

State of Wisconsin



2001 Assembly Bill 54

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2001 WISCONSIN ACT 2

AN ACT to amend 48.355 (2d) (c), 48.38 (4) (a), 48.38 (5) (c) 7. and 48.977 (2) (f); and to create 48.13 (2m), 48.195, 48.355 (2d) (b) 5. and 48.415 (1m) of the statutes; relating to: relinquishing custody of a newborn child and granting rule-making authority.

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

SECTION 1. 48.13 (2m) of the statutes is created to read:

48.13 (2m) Whose parent has relinquished custody of the child under s. 48.195 (1);

SECTION 2. 48.195 of the statutes is created to read:

48.195 Taking a newborn child into custody. (1) TAKING CHILD INTO CUSTODY. In addition to being taken into custody under s. 48.19, a child whom a law enforcement officer, emergency medical technician, or hospital staff member reasonably believes to be 72 hours old or younger may be taken into custody under circumstances in which a parent of the child relinquishes custody of the child to the law enforcement officer, emergency medical technician, or hospital staff member and does not express an intent to return for the child. If a parent who wishes to relinquish custody of his or her child under this subsection is unable to travel to a sheriff's office, police station, fire station, hospital, or other place where a law enforcement officer, emergency medical technician, or hospital staff member is located, the parent may dial the telephone number "911" or, in an area in which the telephone number "911" is not available, the number for an emergency medical service provider, and the person receiving the

call shall dispatch a law enforcement officer or emergency medical technician to meet the parent and take the child into custody. A law enforcement officer, emergency medical technician, or hospital staff member who takes a child into custody under this subsection shall take any action necessary to protect the health and safety of the child, shall, within 24 hours after taking the child into custody, deliver the child to the intake worker under s. 48.20, and shall, within 5 days after taking the child into custody, file a birth certificate for the child under s. 69.14 (3).

(2) ANONYMITY AND CONFIDENTIALITY. (a) Except as provided in this paragraph, a parent who relinquishes custody of a child under sub. (1) and any person who assists the parent in that relinquishment have the right to remain anonymous. The exercise of that right shall not affect the manner in which a law enforcement officer, emergency medical technician, or hospital staff member performs his or her duties under this section. No person may induce or coerce or attempt to induce or coerce a parent or person assisting a parent who wishes to remain anonymous into revealing his or her identity, unless the person has reasonable cause to suspect that the child has been the victim of abuse or neglect, as defined in s. 48.981 (1) (d), or that the person assisting the parent is coercing the parent into relinquishing custody of the child.

* Section 991.11, WISCONSIN STATUTES 1999-00: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

(b) A parent who relinquishes custody of a child under sub. (1) and any person who assists the parent in that relinquishment may leave the presence of the law enforcement officer, emergency medical technician, or hospital staff member who took custody of the child at any time, and no person may follow or pursue the parent or person assisting the parent, unless the person has reasonable cause to suspect that the child has been the victim of abuse or neglect, as defined in s. 48.981 (1) (d), or that the person assisting the parent has coerced the parent into relinquishing custody of the child.

(c) No officer, employee, or agent of this state or of a political subdivision of this state may attempt to locate or ascertain the identity of a parent who relinquishes custody of a child under sub. (1) or any person who assists the parent in that relinquishment, unless the officer, employee, or agent has reasonable cause to suspect that the child has been the victim of abuse or neglect, as defined in s. 48.981 (1) (d), or that the person assisting the parent has coerced the parent into relinquishing custody of the child.

(d) Any person who obtains any information relating to the relinquishment of a child under sub. (1) shall keep that information confidential and may not disclose that information, except to the following persons:

1. The birth parent of the child, if the birth parent has waived his or her right under par. (a) to remain anonymous, or the adoptive parent of the child, if the child is later adopted.

2. Appropriate staff of the department, county department, or licensed child welfare agency that is providing services to the child.

3. A person authorized to provide or providing intake or dispositional services under s. 48.067, 48.069, or 48.10.

4. An attending physician for purposes of diagnosis and treatment of the child.

5. The child's foster parent, treatment foster parent, or other person having physical custody of the child.

6. A court conducting proceedings under s. 48.21, proceedings relating to a petition under s. 48.13 (2m) or 48.42, or dispositional proceedings under subch. VI or VIII relating to the child, the county corporation counsel, district attorney, or agency legal counsel representing the interests of the public in those proceedings, or the guardian ad litem representing the interests of the child in those proceedings.

7. A tribal court, or other adjudicative body authorized by an American Indian tribe or band to perform child welfare functions, that is exercising jurisdiction over proceedings relating to the child, an attorney representing the interests of the American Indian tribe or band in those proceedings, or an attorney representing the interests of the child in those proceedings.

(3) INFORMATION FOR PARENT. (a) Subject to par. (b), a law enforcement officer, emergency medical techni-

cian, or hospital staff member who takes a child into custody under sub. (1) shall make available to the parent who relinquishes custody of the child the maternal and child health toll-free telephone number maintained by the department under 42 USC 705 (a) (5) (E).

(b) The decision whether to accept the information made available under par. (a) is entirely voluntary on the part of the parent. No person may induce or coerce or attempt to induce or coerce any parent into accepting that information.

(4) IMMUNITY FROM LIABILITY. (a) Any parent who relinquishes custody of his or her child under sub. (1) and any person who assists the parent in that relinquishment are immune from any civil or criminal liability for any good faith act or omission in connection with that relinquishment. The immunity granted under this paragraph includes immunity for exercising the right to remain anonymous under sub. (2) (a), the right to leave at any time under sub. (2) (b), and the right not to accept any information under sub. (3) (b) and immunity from prosecution under s. 948.20 for abandonment of a child or under s. 948.21 for neglecting a child.

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

(c) In any civil or criminal proceeding, the good faith of a person specified in par. (a) or (b) is presumed. This presumption may be overcome only by clear and convincing evidence.

(5) MEDICAL ASSISTANCE ELIGIBILITY. A child who is taken into custody under sub. (1) is presumed to be eligible for medical assistance under s. 49.46 or 49.47.

(6) RULES. The department shall promulgate rules to implement this section. In promulgating those rules, the department shall consider the different circumstances under which a parent might relinquish custody of a child under sub. (1). The rules shall include rules prescribing a means by which a parent who relinquishes custody of his or her child under sub. (1) may, until the granting of an order terminating parental rights, choose to be identified as the child's parent.

SECTION 3. 48.355 (2d) (b) 5. of the statutes is created to read:

48.355 (2d) (b) 5. That the parent has been found under s. 48.13 (2m) to have relinquished custody of the child under s. 48.195 (1) when the child was 72 hours old or younger.

SECTION 4. 48.355 (2d) (c) of the statutes is amended to read:

48.355 (2d) (c) If the court makes a finding specified in par. (b) 1., 2., 3. ~~or~~ 4., or 5., the court shall hold a hearing within 30 days after the date of that finding to determine the permanency plan for the child. If a hearing is held under this paragraph, the agency responsible for preparing the permanency plan shall file the permanency plan with the court not less than 5 days before the date of the hearing.

SECTION 5. 48.38 (4) (a) of the statutes is amended to read:

48.38 (4) (a) The services offered and any service provided in an effort to prevent holding or placing the child outside of his or her home, while assuring that the health and safety of the child are the paramount concerns, and to make it possible for the child to return safely home, except that the permanency plan need not include a description of those services offered or provided with respect to a parent of the child if any of the circumstances specified in s. 48.355 (2d) (b) 1., 2., 3. ~~or~~ 4., or 5. apply to that parent.

SECTION 6. 48.38 (5) (c) 7. of the statutes is amended to read:

48.38 (5) (c) 7. Whether reasonable efforts were made by the agency to make it possible for the child to return safely to his or her home, except that the court or panel need not determine whether those reasonable efforts were made with respect to a parent of the child if any of the circumstances specified in s. 48.355 (2d) (b) 1., 2., 3. ~~or~~ 4., or 5. apply to that parent.

SECTION 7. 48.415 (1m) of the statutes is created to read:

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

SECTION 10. 48.977 (2) (f) of the statutes is amended to read:

48.977 (2) (f) That 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, while assuring that the child's health and safety are the paramount concerns, but that reunification of the child with the child's parent or parents is unlikely or contrary to the best interests of the child and that further reunification efforts are unlikely to be made or are contrary to the best interests of the child, except that the court need not find that the agency has made those reasonable efforts with respect to a parent of the child if any of the circumstances specified in s. 48.355 (2d) (b) 1., 2., 3. ~~or~~ 4., or 5. apply to that parent.

SECTION 11. Initial applicability.

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