public Member Iris Christenson; Technical Advisory Committee Member Martha Askins; and Evelyn Mazack, from the State Public Defenders Office, who worked previously at the Legislative Reference Bureau as a drafter of legislation under the Children's Code [ch. 48, Stats.]. Also contacted by the Working Group with reference to its recommendations were Special Committee Member Antonia Drew and Technical Advisory Committee Member Barbara Powell.

This Memo is divided into the following parts:

I. IDENTIFICATION OF PROBLEMS RELATING TO INCARCERATED WOMEN AND THEIR CHILDREN

The Working Group identified the following areas as among the more significant problem areas for incarcerated women with children:

a. Parents who were the primary caretakers of their children prior to incarceration have minimal or no contact with their children during the period of incarceration. Obstacles to continuing contact with their children include, but are not limited to:

(1) Indigence of the incarcerated parent or the child's caregiver during the incarcera ' ¬.

(2) The distance between the child's home and prison.

(3) A prison environment which is not conducive to visits with children. The Department of Corrections' (DOC) and individual prison rules relating to telephone calls to, and visits from, an inmate's children overly restrict an inmate-parent's contact with her children.

b. Parents who were primary caretakers of their children prior to incarceration and whose children are placed in foster care during the parents' incarceration have problems in addition to those in item a, above, including:

(1) The parents may be left out of court proceedings and permanency plan review meetings (discussed below) due to lack of notice or lack of understanding of their legal rights.

(2) The social worker in the inmate-parent's home county may not provide any, or adequate, assistance to the foster parent in arranging visitation (e.g., paying transportation costs or providing transportation to the prison).

(3) The social worker in the institution may not provide financial assistance for collect telephone calls to the foster home or even allow collect calls from the inmate to the social worker.

(4) The social worker for the family may not communicate with the inmate-parent, the social worker at the prison or the inmate-parent's probation or parole agent about the children's current status or difficulties.

As a general observation, the Working Group concluded that better communication and coordination between all of the parties mentioned above would result in more comprehensive and realistic permanency plans for the family and prerelease plans for the inmate-parent.

II. WORKING GROUP'S RECOMMENDATIONS FOR CHANGES IN STATUTES OR DOC RULES

A. Additional Inquiries Made, and Information Provided, During the Assessment and Evaluation Process

The Working Group ***recommends*** that statutory language be created directing the DOC to promulgate rules which provide that, during the assessment and evaluation (A&E) process at the admitting institution, the DOC should be required to assess the current family situation of women offenders who were the ***primary caretakers*** of their children, including but not limited to:

1. Where the children are currently living.

2. Who the children's current caregiver is.

3. Whether or not the current caregiver can arrange for adequate contact between the inmate-parent and the children.

4. Whether or not the children are under juvenile court jurisdiction.

The rules should require that the A&E report include recommendations regarding the services needed to ensure that the family will maintain contact and that the inmate-parent will assume as much responsibility as possible for decision-making regarding the children. The rules should also require:

1. Assessment of the need for the parent-inmate to maintain contact with her children; and

2. That the A&E staff consider the feasibility of placement of the inmate in a facility closer to the children when considering the parent-inmate's security level. The Program Review Committee should also have to include a consideration of the inmate-parent's placement with reference to proximity to her children at any subsequent reviews of the inmate's security level.

These provisions should apply only to parents who were the "***primary caretakers***" of their children prior to incarceration. "Primary caretaker parent" would be defined to mean:

1. A parent who:

a. Is a single parent; ***or***

b. Before incarceration, assumed responsibility for the housing (including temporary placement in the home of a responsible adult), health and safety of one or more of her children.

2. A woman who gives birth to a child during the term for which the woman is currently incarcerated.

B. Right to Participate in Court Proceedings Relating to Inmate's Children

1. Recommendations of Working Group

The Working Group ***recommends*** that a statute be created to provide that where an incarcerated parent has a right to attend a court proceeding regarding his or her children [e.g., a termination of parental rights (TPR) hearing], the court must ensure that the parent has an opportunity to participate in the proceeding by ***either*** of the following methods:

a. ***Writ to appear.*** The court must issue a ***writ of habeas corpus ad testificandum*** for the person to appear in court for the proceeding. The sheriff of the county in which the writ is issued would make sure that the writ is complied with.

b. ***Telephone conference.*** The court would have to arrange for a ***telephone conference*** with the parent-inmate in place of an in-person appearance at the proceeding. The telephone conference would be at county or institution expense, and ***not*** at the inmate's expense.

The choice between issuing a writ or setting up a telephone conference should be up to the judge's discretion.

If the parent-inmate is not present at the hearing or proceeding, the court would have to: (a) inquire as to why the parent-inmate did not attend and determine that the parent had sufficient notice; and (b) determine that sufficient provisions were made for his or her attendance by telephone conference or in person.

The Working Group agreed that this change would guarantee parental involvement (i.e., notice and the opportunity to appear) at TPR hearings, dispositional hearings and extension or revision hearings for "children in need of protection or services" (CHIPS) or delinquency cases and other juvenile court hearings under the Children's Code as well as at hearings in family court in actions affecting the family (e.g., divorce and paternity).

The Working Group also ***recommends*** language providing that the judge, in his or her discretion, ***may*** provide for ***telephone conferencing*** for ***permanency review planning*** under the Children's Code [s. 48.38, Stats.].

2. Comment: California Statute

Although not specifically discussed by the Working Group, a somewhat similar "notice to prisoner" of certain court proceedings provision in California includes a definition of "prisoner" which the Special Committee might want to consider (modified in accordance with Wisconsin terminology and the Special Committee's revisions, if any) as an additional definition to "primary caretaker parent" (discussed in Section A, above). Section 2625 of the California Penal Code provides, in part, that:

> For the purposes of this section only, the term "prisoner" includes any individual in custody in a state prison, in the California Rehabilitation Center, or a county jail, or who is a ward of the Department of the Youth Authority or who, upon a verdict or finding that the individual was insane at the time of committing an offense, or mentally incompetent to be tried or adjudged to punishment, is confined in a state hospital for the care and treatment of the mentally disordered or in any other public or private treatment facility.

A copy of the entire s. 2625, Cal. Penal Code, setting forth the types of cases in which a prisoner must be given notice and an opportunity to attend hearings (in general, TPR cases) and those cases in which the court may order a prisoner's appearance ("in any other action in which a prisoner's parental or marital rights are subject to adjudication") is attached as Appendix 1 to this Memo.

C. Reasonable Efforts Standards for CHIPS and Delinquency Cases

1. Current Law

Under s. 48.355 (2c), Stats., in any dispositional order following a delinquency adjudication under s. 48.34, Stats., or a finding that the child is in need of protection or services under s. 48.345, Stats., the court's dispositional order must contain certain statutorily prescribed items. One of those items is that if the child is placed outside the home, the court must make a finding: (a) as to whether a county department which provides social services, or the agency primarily responsible for provision of services under a court order, has made "***reasonable efforts***" to prevent the removal of the child from the home; or (b) if applicable, that the agency primarily responsible for the provision of services under a court order has made "***reasonable efforts***" to make it possible for the child to return to his or her home. Current law specifies that the court, in making its finding relating to "reasonable efforts," must consider at least the following (i.e., a nonexhaustive list):

a. Whether a comprehensive assessment of the ***family's situation*** was completed, including a determination of the likelihood of protecting the child's welfare effectively in the home.

b. Whether ***financial assistance***, if applicable, was provided to the family.

c. Whether ***services*** were offered or provided to the family, if applicable, and whether any ***assistance*** was provided to the family to utilize the services. The statutes set forth examples of the type of services that may have been offered, including in-home support services, such as homemakers and parent aides; in-home intensive treatment services; community support services, such as day care, parent skills training, housing assistance, employment training and emergency mental health services; and specialized services for family members with special needs.

d. Whether ***monitoring*** of client progress and client participation in services was provided.

e. Whether a consideration of ***alternative ways of addressing the family's needs*** was provided, if services did not exist or existing services were not available to the family.

When a court makes a finding as to whether the agency primarily responsible for providing services to the child under a court order has made "reasonable efforts" to make it possible for the child to return to his or her home, the court's consideration of reasonable efforts must include, but not be limited to, the considerations listed in items a to e, above, ***and whether visitation schedules between the child and his or her parents were implemented, unless visitation was denied or limited by the court.***

2. Recommendations of Working Group

The Working Group ***recommends*** that a separate "reasonable efforts" provision be added to s. 48.355 (2c), Stats., to deal specifically with inmate-parents. The provision would provide that "reasonable efforts" for incarcerated parents and their family must include, but not be limited to, whether:

a. There has been a comprehensive assessment of the family situation while the parent is incarcerated, including a determination of the likelihood of reunification after incarceration ends.

b. Financial assistance, if applicable, was provided to the family and inmate-parent to assure reasonable visitation and contact with the child.

c. Services were offered or provided to the family, if applicable, and whether any assistance was provided to the family to enable the family to utilize the services. Examples of the types of services that may have been offered would include:

(1) Transportation of a child to and from the prison facility or transportation of the parent to a location convenient to the children and their child care provider.

(2) Support services for formerly incarcerated parents upon return to the community such as day care, parent skills training, housing assistance, employment training and emergency mental health services.

(3) Specialized services for family members with special needs.

(4) Assistance in arranging adequate communication between the inmate-parent and his or her child.

d. Efforts were made to coordinate services among the Division of Adult Institutions, the Division of Probation and Parole and the Division of Intensive Sanctions in the DOC.

The Working Group ***recommends*** that an identical "reasonable efforts" provision be placed in the DOC statutes (i.e., somewhere in ch. 300, et seq.) since s. 48.355 (2c), Stats., applies only to children under court order. The Working Group also ***recommends*** that any other provisions in

the Children's Code which refer to this reasonable efforts standard should include language defining "reasonable efforts" as applicable to inmate-parents. One example of such a provision is s. 48.365 (2m), Stats., relating to a finding, in a proceeding to extend a dispositional order, as to whether reasonable efforts were made by the agency primarily responsible for providing services to the child to make it possible for the child to return to his or her home.

D. Permanency Planning

1. Contents of Plan

a. Current Law

Under current law, in general, for each child living in a foster home, group home, child-caring institution, secure detention facility or shelter care facility, the agency that placed the child or arranged the placement or the agency assigned primary responsibility for providing services to the child under s. 48.355, Stats., must prepare a written permanency plan if certain conditions exist. A "permanency plan" is defined to mean a plan designed to ensure that a child is reunified with his or her family whenever possible, or that the child quickly attains a placement or home providing long-term stability. A copy of the permanency planning statute [s. 48.38, Stats.] is attached as Appendix 2 to this Memo.

Current s. 48.38 (4), Stats., sets forth the contents of the plan. One of the items the permanency plan must include is a description of the services that will be provided to the child, the child's family and the child's foster parent or operator of the facility where the child is living to carry out the dispositional order, including services planned to accomplish all of the following:

(1) Ensure proper care and treatment of the child and promote stability in the placement.

(2) Meet the child's physical, emotional, social, educational and vocational needs.

(3) Improve the conditions of the parents' home to facilitate the return of the child to his or her home, or, if appropriate, obtain an alternative permanent placement for the child.

b. Recommendation of Working Group

The Working Group ***recommends*** that a fourth item be added to the list in s. 48.38 (4), Stats., to specify that in describing the services in the permanency plan, the plan must describe services to accomplish the following:

> Improve the conditions between a parent and his or her child during a parent's incarceration, and prior to release from incarceration, to facilitate communication and a parental relationship between the inmate-parent and the child, and to facilitate reunification of the child

and parent whenever the parent was the primary caretaker of the child prior to incarceration.

2. Permanency Plan Review

a. Current Law

The current permanency planning statute specifies that either the court or, if the court does not elect to do so, a panel consisting of at least three persons appointed by the agency that prepared the permanency plan, must review the permanency plan every six months from the date on which the child was first held in physical custody or placed outside of his or her home. The court or agency is required to notify the parents of the child, the child if he or she is 12 years of age or older and the child's foster parent or operator of the facility in which the child is living of the time and place of the review and of the fact that they may participate in the review. The notice must be provided in writing not less than 10 days before the review and a copy must be filed in the child's case record. The court or the panel is required to make a determination on a number of statutorily prescribed items, including whether reasonable efforts were made by the agency to make it possible for the child to return to his or her home [s. 48.38 (5) (a), (b) and (c), Stats.].

b. Recommendations of Working Group

The Working Group ***recommends***:

(1) That an additional notice provision be added to this permanency plan review subsection. The provision would read: "Due to the time involved in seeking legal assistance and obtaining a writ for the parent's appearance, the notice shall be provided in writing not less than 30 days before the plan review if the parent is incarcerated."

(2) That the following additional item should be added to the list of determinations the court or panel must make in the plan review: "Whether reasonable efforts were made by the agency to facilitate communication and a parental relationship between the inmate-parent and the child, and to facilitate reunification between the child and the incarcerated parent when the parent was the primary caretaker prior to incarceration."

E. Grounds for Involuntary Termination of Parental Rights

1. Current Law

Current s. 48.415, Stats. (a copy of which is attached as Appendix 3), sets forth the grounds for involuntary TPR. Among those grounds are:

a. Abandonment, which may be established by a showing that, among other things: (1) the child has been placed, or continued in a placement, outside the parents' home by a court order (which must contain a notice to the parent or parents of any grounds for TPR which may be

applicable and of the conditions necessary for the child to be returned to the home) and the parent has failed to visit or communicate with the child for a period of six months or longer; or (2) 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. Current law provides that incidental contact between parent and child does not preclude the court from finding that the parent has failed to visit or communicate with the child under item (1) or (2), above, and that the time periods under those items may not include any periods during which the parent has been prohibited by judicial order from visiting or communicating with the child.

b. Continuing need of protection or services, which may be established by a showing of all of the items set forth in s. 48.415 (2), Stats., including that the child has been outside the home for a cumulative total period of one year or longer pursuant to a CHIPS order, or related order (e.g., extension or revision of CHIPS order); the parent has substantially neglected, wilfully refused or been unable to meet the conditions established for return of the child to the home; and there is a substantial likelihood that the parent will not meet these conditions in the future.

2. Recommendations of Working Group

The Working Group ***recommends*** that a sentence be added to s. 48.415 (1) (b), Stats. (abandonment), as follows: "The time periods under par. (a) 2 or 3 shall not include any periods during which the parent was incarcerated and prevented from visiting or communicating with the child on a regular basis due to factors primarily caused by incarceration."

The Working Group also ***recommends*** that a similar provision be inserted in s. 48.415 (2), Stats. (continuing need of protection or services).

The Working Group expressed some concern that this new language is not flexible enough in light of the best interest of the child. For example, this language would make it difficult to do permanency planning for the child of a parent-inmate who has a very lengthy sentence and is not eligible for release for many years. The Special Committee may want to consider possible exceptions to this new language to take care of this concern (e.g., not applicable where the parent is serving a life term or greater; not applicable where the parent is not eligible for parole for seven or more years).

F. Visitation and Communication with Child of "Primary Caretaker" Inmate-Parent

With reference to the issue of visitation and communication with a child of a "primary caretaker" inmate-parent (see definition of "primary caretaker" in Section A, above), the Working Group ***recommends*** that the DOC be statutorily directed to promulgate the following rules:

1. General Prohibition Against Loss of Privilege to Visit or Otherwise Communicate With Inmate-Parent's Child as a Result of a Minor Penalty

Under ***current*** s. DOC 303.68, Wis. Adm. Code, relating to major and minor penalties and offenses, a "minor penalty" is defined to mean, among other things, "loss of a specific privilege." The Working Group ***recommends*** that the following exception be inserted in this definition: ", except that an inmate shall not be prohibited from visiting, telephoning or corresponding with his or her child unless the inmate has been found guilty of misconduct directly related to such visiting, telephoning or corresponding."

2. Visitation

The ***current*** DOC rules relating to visitation are set forth in ss. DOC 309.10 to 309.17, Wis. Adm. Code, copies of which are attached as Appendix 4. The Working Group ***recommends*** the following changes:

a. That a sentence be added to s. DOC 309.10, Wis. Adm. Code, as follows: "The inmate's social worker, or other staff member, shall assist in arranging visits between inmates and their children." [NOTE: Issues not discussed by the Working Group are: (1) who would decide whether the social worker or "other staff member" would do this (e.g., the superintendent?); and (2) which other staff member would be eligible and qualified to provide this assistance.]

b. That s. DOC 302.05, Wis. Adm. Code, relating to orientation during an inmate's A&E, must include a requirement that in addition to the current information communicated to the inmate at orientation, the inmate must also receive oral and written information describing the resources available to assist the inmate in achieving visitation with his or her children. The Working Group also ***recommends*** that a new provision be added to this section providing that at orientation, a social worker or other appropriate staff member must: (1) ascertain whether the inmate has children under the age of 18, and if so, ascertain whether the inmate desires visitation with one or more of those children; and (2) inquire whether there are any court-imposed restrictions on visits by the inmate's children.

3. Telephone Calls

Section DOC 309.56, Wis. Adm. Code, a copy of which is attached as Appendix 5, sets forth the DOC's rules relating to inmate telephone calls. Subsection (3) provides that each inmate must be permitted to make a minimum of one telephone call per month, but where resources permit, more than one telephone call may be allowed "and is encouraged."

The Working Group ***recommends*** that:

a. Section DOC 309.56 (3) be amended to provide that calls by inmates to their children should be permitted at least one time per week and that the DOC would have to designate one or more persons (e.g., the child's foster parent or parents or the child's relative who is caring for the child) who would be permitted to accept calls from the inmate and place the child on the telephone.

b. Language be added to s. DOC 309.56 specifying that inmates shall be encouraged to have telephone contact with their children and to telephone their children at least one time per week.

c. Section DOC 309.56 include a provision stating that if an inmate is in segregation status, his or her telephone privileges may be suspended, except that the inmate may not be prohibited from telephoning his or her child or children at least one time per week.

Current s. DOC 309.60, Wis. Adm. Code, requires each institution to make a written policy available to inmates that contains a specific procedure for requesting telephone calls and that sets time limits for the calls. The Working Group ***recommends*** that a provision be added to this section requiring each institution to make a written policy available to inmates that contains a specific procedure for arranging telephone calls between inmates and their children.

4. General Statement Relating to Communication Between Parent-Inmates and Their Children

The Working Group ***recommends*** that the following general statement relating to communication between inmate-parents and their children be placed in the DOC rules (e.g., at the beginning of ch. DOC 309):

> The department encourages communication between inmates and their children through visits, telephone calls and correspondence. Such communication fosters reintegration into the community and the maintenance of family ties. The department shall designate staff at each institution to facilitate communication between inmates and their children, unless such communication is prohibited by court order. Inmates may not be denied contact with their children as a form of discipline, or incident to discipline (e.g., placement in segregation), unless the inmate's misconduct is directly related to the communication with his or her child.

G. Information on Convicted Woman's Parental Status Prior to Sentencing

The Working Group ***recommends*** that in its presentence investigative report prior to sentencing, the DOC provide information to a sentencing judge regarding a woman's parental status so that that information may be considered in the sentencing process.

H. Development of a Mother-Infant Program

The Working Group ***recommends*** that:

1. The Special Committee recommend to the DOC's newly created Work Group on Women Offenders that it study the problem of incarcerated mothers and their infant children and obtain data on the effects on the mother and her newborn child of removing the child immediately from an incarcerated mother after the child's birth.

2. Based on the information and data obtained under item 1, above, the DOC develop a new system for dealing with women with infant children to ensure that, in appropriate cases, the mother and child are permitted a period of "bonding." Such a program could be similar to the Bedford Hills program in New York State for women with infants (see MEMO NO. 6 to the Special Committee and the attachments to that Memo for a description of the Bedford Hills program and other programs relating to mother-inmates and their infants).

DLS:rah:wu:kja;wu

Attachments

California Notice to Prisoner of Termination of Parental Rights Appearance of Prisoner in Court

DEERING'S CALIFORNIA CODES ANNOTATED

*** THIS SECTION IS CURRENT THROUGH THE 1992 SUPPLEMENT (1991 SESSION) ***

PENAL CODE
PART 3. Of Imprisonment and the Death Penalty
TITLE 1. Imprisonment of Male Prisoners in State Prisons
CHAPTER 3. Civil Rights of Prisoners
ARTICLE 2. Prisoners as Witnesses

Cal Pen Code @ 2625 (1992)

STATUS: CONSULT SLIP LAWS CITED BELOW FOR RECENT CHANGES TO THIS DOCUMENT
LEXSEE 1992 Cal ALS 163 -- See section 110.

@ 2625. Notice to prisoner of proceeding terminating parental rights; Temporary removal from prison and production before court

In any action brought under Section 232 of the Civil Code, and Section 366.26 of the Welfare and Institutions Code, where the action seeks to terminate the parental rights of any prisoner or any action brought under Section 300 of the Welfare and Institutions Code, where the action seeks to adjudicate the child of a prisoner a dependent child of the court, the superior court of the county in which the action is pending, or a judge thereof, shall order notice of any court proceeding regarding the action transmitted to the prisoner.

For the purposes of this section only, the term "prisoner" includes any individual in custody in a state prison, in the California Rehabilitation Center, or a county jail, or who is a ward of the Department of the Youth Authority or who, upon a verdict or finding that the individual was insane at the time of committing an offense, or mentally incompetent to be tried or adjudged to punishment, is confined in a state hospital for the care and treatment of the mentally disordered or in any other public or private treatment facility.

Service of notice shall be made pursuant to Section 235 of the Civil Code or Section 337 or 366.23 of the Welfare and Institutions Code, as appropriate.

Upon receipt by the court of a statement from the prisoner or his or her attorney indicating the prisoner's desire to be present during the court's

proceedings, the court shall issue an order for the temporary removal of the prisoner from the institution, and for the prisoner's production before the court. No proceeding may be held under Section 232 of the Civil Code or Section 366.26 of the Welfare and Institutions Code and no petition to adjudge the child of a prisoner a dependent child of the court pursuant to subdivision (a), (b), (c), (d), (e), (f), (i), or (j) of Section 300 of the Welfare and Institutions Code may be adjudicated without the physical presence of the prisoner or the prisoner's attorney, unless the court has before it a knowing waiver of the right of physical presence signed by the prisoner or an affidavit signed by the warden, superintendent or other person in charge of the institution, or his or her designated representative stating that the prisoner has, by express statement or action, indicated an intent not to appear at the proceeding.

In any other action in which a prisoner's parental or marital rights are subject to adjudication, an order for the prisoner's temporary removal from the institution and for the prisoner's production before the court may be made by the superior court of the county in which the action is pending, or by a judge thereof. A copy of the order shall be transmitted to the warden, superintendent, or other person in charge of the institution not less than 48 hours before the order is to be executed. The order shall be executed by the sheriff of the county in which it shall be made, whose duty it shall be to bring the prisoner before the proper court, to keep the prisoner safely, and when the prisoner's presence is no longer required, to return the prisoner to the institution from which he or she was taken; the expense of executing the order shall be a proper charge against and shall be paid by, the county in which the order shall be made.

The order shall be to the following effect:

County of -------- (as the case may be).

The people of the State of California to the warden of --------:

An order having been made this day by me, that A. B. be produced in this court as a party in the case of --------, you are commanded to deliver A. B. into the custody of -------- for the purpose of (recite purposes).

Dated this -------- day of --------, 19--.

When a prisoner is removed from the institution pursuant to this section, the prisoner shall remain in the constructive custody of the warden, superintendent, or other person in charge of the institution.

Section 48.38, Stats.

48.38 PERMANENCY PLANNING. (1) DEFINITIONS. In this section:

(a) "Agency" means the department, a county department or a licensed child welfare agency.

(b) "Permanency plan" means a plan designed to ensure that a child is reunified with his or her family whenever possible, or that the child quickly attains a placement or home providing long-term stability.

(2) PERMANENCY PLAN REQUIRED. Except as provided in sub. (3), for each child living in a foster home, group home, child-caring institution, secure detention facility or shelter care facility, the agency that placed the child or arranged the placement or the agency assigned primary responsibility for providing services to the child under s. 48.355 shall prepare a written permanency plan, if one of the following conditions exists:

(a) The child is being held in physical custody under s. 48.207, 48.208 or 48.209.

(b) The child is in the legal custody of the agency.

(c) The child is under supervision of an agency under s. 48.64 (2) or pursuant to a court order under s. 48.355.

(d) The child was placed under a voluntary agreement between the agency and the child's parent under s. 48.63 (1).

(e) The child is under the guardianship of the agency.

(f) The child's care is paid under s. 49.19.

(3) TIME. The agency shall file the permanency plan with the court within 60 days after the date on which the child was first held in physical custody or placed outside of his or her home under a court order, except under either of the following conditions:

(a) If the child is alleged to be delinquent and is being held in a secure detention facility, juvenile portion of a county jail or shelter care facility, and the agency intends to recommend that custody of the child be transferred to the department for placement in a secured correctional facility, the agency is not required to submit the permanency plan unless the court does not accept the agency's recommendation. If the court places the child in any facility outside of his or her home other than a secured correctional facility, the agency shall file the permanency plan with the court within 60 days after the date of disposition.

(b) If the child is held for less than 60 days in a secure detention facility, juvenile portion of a county jail or a shelter care facility, no permanency plan is required if the child is returned to his or her home within that period.

(4) CONTENTS OF PLAN. The permanency plan shall include a description of all of the following:

(a) The services offered and any service provided in an effort to prevent holding or placing the child outside of his or her home, and to make it possible for the child to return home.

(b) The basis for the decision to hold the child in custody or to place the child outside of his or her home.

(c) The location and type of facility in which the child is currently held or placed, and the location and type of facility in which the child will be placed.

(d) If the child is living more than 60 miles from his or her home, documentation that placement within 60 miles of the child's home is either unavailable or inappropriate.

(e) The appropriateness of the placement and of the services provided to meet the needs of the child and family, including a discussion of services that have been investigated and considered and are not available or likely to become available within a reasonable time to meet the needs of the child or, if available, why such services are not appropriate.

(f) The services that will be provided to the child, the child's family and the child's foster parent or operator of the facility where the child is living to carry out the dispositional order, including services planned to accomplish all of the following:

1. Ensure proper care and treatment of the child and promote stability in the placement.

2. Meet the child's physical, emotional, social, educational and vocational needs.

3. Improve the conditions of the parents' home to facilitate the return of the child to his or her home, or, if appropriate, obtain an alternative permanent placement for the child.

(g) The conditions, if any, upon which the child will be returned to his or her home, including any changes required in the parents' conduct, the child's conduct or the nature of the home.

(5) PLAN REVIEW. (a) Either the court or, if the court does not elect to do so, a panel consisting of at least 3 persons appointed by the agency that prepared the permanency plan shall review the permanency plan every 6 months from the date on which the child was first held in physical custody or placed outside of his or her home. At least one person on each panel shall be a person who is not employed by the agency that prepared the permanency plan and who is not responsible for providing services to the child or the parents of the child whose permanency plan is the subject of the review.

(b) The court or the agency shall notify the parents of the child, the child if he or she is 12 years of age or older and the child's foster parent or operator of the facility in which the child is living of the time and place of the review and of the fact that they may participate in the review. The notice shall be provided in writing not less than 10 days before the review and a copy shall be filed in the child's case record.

(c) The court or the panel shall determine each of the following:

1. The continuing necessity for and the appropriateness of the placement.

2. The extent of compliance with the permanency plan by the agency and any other service providers, the child's parents and the child.

3. The extent of any efforts to involve appropriate service providers in addition to the agency's staff in planning to meet the special needs of the child and the child's parents.

4. The progress toward eliminating the causes for the child's placement outside of his or her home and toward returning the child to his or her home or obtaining a permanent placement for the child.

5. The date by which it is likely that the child will be returned to his or her home, placed for adoption, placed under legal guardianship or otherwise permanently placed.

6. If the child has been placed outside of his or her home for 2 years or more, the appropriateness of the permanency plan and the circumstances which prevent the child from:

a. Being returned to his or her home;

b. Having a petition for the involuntary termination of parental rights filed on behalf of the child;

c. Being placed for adoption; or

d. Being placed in sustaining care.

7. Whether reasonable efforts were made by the agency to make it possible for the child to return to his or her home.

(d) Notwithstanding s. 48.78 (2) (a), a person appointed to a review panel who is not an employe of an agency may have access to the child's records for the purpose of participating in the review. A person permitted access to a child's records under this paragraph may not disclose any information from the records to any other person.

(e) Within 30 days, the agency shall prepare a written summary of the determinations under par. (c) and shall provide a copy to the court that entered the order, the child or the child's counsel or guardian ad litem, the child's parent or guardian and the child's foster parent or operator of the facility where the child is living.

(f) If the summary prepared under par. (e) indicates that the review panel made recommendations that conflict with the court order or that provide for additional services not specified in the court order, the agency primarily responsible for providing services to the child shall request a revision of the court order.

(6) RULES. The department of health and social services shall promulgate rules establishing the following:

(a) Procedures for conducting permanency plan reviews.

(b) Requirements for training review panels.

(c) Standards for reasonable efforts to prevent placement of children outside of their homes and to make it possible for children to return to their homes if they have been placed outside of their homes.

(d) The format for permanency plans and review panel reports.

(e) Standards and guidelines for decisions regarding the placement of children.

Section 48.415, Stats.

48.415 GROUNDS FOR INVOLUNTARY TERMINATION OF PARENTAL RIGHTS. At the fact-finding hearing the court or jury may make a finding that grounds exist for the termination of parental rights. Grounds for termination of parental rights shall be one of the following:

(1) ABANDONMENT. (a) Abandonment may be established by a showing 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 court order containing the notice required by s. 48.356 (2) and the parent has failed to visit or communicate with the child for a period of 6 months or longer; or

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.

(b) Incidental contact between parent and child shall not preclude the court from finding that the parent has failed to visit or communicate with the child under par. (a) 2 or 3. The time periods under par. (a) 2 or 3 shall not include any periods during which the parent has been prohibited by judicial order from visiting or communicating with the child.

(c) A showing under par. (a) that abandonment has occurred may be rebutted by other evidence that the parent has not disassociated himself or herself from the child or relinquished responsibility for the child's care and well-being.

(2) CONTINUING NEED OF PROTECTION OR SERVICES. Continuing need of protection or services may be established by a showing of all of the following:

(a) That the child has been adjudged to be in need of protection or services and placed, or continued in a placement, outside his or her home pursuant to one or more court orders under s. 48.345, 48.357, 48.363 or 48.365 containing the notice required by s. 48.356 (2).

(b) That the agency responsible for the care of the child and the family has made a diligent effort to provide the services ordered by the court.

(c) That the child has been outside the home for a cumulative total period of one year or longer pursuant to such orders, the parent has substantially neglected, wilfully refused or been unable to meet the conditions established for the eturn of the child to the home and there is a substantial likelihood that the parent will not meet these conditions in the future.

(3) CONTINUING PARENTAL DISABILITY. Continuing parental disability may be established by a showing that:

(a) The parent is presently, and for a cumulative total period of at least 2 years within the 5 years immediately prior to the filing of the petition has been, an inpatient at one or more hospitals as defined in s. 50.33 (2) (a), (b) or (c), licensed treatment facilities as defined in s. 51.01 (2) or state treatment facilities as defined in s. 51.01 (15) on account of mental illness as defined in s. 51.01 (13) (a) or (b) or developmental disability as defined in s. 55.01 (2) or (5);

(b) The condition of the parent is likely to continue indefinitely; and

(c) The child is not being provided with adequate care by a relative who has legal custody of the child, or by a parent or a guardian.

(4) CONTINUING DENIAL OF PERIODS OF PHYSICAL PLACEMENT. Continuing denial of periods of physical placement may be established by a showing that:

(a) The parent has been denied periods of physical placement by court order in an action affecting the family; and

(b) At least 1 year has elapsed since the order denying periods of physical placement was issued and the court has not subsequently modified its order so as to permit periods of physical placement.

(5) CHILD ABUSE. Child abuse may be established by a showing that the parent has exhibited a pattern of abusive behavior which is a substantial threat to the health of the child who is the subject of the petition and a showing of either of the following:

(a) That the parent has caused death or injury to a child or children resulting in a felony conviction.

(b) That, on more than one occasion, a child has been removed from the parent's home by the court under s. 48.345 after an adjudication that the child is in need of protection or services and a finding by the court that sexual or physical abuse was inflicted by the parent.

(6) FAILURE TO ASSUME PARENTAL RESPONSIBILITY. (a) Failure to assume parental responsibility may be established by a showing that a child is a nonmarital child who has not been adopted or whose parents have not subsequently intermarried under s. 767.60, that paternity was not adjudicated prior to the filing of the petition for termination of parental rights and:

1. The person or persons who may be the father of the child have been given notice under s. 48.42 but have failed to appear or otherwise submit to the jurisdiction of the court and that such person or persons have never had a substantial parental relationship with the child; or

2. That although paternity to the child has been adjudicated under s. 48.423, the father did not establish a substantial parental relationship with the child prior to the filing of a petition for termination of parental rights although the father had reason to believe that he was the father of the child and has not assumed parental responsibility for the child.

(b) In this subsection, "substantial parental relationship" means the acceptance and exercise of significant responsibility for the daily supervision, education, protection and care of the child. In evaluating whether the person has had a substantial parental relationship with the child, the court may consider such factors, including, but not limited to, whether the person has ever expressed concern for or interest in the support, care or well-being of the child or the mother during her pregnancy and whether the person has neglected or refused to provide care or support.

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

Sections DOC 309.10 to 309.17, Wis. Adm. Code

DOC 309.10 Visitation. The department of corrections shall encourage and accommodate the visitation of inmates by family members, friends, and others who provide support to inmates. The successful adjustment of an inmate to a correctional institution and the ultimate successful reintegration of an inmate into the community depend upon the maintenance of family and community ties. Personal contact through visits greatly assists in the maintenance of these ties. Visitation also enhances the exchange of ideas and information between inmates and the public, and many important values are thereby served.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81.

DOC 309.11 Conduct during visits. (1) Visitors are required to obey the administrative rules and institution policies and procedures regarding visitation. Visitors and inmates shall avoid loud talking and boisterous behavior. Parents are responsible for supervising their children.

(2) Inmates and their visitors are permitted to embrace and kiss at the beginning and end of each visit. Inmates may hold their children. Inmates should otherwise conduct themselves in a discreet manner.

(3) Inmates and visitors may not pass or exchange items during a visit unless authorized to do so.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81.

DOC 309.12 Visiting list. (1) Each inmate shall have an approved visitors' list.

(2) (a) Except as otherwise provided under this section, only visitors known to the inmate and on the inmate's approved list shall be permitted to visit the inmate. Each inmate shall be permitted 12 adult visitors on the visiting list, regardless of relationship.

(b) Children of the inmate and approved visitors who have not attained their 18th birthday may visit and shall not be counted against the 12 visitors permitted.

(c) Spouses of immediate family members, as defined in sub. (10), who are on the visiting list shall be listed on the visiting list but shall not be counted against the 12 visitors permitted.

(d) With the approval of the superintendent or designee, an inmate may have more than 12 visitors on the visiting list if all such visitors are immediate family members as defined in sub. (10).

(3) An inmate's approved visiting list shall show the name and address of all visitors, relationship, date of birth, the date the person was approved for visiting, and any denial of visitation privileges.

(4) Except as provided under sub. (8), a person may be approved for visiting according to the following requirements:

(a) The inmate shall submit a written request on the appropriate form asking that a person be added to the visiting list.

(b) The appropriate form shall then be sent to the prospective visitor for completion and returned to the institution.

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(c) Upon return of the form under par. (b), it will be evaluated by the designated staff member. A field investigation may be requested if further information is necessary.

(d) Minors shall be required to have written approval of their parent or guardian to visit.

(e) In determining whether a person should be approved for visiting, a proposed visitor may be disapproved only if one or more of the following criteria exist:

1. The requesting inmate has provided falsified, incorrect, or incomplete information under par. (a).

2. The proposed visitor has provided falsified, incorrect, or incomplete information on the form under par. (b) or the questionnaire is not returned in 30 days.

3. There is no signed and dated approval of parent or guardian for a proposed visitor under 18 years of age.

4. There are reasonable grounds to believe the visitor has attempted to bring contraband into any correctional institution, including the county jail.

5. The inmate has already reached the limit of 12 visitors permitted under sub. (2).

6. There are reasonable grounds to believe the visitor's presence may pose a direct threat to the safety and security of inmates and staff.

7. The inmate's reintegration into the community would be hindered because of prior criminal involvement with the proposed visitor or because of the proposed visitor's poor adjustment or reputation in the community. This rule is not intended to interfere with inmates' and visitors' pursuit of joint legal interests. Sources specifying prior criminal involvement or poor adjustment and reputation should be listed.

8. A proposed visitor may be disapproved if he or she is a mandatory release and discretionary parolee, probationer, or ex-offender who has not been released or under supervision for at least 6 months before approval unless the proposed visitor is an immediate family member as defined under sub. (10). In all cases, support for approval should come from the supervising agent or agencies involved.

(5) Visiting privileges shall not be denied because of the visitor's marital status. Approved visitors of either sex shall be permitted to visit inmates whether the married visitor's spouse accompanies the visitor or has approved of the visit.

(6) No changes shall be made in an inmate's visiting list for a minimum of 6 months from the date of approval.

(7) Visitors who have not attained their 18th birthday shall be accompanied by an adult who is on the approved list, unless the visitor is the spouse of the inmate.

(8) If a potential visitor is disapproved for visiting, the inmate and the visitor shall be informed of the reasons for the disapproval in writing. The proposed visitor can object to this decision by appealing to the su-

perintendent. A record of the disapproval shall be kept. An inmate may appeal a disapproval through the inmate complaint review system.

(9) Immediate family members as defined under sub. (10) shall be routinely approved for visiting if requested by the inmate to be added to the visiting list of 12 visitors.

(10) Immediate family members are the inmate's natural, adoptive, or stepparents, children, grandchildren, siblings, grandparents, spouse, foster parents, and the spouses of each.

(11) The superintendent may permit occasional visits by family members not on the visiting list who live a great distance from the institution so that frequent visiting is impossible. The superintendent may require notification in advance of such a visit.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81.

DOC 309.13 Regulation of visits for inmates in the general population. (1) Each institution shall set forth in writing and make available to inmates and visitors policies and procedures providing for:

(a) The time for visits;

(b) Weekday, weekend, and night visits;

(c) The duration of visits;

(d) The number of visits;

(e) The number of visitors permitted each visit;

(f) Immediate termination of a visit for a violation of these rules;

(g) Items that may be brought into the institution during a visit; and

(h) The place of visits.

(2) These policies and procedures shall be approved by the administrator of the division of adult institutions.

(3) Each institution shall permit visits on weekends or some weekday nights, or both.

(4) Each institution shall permit visits on weekdays if consistent with scheduled activities and available resources.

(5) Each institution shall permit each inmate in the general population the opportunity to be visited at least 9 hours per week in visits of such duration as the institution specifies pursuant to sub. (1).

(6) Institutions shall require visitors to provide identification before permitting the visit.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81.

DOC 309.14 Special visits. (1) Public officials and members of private and public organizations who provide services to inmates may visit institutions with the approval of the superintendent. Arrangements for all such visits shall be made in advance with the superintendent to minimize interference with normal operations and activities. Such visits may be limited in duration and restricted to certain areas of the institution by the superintendent for security reasons. A person who has not obtained

his or her 18th birthday may not participate in any group visit except with the approval of the superintendent.

(2) Attorneys and clergy shall be permitted to visit their clients to give professional services during institution business hours on weekdays. An attorney's aide and law students shall be permitted the same visitation privileges only if an attorney has informed the institution in writing that the aide and law students will visit. Attorneys' aides, law students, and clergy must give advance notice of their visit, when feasible. Visiting attorneys, their aides, and clergy shall not count against the allowable number of visitors or hours of visits of the inmate. In emergencies, attorney and clergy visits may be permitted outside business hours with the superintendent's approval.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81.

DOC 309.15 Interinstitution visits of family members. (1) Except in the correctional center system and metro centers, visits between spouses and between parents and their children who are inmates of different adult state correctional institutions shall be permitted, subject to the following limitations:

(a) At the time of the visit, each inmate shall be in the general population and not subject to any disciplinary restriction.

(b) A visit each quarter of a year shall be permitted between married inmates, but such visit must be conducted in an institution of the same or greater security as the inmate with the highest security classification.

(c) One visit per calendar year shall be permitted between parents and children provided that such a visit is conducted in an institution of the same or greater security as the inmate with the highest security classification.

(d) Visits must be approved by staff members in each institution. The criteria for approval are the same as for other visitors, as set forth under s. DOC 309.13.

(2) In the correctional center system and metro centers, visits between spouses and between parents and their children who are inmates of different adult state correctional institutions are permitted, consistent with available resources. In scheduling such visits, priority should be given to inmates serving long sentences.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81.

DOC 309.16 Visits to inmates in segregation. (1) Inmates in segregation shall be permitted visits in accordance with this section. Institutions may increase visiting time for inmates in segregation, but shall provide an opportunity for not less than the following:

Segregated status	*Minimum visiting period*
Temporary lockup	One hour per weekday and one hour per weekend within the visiting limit
Observation	One hour per weekday and one hour per weekend within the visiting limit, with the approval of the superintendent
Voluntary confinement	Two hours per month for the first 200 days and four hours per month thereafter

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Adjustment segregation	One hour per week
Program segregation	Two hours per month for the first 200 days and four hours per month thereafter
Control segregation	None
Administrative confinement	Three two-hour visits per month

(2) Inmates in temporary lockup, observation, voluntary confinement, adjustment segregation, and program segregation may designate 3 people from their visiting list who may visit them while in segregation. Inmates in administrative confinement may receive visits from any of the 12 visitors on their visiting list while in segregation. People who have not attained the age of 18, except the children of the inmate, must have the advance approval of the security director to visit inmates in any of the above statuses.

(3) Visits to inmates in segregated status may be limited if the superintendent determines that the visit poses an immediate threat to the inmate or another.

(4) Each institution shall make written policies and procedures relating to visits to inmates in segregation providing for:

(a) The time for visits;

(b) Weekday, weekend, and night visits;

(c) The duration of visits;

(d) The number of visits;

(e) The number of visitors permitted each visit;

(f) Immediate termination of a visit for a violation of these rules;

(g) Items that may be brought into an institution during a visit; and

(h) The place of visits.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81.

DOC 309.17 Suspension of visiting privileges. (1) A visit may be terminated and the adjustment committee or security director may suspend visiting privileges for violations of administrative rules or institution policies and procedures relating to visiting.

(2) If an inmate is alleged to have violated these rules or institution policies or procedures during a visit, a conduct report shall be written and disposed of in accordance with the rules providing for disciplinary procedures for major offenses. For such a violation, the penalty may include suspension for up to one year or termination of visiting privileges with a specific visitor and any other penalty provided in the disciplinary rules, subject to the following:

(a) A suspension of 6 months or less may be imposed by the adjustment committee and appealed to the superintendent.

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(b) A suspension of more than 6 months may be imposed by the adjustment committee and may be appealed to the superintendent and thereafter to the division administrator.

(c) With the approval of the administrator of the division of adult institutions, visiting privileges may be terminated. When visiting privileges have been terminated, there may be a reapplication for visiting to the security director no less than one year after the termination occurs and every 90 days thereafter.

(3) If during a visit a visitor is alleged to have violated these sections or institution policies and procedures relating to visits, the security director shall investigate and decide if such a violation occurred. If such a violation occurred, the security director may suspend or terminate visiting privileges with that visitor. Suspension of visiting privileges may be appealed in accordance with sub (2). The visitor and inmate shall be informed of the suspension or termination promptly in writing and the reasons for it.

Section DOC 309.56, Wis. Adm. Code

DOC 309.56 Inmate telephone calls. (1) The department of corrections shall encourage communication between inmates and their families, friends, government officials, courts, and people concerned with the welfare of inmates. Communication fosters reintegration into the community and the maintenance of family ties. It helps to motivate inmates and thus contributes to morale and to the security of inmates and staff.

(2) Inmates may be permitted to phone individuals on the approved visiting list as provided under s. DOC 309.12 and others as provided in this chapter.

(3) Each inmate shall be permitted to make a minimum of one telephone call per month. Where resources permit, more than one telephone call may be allowed and is encouraged.

(a) Telephone calls not made during the month may not be banked for use at a later date.

(b) The inmate may be prohibited from calling if in segregated status, but may be permitted to make calls under s. DOC 309.57 or 309.58 (2).

(4) Long distance calls shall be made collect unless payment from the inmate's general account is approved.

(5) Calls shall not exceed 6 minutes in duration, without permission.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81.

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