



2013 SENATE BILL 532

January 30, 2014 – Introduced by Senators FARROW, PETROWSKI, LASSA and HARRIS, cosponsored by Representatives LOUDENBECK, KRUG, BIES, JACQUE, KLEEFISCH, SARGENT and BALLWEG. Referred to Committee on Health and Human Services.

1 **AN ACT** *to renumber* 48.58 (1); *to renumber and amend* 48.63 (1); *to amend*
2 48.028 (5) (a), 48.38 (2) (d), 48.38 (4) (d) 1., 48.57 (3n) (am) 6. c., 48.615 (1) (b),
3 48.64 (1), 48.64 (1m), 48.64 (1r), 48.64 (2), 48.979 (1) (c), 48.979 (2), 253.10 (3)
4 (c) 2. c., 938.22 (2) (c) and 938.38 (2) (d); and *to create* 48.58 (5) and 48.63 (1)
5 (b) of the statutes; **relating to:** placement of a child in a shelter care facility
6 under a voluntary agreement.

Analysis by the Legislative Reference Bureau

Under current law, a child who has been taken into custody under the Children's Code or the Juvenile Justice Code, who has been ordered by the court assigned to exercise jurisdiction under the Children's Code and the Juvenile Justice Code to be held in temporary physical custody, or who is in need of a transitional placement when emergency conditions necessitate an immediate change in placement may be held in a shelter care facility, which is a nonsecure place of temporary care and physical custody for children licensed by the Department of Children and Families (DCF).

This bill permits a child to be placed in a shelter care facility under a voluntary agreement for not more than 20 days. Specifically, under the bill, a child's parent, guardian, or Indian custodian, DCF, the Department of Corrections (DOC), a county department of human services or social services (county department), or a child welfare agency licensed to place children in shelter care facilities, may place the child

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or negotiate or act as intermediary for the placement of the child in a shelter care facility that DCF has approved for use for such voluntary placements. A shelter care facility placement under a voluntary agreement may not exceed 20 days from the date on which the child was placed in the shelter care facility under the voluntary agreement and may not be extended.

Under the bill, a person licensed to operate a shelter care facility may request DCF to permit the shelter care facility to be used for voluntary placements and DCF must review the request based on the needs of children in the area served by the shelter care facility and the services provided by the shelter care facility. If DCF determines that those services would meet those needs, DCF may approve the request.

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.** 48.028 (5) (a) of the statutes is amended to read:

2 48.028 (5) (a) *Out-of-home care placement.* A voluntary consent by a parent
3 or Indian custodian to an out-of-home care placement of an Indian child under s.
4 48.63 (1) (a) or (b) or (5) (b) or a delegation of powers by a parent regarding the care
5 and custody of an Indian child under s. 48.979 is not valid unless the consent or
6 delegation is executed in writing, recorded before a judge, and accompanied by a
7 written certification by the judge that the terms and consequences of the consent or
8 delegation were fully explained in detail to and were fully understood by the parent
9 or Indian custodian. The judge shall also certify that the parent or Indian custodian
10 fully understood the explanation in English or that the explanation was interpreted
11 into a language that the parent or Indian custodian understood. Any consent or
12 delegation of powers given under this paragraph prior to or within 10 days after the
13 birth of the Indian child is not valid. A parent or Indian custodian who has executed
14 a consent or delegation of powers under this paragraph may withdraw the consent
15 or delegation for any reason at any time, and the Indian child shall be returned to

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1 the parent or Indian custodian. A parent or Indian custodian who has executed a
2 consent or delegation of powers under this paragraph may also move to invalidate
3 the out-of-home care placement or delegation of powers under sub. (6).

4 **SECTION 2.** 48.38 (2) (d) of the statutes is amended to read:

5 48.38 (2) (d) The child was placed under a voluntary agreement between the
6 agency and the child's parent under s. 48.63 (1) (a) or (5) (b).

7 **SECTION 3.** 48.38 (4) (d) 1. of the statutes is amended to read:

8 48.38 (4) (d) 1. That the placement is made pursuant to a voluntary agreement
9 under s. 48.63 (1) (a).

10 **SECTION 4.** 48.57 (3n) (am) 6. c. of the statutes is amended to read:

11 48.57 (3n) (am) 6. c. The date on which the child is placed outside the long-term
12 kinship care relative's home under a court order or under a voluntary agreement
13 under s. 48.63 (1) (a) or (b) or (5) (b).

14 **SECTION 5.** 48.58 (1) of the statutes is renumbered 48.58.

15 **SECTION 6.** 48.58 (5) of the statutes is created to read:

16 48.58 (5) Provide temporary shelter care for children placed in the county
17 children's home under a voluntary agreement under s. 48.63 (1) (b).

18 **SECTION 7.** 48.615 (1) (b) of the statutes is amended to read:

19 48.615 (1) (b) Except as provided in par. (e), before the department may issue
20 a license under s. 48.60 (1) to a child welfare agency that places children in licensed
21 foster homes, licensed group homes, shelter care facilities approved under s. 938.22
22 (2) (c), and in the homes of guardians under s. 48.977 (2), the child welfare agency
23 must pay to the department a biennial fee of \$254.10.

24 **SECTION 8.** 48.63 (1) of the statutes is renumbered 48.63 (1) (a) and amended
25 to read:

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1 48.63 (1) (a) Acting under court order or voluntary agreement, the child's
2 parent, guardian, or Indian custodian, or the department, the department of
3 corrections, a county department under s. 46.215, 46.22, or 46.23, or a child welfare
4 agency licensed to place children in foster homes or group homes may place a child
5 or negotiate or act as intermediary for the placement of a child in a foster home or
6 group home. Voluntary agreements under this ~~subsection~~ paragraph may not be
7 used for placements in facilities other than foster homes or group homes and may not
8 be extended. A foster home placement under a voluntary agreement may not exceed
9 180 days from the date on which the child was removed from the home under the
10 voluntary agreement. A group home placement under a voluntary agreement may
11 not exceed 15 days from the date on which the child was removed from the home
12 under the voluntary agreement, except as provided in sub. (5). These periods do not
13 apply to placements made under s. 48.345, 938.183, 938.34, or 938.345.

14 (c) Voluntary agreements may be made only under ~~this subsection and~~ par. (a)
15 or (b) or sub. (5) (b) ~~and~~, shall be in writing, and shall specifically state that the
16 agreement may be terminated at any time by the parent, guardian, or Indian
17 custodian or by the child if the child's consent to the agreement is required. In the
18 case of an Indian child who is placed under ~~this subsection and~~ par. (a) or (b) by the
19 voluntary agreement of the Indian child's parent or Indian custodian, the voluntary
20 consent of the parent or Indian custodian to the placement shall be given as provided
21 in s. 48.028 (5) (a). The child's consent to ~~the~~ an agreement under par. (a) or (b) is
22 required whenever the child is 12 years of age or older.

23 (d) If a county department, the department, or the department of corrections
24 places a child or negotiates or acts as intermediary for the placement of a child under
25 ~~this subsection and~~ par. (a) or (b), the voluntary agreement shall also specifically

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1 state that the county department, department, or department of corrections has
2 placement and care responsibility for the child as required under 42 USC 672 (a) (2)
3 and has primary responsibility for providing services to the child.

4 **SECTION 9.** 48.63 (1) (b) of the statutes is created to read:

5 48.63 (1) (b) Acting under a voluntary agreement, a child's parent, guardian,
6 or Indian custodian, the department, the department of corrections, a county
7 department under s. 46.215, 46.22, or 46.23, or a child welfare agency licensed to
8 place children in shelter care facilities, may place the child or negotiate or act as
9 intermediary for the placement of the child in a shelter care facility that the
10 department has approved under s. 938.22 (2) (c) for use for placements under this
11 paragraph. A voluntary agreement under this paragraph may not be used for
12 placement in a facility other than an approved shelter care facility. A shelter care
13 facility placement under a voluntary agreement may not exceed 20 days from the
14 date on which the child was placed in the shelter care facility under the voluntary
15 agreement and may not be extended.

16 **SECTION 10.** 48.64 (1) of the statutes is amended to read:

17 48.64 (1) DEFINITION. In this section, "agency" means the department, the
18 department of corrections, a county department under s. 46.215, 46.22, or 46.23, or
19 a licensed child welfare agency authorized to place children in foster homes or group
20 homes, or shelter care facilities approved under s. 938.22 (2) (c) or in the homes of
21 relatives other than a parent.

22 **SECTION 11.** 48.64 (1m) of the statutes is amended to read:

23 48.64 (1m) OUT-OF-HOME CARE AGREEMENTS. If an agency places a child in a
24 foster home or group home or in the home of a relative other than a parent under a
25 court order or places a child in a foster home or group home, or shelter care facility

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1 approved under s. 938.22 (2) (c) under a voluntary agreement under s. 48.63, the
2 agency shall enter into a written agreement with the head of the home or facility.
3 The agreement shall provide that the agency shall have access at all times to the
4 child and the home or facility, and that the child will be released to the agency
5 whenever, in the opinion of the agency placing the child or the department, the best
6 interests of the child require release to the agency. If a child has been in a foster home
7 or group home or in the home of a relative other than a parent for 6 months or more,
8 the agency shall give the head of the home written notice of intent to remove the
9 child, stating the reasons for the removal. The child may not be removed from a foster
10 home, group home, or home of a relative other than a parent before completion of the
11 hearing under sub. (4) (a) or (c), if requested, or 30 days after the receipt of the notice,
12 whichever is later, unless the safety of the child requires it or, in a case in which the
13 reason for removal is to place the child for adoption under s. 48.833, unless all of the
14 persons who have the right to request a hearing under sub. (4) (a) or (c) sign written
15 waivers of objection to the proposed removal. If the safety of the child requires earlier
16 removal, s. 48.19 applies. If an agency removes a child from an adoptive placement,
17 the head of the home shall have no claim against the placing agency for the expense
18 of care, clothing, or medical treatment.

19 **SECTION 12.** 48.64 (1r) of the statutes is amended to read:

20 48.64 (1r) NOTIFICATION OF SCHOOL DISTRICT. When an agency places a
21 school-age child in a foster home ~~or~~, group home, or shelter care facility approved
22 under s. 938.22 (2) (c) or in the home of a relative other than a parent, the agency shall
23 notify the clerk of the school district in which the foster home, group home, shelter
24 care facility, or home of the relative is located that a school-age child has been placed

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1 in a foster home, group home, shelter care facility, or home of a relative in the school
2 district.

3 **SECTION 13.** 48.64 (2) of the statutes is amended to read:

4 48.64 (2) SUPERVISION OF OUT-OF-HOME CARE PLACEMENTS. Every child who is
5 placed in a foster home ~~or~~, group home, or shelter care facility approved under s.
6 938.22 (2) (c) shall be under the supervision of an agency. Every child who is placed
7 in the home of a relative other than a parent under a court order shall be under the
8 supervision of an agency.

9 **SECTION 14.** 48.979 (1) (c) of the statutes is amended to read:

10 48.979 (1) (c) A parent who has legal custody of a child may not place the child
11 in a foster home, group home, shelter care facility, or inpatient treatment facility by
12 means of a delegation of powers under par. (a). Those placements may be made only
13 by means of a court order or as provided in s. 48.63 or 51.13.

14 **SECTION 15.** 48.979 (2) of the statutes is amended to read:

15 48.979 (2) A power of attorney complies with sub. (1) (a) if the power of attorney
16 substantially conforms to the following form:

17 **POWER OF ATTORNEY**

18 **DELEGATING PARENTAL POWER**

19 AUTHORIZED BY s. 48.979, Wis. Stats.

20 NAME(S) OF CHILD(REN)

21 This power of attorney is for the purpose of providing for the care and custody
22 of:

23 Name, address, and date of birth of child

24 Name, address, and date of birth of child

25 Name, address, and date of birth of child

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1 DELEGATION OF POWER TO AGENT

2 I, (name and address of parent), state that I have legal custody of the
3 child(ren) named above. (*Only a parent who has legal custody may use this form.*)
4 *A parent may not use this form to delegate parental powers regarding a child who is*
5 *subject to the jurisdiction of the juvenile court under s. 48.13, 48.14, 938.12, 938.13,*
6 *or 938.14, Wis. Stats.*

7 I delegate my parental power to:

8 Name of agent

9 Agent's address

10 Agent's telephone number(s)

11 Agent's e-mail address

12 Relationship of agent to child(ren)

13 The parental power I am delegating is as follows:

14 FULL

15 (*Check if you want to delegate full parental power regarding the care and*
16 *custody of the child(ren) named above.*)

17 Full parental power regarding the care and custody of the child(ren) named
18 above

19 PARTIAL

20 (*Check each subject over which you want to delegate your parental power*
21 *regarding the child(ren) named above.*)

22 The power to consent to all health care; or

23 The power to consent to only the following health care:

24 Ordinary or routine health care, excluding major surgical procedures,
25 extraordinary procedures, and experimental treatment

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- 1 Emergency blood transfusion
- 2 Dental care
- 3 Disclosure of health information about the child(ren)
- 4 The power to consent to educational and vocational services
- 5 The power to consent to the employment of the child(ren)
- 6 The power to consent to the disclosure of confidential information, other
- 7 than health information, about the child(ren)
- 8 The power to provide for the care and custody of the child(ren)
- 9 The power to consent to the child(ren) obtaining a motor vehicle operator's
- 10 license
- 11 The power to travel with the child(ren) outside the state of Wisconsin
- 12 The power to obtain substitute care, such as child care, for the child(ren)
- 13 Other specifically delegated powers or limits on delegated powers (*Fill in the*
- 14 *following space or attach a separate sheet describing any other specific powers that*
- 15 *you wish to delegate or any limits that you wish to place on the powers you are*
- 16 *delegating.*)

17 This delegation of parental powers does not deprive a custodial or noncustodial

18 parent of any of his or her powers regarding the care and custody of the child,

19 whether granted by court order or force of law.

20 THIS DOCUMENT MAY NOT BE USED TO DELEGATE THE POWER TO

21 CONSENT TO THE MARRIAGE OR ADOPTION OF THE CHILD(REN), THE

22 PERFORMANCE OR INDUCEMENT OF AN ABORTION ON OR FOR THE

23 CHILD(REN), THE TERMINATION OF PARENTAL RIGHTS TO THE

24 CHILD(REN), THE ENLISTMENT OF THE CHILD(REN) IN THE U.S. ARMED

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1 FORCES OR TO PLACE THE CHILD(REN) IN A FOSTER HOME, GROUP HOME,
2 SHELTER CARE FACILITY, OR INPATIENT TREATMENT FACILITY.

3 EFFECTIVE DATE AND TERM
4 OF THIS DELEGATION

5 This Power of Attorney takes effect on and will remain in effect until If
6 no termination date is given or if the termination date given is more than one year
7 after the effective date of this Power of Attorney, this Power of Attorney will remain
8 in effect for a period of one year after the effective date, but no longer. This Power
9 of Attorney may be revoked in writing at any time by a parent who has legal custody
10 of the child(ren) and such a revocation invalidates the delegation of parental powers
11 made by this Power of Attorney, except with respect to acts already taken in reliance
12 on this Power of Attorney.

13 SIGNATURE(S) OF PARENT(S)

14 Signature of parent Date

15 Parent's name printed

16 Parent's address

17 Parent's telephone number

18 Parent's e-mail address

19 Signature of parent Date

20 Parent's name printed

21 Parent's address

22 Parent's telephone number

23 Parent's e-mail address

24 WITNESSING OF SIGNATURE(S) (OPTIONAL)

25 State of

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1 County of

2 This document was signed before me on (date) by (name(s) of parent(s)).

3 Signature of notary

4 My commission expires:

5 **STATEMENT OF AGENT**

6 I, (name and address of agent), understand that (name(s) of parent(s)) has
7 (have) delegated to me the powers specified in this Power of Attorney regarding the
8 care and custody of (name(s) of child(ren)). I further understand that this Power
9 of Attorney may be revoked in writing at any time by a parent who has legal custody
10 of (name(s) of child(ren)). I hereby declare that I have read this Power of Attorney,
11 understand the powers delegated to me by this Power of Attorney, am fit, willing, and
12 able to undertake those powers, and accept those powers.

13 Agent's signature Date

14 **APPENDIX**

15 *(Here the parent(s) may indicate where they may be located during the term of*
16 *the Power of Attorney if different from the address(es) set forth above.)*

17 I can be located at:

18 Address(es)

19 Telephone number(s)

20 E-mail address(es)

21 Or, by contacting:

22 Name

23 Address

24 Telephone number

25 E-mail address

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1 Or, I cannot be located

2 **SECTION 16.** 253.10 (3) (c) 2. c. of the statutes is amended to read:

3 253.10 (3) (c) 2. c. That the woman has a legal right to continue her pregnancy
4 and to keep the child; to place the child in a foster home for 6 months ~~or, in a group~~
5 home for 15 days, or in a shelter care facility approved under s. 938.22 (2) (c) for 20
6 days; to petition a court for placement of the child in a foster home or group home or
7 with a relative; or to place the child for adoption under a process that involves court
8 approval both of the voluntary termination of parental rights and of the adoption.

9 **SECTION 17.** 938.22 (2) (c) of the statutes is amended to read:

10 938.22 (2) (c) A shelter care facility ~~shall~~ may be used for the temporary care
11 of ~~juveniles~~ children taken into custody under s. 48.19, in need of transitional
12 placements in emergency situations under s. 48.357 (2m), or placed in the shelter
13 care facility by order of the court under ch. 48 and of juveniles taken into custody
14 under s. 938.19, in need of transitional placements in emergency situations under
15 s. 938.357 (2m), or placed in the shelter care facility by order of the court under this
16 chapter, except that on the request of a person licensed to operate a shelter care
17 facility the department of children and families may permit that shelter care facility
18 to be used for voluntary placements under s. 48.63 (1) (b). The department of
19 children and families shall review such a request based on the needs of children and
20 juveniles in the area served by the shelter care facility and the services provided by
21 the shelter care facility and may approve the request if it determines that the
22 services provided by the shelter care facility would meet those needs. A shelter care
23 facility, other than a holdover room, may not be in the same building as a facility for
24 the detention of adults.

25 **SECTION 18.** 938.38 (2) (d) of the statutes is amended to read:

