

1973 Assembly Bill 751

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CHAPTER 328, Laws of 1973

AN ACT to amend 48.34 (1) (f), 48.35 (1) (d), 48.64 (1) and (4) (a) and 49.19 (10) (b) to (d) of the statutes, relating to placement of children in foster homes.

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

SECTION 1. 48.34 (1) (f) of the statutes is amended to read:

48.34 (1) (f) If the child is in need of special treatment and care, the court may order the child's parents, guardian or legal custodian to provide such care. If the parent, guardian or legal custodian fails to provide such care, the court may order it provided. Alternatively, the court may make a judicial determination that continuance in the home of the parent or guardian would be contrary to the child's welfare for any

reason and place the child in the licensed foster home or child-caring institution recommended by the child-placing agency. The court will review for approval the plan for the child agreed upon by the parent or guardian and the child-placing agency. When it is determined that a child is in need of special treatment and care, legal custody shall not be transferred from the parent or guardian unless it is shown that the special treatment and care cannot be accomplished by means of voluntary consent of the parent or guardian.

SECTION 2. 48.35 (1) (d) of the statutes is amended to read:

48.35 (1) (d) If the child is in need of special treatment and care, the court may order the child's parent, guardian or legal custodian to provide such care. If the parent, guardian or legal custodian fails to provide such care, the court may order it provided. Alternatively, the court may make a judicial determination that continuance in the home of the parent or guardian would be contrary to the child's welfare for any reason and place the child in the licensed foster home or child-caring institution recommended by the child-placing agency. The court will review for approval the plan for the child agreed upon by the parent or guardian and the child-placing agency. When it is determined that a child is in need of special treatment and care, legal custody shall not be transferred from the parent or guardian unless it is shown that the special treatment and care cannot be accomplished by means of voluntary consent of the parent or guardian.

SECTION 3. 48.64 (1) and (4) (a) of the statutes are amended to read:

48.64 (1) FOSTER HOME AGREEMENT. If the department, a county agency specified in s. 48.56, a juvenile court, or a child welfare agency authorized to do so, places a child in a foster home, it shall enter into a written agreement with the head of such home, which agreement shall provide that the agency shall have access at all times to the child and the home, and that the child will be released to the agency whenever, in the opinion of the agency placing the child or the department, the best interests of the child require it. Where a child has been in the foster home for 6 months or more, the department or agency shall give the foster parents written notice of intent to remove the child, stating the reasons for such removal. The child may not be removed before completion of the hearing under sub. (4) (a), if requested, or 30 days from the receipt of the notice, whichever is later, unless the safety of the child requires it. If a child is removed from an adoptive placement, the foster parents shall have no claim against the placing agency for the expense of care, clothing or medical treatment.

(4) (a) Any decision or order issued by a division of the department of health and social services, a county welfare department or a child welfare agency affecting foster parents of the children involved may be appealed to the department of health and social services under fair hearing procedures established under department rules. The department shall, upon receipt of such petition, give the foster parents reasonable notice and opportunity for a fair hearing. The department may make such additional investigation as it deems necessary. Notice of the hearing shall be given to the foster parents and to the division, the county department or child welfare agency. They shall

be entitled to be represented at such hearing. At all hearings conducted under this subsection, the foster parents, or their representative, shall have an adequate opportunity, notwithstanding s. 48.78, to examine all documents and records to be used at the hearing at a reasonable time before the date of the hearing as well as during the hearing, to bring witnesses, to establish all pertinent facts and circumstances, and to question or refute any testimony or evidence, including opportunity to confront and cross-examine adverse witnesses. A continuance for a reasonable period of time shall be granted when an issue is raised for the first time during a hearing. This requirement may be waived with the consent of the parties. The decision of the department shall be based exclusively on evidence introduced at the hearing. A transcript of testimony and exhibits, or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding, and the findings of the hearing examiner shall constitute the exclusive record for decision by the department and shall be available to the foster parents or their representative, at a place accessible to them, at any reasonable time. Decisions by the department shall specify the reasons for the decision and identify the supporting evidence. No person participating in a departmental or agency action being appealed shall participate in the final administrative decision on such action. The department shall render its decision as soon as possible after the hearing and shall send a certified copy of its decision to the foster parents, the division, the county department or the child welfare agency. The decision shall be binding on all parties concerned.

SECTION 4. 49.19 (10) (b) to (d) of the statutes are amended to read:

49.19 (10) (b) Aid under this section may also be granted on behalf of a child in the legal custody of a county agency providing child welfare services or on behalf of a child who was removed from the home of a relative specified in sub. (1) (a) as a result of a judicial determination that continuance in the home of a relative would be contrary to the child's welfare for any reason when such child is placed in a licensed child-caring institution by such the county agency. Reimbursement shall be made by the state pursuant to par. (a).

(c) Reimbursement under par. (a) may also be paid to the county when the child is placed in a licensed foster home or child-caring institution by a licensed child welfare agency, if the child is in the legal custody of the county agency providing child welfare services or if the child was removed from the home of a relative specified in sub. (1) (a) as a result of a judicial determination that continuance in the home of the relative would be contrary to the child's welfare for any reason and the placement is made pursuant to an agreement with the county agency.

(d) Aid may also be paid under this section to a foster home or to a child-care institution by the state when the child is in the custody or guardianship of the state or when the child was removed from the home of a relative specified in sub. (1) (a) as a result of a judicial determination that continuance in the home of a relative would be contrary to the child's welfare for any reason and the child is placed by the department. The county of legal settlement shall be liable for its pro rata share

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pursuant to s. 49.52 of any such aid paid, except that if the child is without legal settlement, there shall be no county liability.
