



2011 ASSEMBLY BILL 396

November 23, 2011 – Introduced by Representatives KOYENGA, TURNER, MILROY, SPANBAUER, JACQUE, THIESFELDT, BALLWEG, STROEBEL, CRAIG, BROOKS, DOYLE, TOLES, RIVARD, GRIGSBY, A. OTT, MOLEPSKE JR, YOUNG and ENDSLEY, cosponsored by Senators LAZICH, OLSEN, GROTHMAN, HOLPERIN and GALLOWAY. Referred to Committee on Children and Families.

1 **AN ACT to amend** 48.195 (1), 48.195 (2) (a), 48.195 (2) (b), 48.195 (3) (a), 48.195
2 (4) (b), 48.355 (2d) (b) 5. and 48.415 (1m) of the statutes; **relating to:**
3 relinquishing custody of a newborn child.

Analysis by the Legislative Reference Bureau

Under current law, a child whom a law enforcement officer, emergency medical technician, or hospital staff member reasonably believes to be 72 hours old or younger (newborn child) may be taken into custody under circumstances in which a parent of the newborn child relinquishes custody of the newborn child to the law enforcement officer, emergency medical technician, or hospital staff member and does not express an intent to return for the newborn child (commonly referred to as the “safe haven law”). A law enforcement officer, emergency medical technician, or hospital staff member who takes a newborn child into custody under the safe haven law must take any action necessary to protect the health and safety of the newborn child and, within 24 hours after taking the newborn child into custody must deliver the newborn child to the intake worker of the court assigned to exercise jurisdiction under the Children’s Code.

This bill permits a parent to relinquish custody of a child *30 days* old or younger under the safe haven law. The bill also permits a health care clinic staff member to take a child into custody under that law.

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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:

1 **SECTION 1.** 48.195 (1) of the statutes is amended to read:

2 48.195 (1) **TAKING CHILD INTO CUSTODY.** In addition to being taken into custody
3 under s. 48.19, a child whom a law enforcement officer, emergency medical
4 technician, or hospital or health care clinic staff member reasonably believes to be
5 ~~72 hours~~ 30 days old or younger may be taken into custody under circumstances in
6 which a parent of the child relinquishes custody of the child to the law enforcement
7 officer, emergency medical technician, or hospital or health care clinic staff member
8 and does not express an intent to return for the child. If a parent who wishes to
9 relinquish custody of his or her child under this subsection is unable to travel to a
10 sheriff's office, police station, fire station, hospital, health care clinic, or other place
11 where a law enforcement officer, emergency medical technician, or hospital or health
12 care clinic staff member is located, the parent may dial the telephone number "911"
13 or, in an area in which the telephone number "911" is not available, the number for
14 an emergency medical service provider, and the person receiving the call shall
15 dispatch a law enforcement officer or emergency medical technician to meet the
16 parent and take the child into custody. A law enforcement officer, emergency medical
17 technician, or hospital or health care clinic staff member who takes a child into
18 custody under this subsection shall take any action necessary to protect the health
19 and safety of the child, shall, within 24 hours after taking the child into custody,
20 deliver the child to the intake worker under s. 48.20, and shall, within 5 days after
21 taking the child into custody, file a birth certificate for the child under s. 69.14 (3).

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1 **SECTION 2.** 48.195 (2) (a) of the statutes is amended to read:

2 48.195 (2) (a) Except as provided in this paragraph, a parent who relinquishes
3 custody of a child under sub. (1) and any person who assists the parent in that
4 relinquishment have the right to remain anonymous. The exercise of that right shall
5 not affect the manner in which a law enforcement officer, emergency medical
6 technician, or hospital or health care clinic staff member performs his or her duties
7 under this section. No person may induce or coerce or attempt to induce or coerce a
8 parent or person assisting a parent who wishes to remain anonymous into revealing
9 his or her identity, unless the person has reasonable cause to suspect that the child
10 has been the victim of abuse or neglect or that the person assisting the parent is
11 coercing the parent into relinquishing custody of the child.

12 **SECTION 3.** 48.195 (2) (b) of the statutes is amended to read:

13 48.195 (2) (b) A parent who relinquishes custody of a child under sub. (1) and
14 any person who assists the parent in that relinquishment may leave the presence of
15 the law enforcement officer, emergency medical technician, or hospital or health care
16 clinic staff member who took custody of the child at any time, and no person may
17 follow or pursue the parent or person assisting the parent, unless the person has
18 reasonable cause to suspect that the child has been the victim of abuse or neglect or
19 that the person assisting the parent has coerced the parent into relinquishing
20 custody of the child.

21 **SECTION 4.** 48.195 (3) (a) of the statutes is amended to read:

22 48.195 (3) (a) Subject to par. (b), a law enforcement officer, emergency medical
23 technician, or hospital or health care clinic staff member who takes a child into
24 custody under sub. (1) shall make available to the parent who relinquishes custody

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1 of the child the maternal and child health toll-free telephone number maintained by
2 the department under 42 USC 705 (a) (5) (E).

3 **SECTION 5.** 48.195 (4) (b) of the statutes is amended to read:

4 48.195 (4) (b) Any law enforcement officer, emergency medical technician, or
5 hospital or health care clinic staff member who takes a child into custody under sub.
6 (1) is immune from any civil liability to the child's parents, or any criminal liability
7 for any good faith act or omission occurring solely in connection with the act of
8 receiving custody of the child from the child's parents, but is not immune from any
9 civil or criminal liability for any act or omission occurring in subsequently providing
10 care for the child.

11 **SECTION 6.** 48.355 (2d) (b) 5. of the statutes is amended to read:

12 48.355 (2d) (b) 5. That the parent has been found under s. 48.13 (2m) to have
13 relinquished custody of the child under s. 48.195 (1) when the child was ~~72 hours~~ 30
14 days old or younger, as evidenced by a final order of a court of competent jurisdiction
15 making that finding.

16 **SECTION 7.** 48.415 (1m) of the statutes is amended to read:

17 48.415 (1m) RELINQUISHMENT. Relinquishment, which shall be established by
18 proving that a court of competent jurisdiction has found under s. 48.13 (2m) that the
19 parent has relinquished custody of the child under s. 48.195 (1) when the child was
20 ~~72 hours~~ 30 days old or younger.

21 **SECTION 8. Initial applicability.**

22 (1) RELINQUISHMENT OF NEWBORN CHILD. This act first applies to a child whose
23 custody is relinquished, as described in section 48.195 (1) of the statutes, as affected
24 by this act, on the effective date of this subsection.

25

(END)