

2001 DRAFTING REQUEST

Bill

Received: **09/20/2000**

Received By: **malaigm**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget 6-2288**

By/Representing: **Fossum**

This file may be shown to any legislator: **NO**

Drafter: **malaigm**

May Contact:

Alt. Drafters:

Subject: **Children - out-of-home placement**

Extra Copies:

Pre Topic:

DOA:.....Fossum -

Topic:

Court-ordered placements

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	malaigm 10/03/2000 malaigm 10/08/2000	gilfokm 10/03/2000 hhagen 10/25/2000		_____			S&L
/1	malaigm 12/29/2000		pgreensl 10/26/2000	_____	gretskl 10/26/2000		S&L
/2	malaigm 01/08/2001	jdyer 01/09/2001	pgreensl 01/09/2001	_____	lrb_docadmin 01/09/2001		S&L
/3	malaigm	jdyer	pgreensl	_____	lrb_docadmin		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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DHFS

Department of Health and Family Services
1999-2001 Biennial Budget Statutory Language Request
September 11, 2000

Title: Court-Ordered Dispositions

Current Language

Sections 48.345 and 938.345 indicate the out of home care placements where a judge may place a child as a disposition for a child or juvenile in need of protection or services.

Proposed Change

938.345 too
Renumber s. 48.345(3)(a) to (d) as 48.345(3)(a)1 to 4.

as prom in s. 335(2)(4)2.
Renumber s. 48.345(3)(intro.) as s. 48.345(3)(a) and amend to read, "Designate one of the following types of placement as the placement for the child."

Create s. 48.345(3)(b) to read: "In determining a placement for the child, the judge shall indicate the type of placement but ~~shall~~ ^{may} not indicate the specific facility for the child. Within ~~the~~ 14 days after placing the child, the agency that placed the child shall notify the judge of that specific placement."

Effect of the Change

Under current law, the judge may, but is not required to identify the specific facility where a child is to be placed. This change would prevent the judge from identifying the specific facility but would allow the judge to identify the type of placement for the child.

Rationale for the Change

A recent change in federal law would prohibit the state from claiming Title IV-E funds for any child who was ordered into a specific placement facility by the court. This could have a significant fiscal impact on the state.

Desired Effective Date: Upon passage
Agency: DHFS
Agency Contact: Andy Forsaith
Phone: 266-7684

Malaise, Gordon

From: Fossum, Gretchen
Sent: Tuesday, October 03, 2000 3:55 PM
To: Malaise, Gordon
Subject: Court Ordered Dispositions and Relative Guardianships

Gordon:

Here are Andy Forsaith's answers to your questions.

Gretchen: Gordon Malaise called me earlier in the week to ask me questions about these two DCFS stat language requests. Could you pass along the following answers:

Relative Guardianship: Gordon suggested that a better way to accomplish our intent in amending s. 48.977(2)(a) is to delete the final phrase in the paragraph ".....for a cumulative total period of one year or longer" and to not insert "is being placed." We agree that this is the better approach, so please draft it that way.

Court Ordered Dispositions:

1. The cite for the federal prohibition against the court designating a specific facility is 45 CFR 1356.21(g)(3). The rule was promulgated in the January 25, 2000 Federal Register, which contains comments explaining the rules intent. There is a comment re: 1356.21(g)(3) on pages 4057 and 4058. Based on the comment, the rationale for the requirement appears to be that placement is the responsibility of the state agency, and the state court should not usurp that role. The feds do not want to provide IV-E reimbursement in cases where a state judge places a child with a provider that conflicts with the case plan developed by the state agency for the child. The rule is a way to prevent those situations.
2. The federal requirement would not prevent a judge from ordering that the child be placed with a relative, though the judge would not be able (correct me if I'm wrong Mark) to designate a particular relative. However, the case plan would include a discussion of whether there are suitable relatives for the child to be placed with, and the judge can decide based on that information whether to order placement with a relative.
3. We do not wish the change to apply to temporary placements/temporary custody.
4. We would intend for the change to apply to changes in placements, for example, if the placement was changed from a CCI to a foster home. It is our understanding, however, that under the proposed change the agency would not need to seek court approval to move a child from one CCI to another or from foster home to another.

Thanks for passing on this information.

removal from the home, reunify the child with the family and finalize permanent placements; and to conduct permanency hearings. The State agency is responsible for developing and implementing the case plan. We see no additional benefit in requiring court approval of the case plan.

In addition, we are clarifying in the regulation at § 1356.21(g)(3) that it is not permissible for courts to extend their responsibilities to include ordering a child's placement with a specific foster care provider. To be eligible for title IV-E foster care maintenance payments the child's placement and care responsibility must either lie with the State agency, or another public agency with whom the State has an agreement according to section 472(a)(2) of the Act. Once a court has ordered a placement with a specific provider, it has assumed the State agency's placement responsibility. Consequently, the State cannot claim FFP for that placement.

Comment: A couple of commenters requested that we specify that long term foster care is an appropriate permanency goal for unaccompanied refugee minors.

Response: The determination of the appropriateness of a permanency goal must be made by the State on a case-by-case basis and take into consideration the best interests of the child. The State agency is the responsible party for making this determination, with the oversight of the court. We, therefore, will not regulate appropriate permanency goals for any group of children.

Comment: A commenter suggested that we require case plans to address the child's developmental needs and acquisition of life skills.

Response: We believe that the statute at section 475(1) of the Act already requires States to document how the services provided will meet the needs of the child, and in the case of a child whose goal is independent living, the programs and services that will enable the child to transition into independent living. We do not believe that any additional regulation in this area is required.

Section 1356.21(h) Application of Permanency Hearing Requirements

This section implements the new ASFA requirements related to permanency hearings and modifies and clarifies existing policy. It also sets forth requirements for an administrative body appointed or approved by the court to conduct permanency hearings.

Comment: One commenter was concerned that children would become ineligible for title IV-E funding if the

permanency hearing requirements were not satisfied as prescribed.

Response: We agree that the language at paragraph (h)(1) presented the permanency hearing as an eligibility criterion. That is not the case and we have amended the paragraph to clarify that, in meeting the requirements of the permanency hearing, the State must comply with section 475(5)(C) of the Act and this paragraph. The permanency hearing is a State plan requirement. It is not a title IV-E eligibility criterion. If the State fails to meet the permanency hearing requirements, it is out of compliance with the State plan. The child does not become ineligible for title IV-E funding.

Comment: We received a number of comments regarding paragraph (h)(2) which provides guidance related to determining for whom the State must hold permanency hearings. Commenters thought the paragraph was confusing and unclear about whether we were referring to initial or subsequent permanency hearings. We also received a request not to refer to these permanent placements as "court sanctioned" because the commenter felt the terminology meant the court chooses the placement, which would make the placement ineligible for title IV-E funding.

Response: In the NPRM, we proposed to retain the provision in the current regulation for permitting the State to waive subsequent permanency hearings for children placed in permanent foster family homes. The number of comments received prompted us to review this section of the proposed rule against the statutory language as amended by ASFA. Based on that review, we have decided to delete the paragraph in its entirety. When ASFA was passed the language from the definition of permanency hearing in section 475(5)(C) of the Act that addressed children remaining in foster care on a "permanent or long term basis" was removed. Instead, the ASFA requires the State to document a compelling reason for establishing a permanency plan that does not call for the child to exit foster care through reunification, adoption, legal guardianship, or placement with a fit and willing relative. Therefore, all children in foster care must be afforded the benefit of permanency hearings while they are in foster care.

Although the paragraph in question has been deleted from the regulation, we wanted to take this opportunity to respond to the observation that the State may not claim FFP when the court orders a specific placement for a child. The commenter is correct. Section 472(a)(2) of the Act requires

responsibility for the child's placement and care to be with the State agency. When the court orders a specific placement, it in essence takes on the State's responsibility for the child's placement and the child becomes ineligible for title IV-E funding. To make this clear, we have amended § 1356.21(g) to note this restriction. The court may sanction a permanent foster family home through its oversight of the permanency plan, however, this does not give the court the authority to determine a specific placement for the child.

Finally, we recognize that States will need transition time to begin holding subsequent permanency hearings for children who formerly were exempt from this requirement. We will not take adverse action against a State that cannot comply with this requirement for a period of 12 months from the effective date of this final rule.

Comment: One commenter suggested that the requirement in paragraph (h)(2) for holding a permanency hearing within 30 days of a judicial determination that reasonable efforts are not required, be extended to circumstances beyond those identified at section 471(a)(15)(D) of the Act. Another wanted us to exempt unaccompanied refugee minors from this provision altogether.

Response: The statute is very specific to those circumstances enumerated at section 471(a)(15)(D) of the Act. We have no authority to expand that list. However, the State may hold a permanency hearing any time it deems it to be appropriate to do so. We also have no authority to exempt unaccompanied refugee minors from this requirement.

Comment: Some commenters noted that the language in § 1356.21(h)(3) (proposed § 1356.21(h)(4)) is inconsistent with the definition of "permanency hearing" at § 1355.20. The language at § 1356.21(h)(3) limited the alternate planned permanent living arrangement options to a foster family home.

Response: We concur with the commenter and have amended paragraph (h)(3) to use the exact statutory language, " * * * another planned permanent living arrangement * * * "

Comment: Some commenters objected to the inclusion of an example of a compelling reason for the State to choose another planned permanent living arrangement over reunification, guardianship, or adoption in the text of the regulation. These commenters believe that examples included in regulation become *de facto* policy.

We received and considered 38 letters in response to the preclearance Notice (63 FR 52703 (October 1, 1998)) published in order to obtain approval of this information collection under the Paperwork Reduction Act. Several commenters submitted comments on the October 1, 1998 Notice in conjunction with their comments on the NPRM. The comment period for the October 1, 1998 Notice closed on December 1, 1998 while the comment period for the NPRM closed on December 17, 1998. In our opinion, to consider late comments constitutes an arbitrary extension of the comment period for certain groups or individuals. Those comments pertaining to the October 1, 1998 Notice that were submitted in conjunction with the comments on the NPRM were late and were not considered.

In the October 1, 1998 Notice, we published, in their entirety, the statewide assessment, on-site review instrument, and stakeholder interview guide used in conducting the child and family service review. Overwhelmingly, the comments we received were very technical in nature. Commenters offered specific suggestions for rephrasing or adding questions, for quantifying responses, for changes in terminology, and for increasing the objectivity of the instruments. In response to the comments received, each instrument has undergone significant revision. We streamlined the statewide assessment so that it targets State performance in satisfying the relevant State plan requirements and reports on the statewide data indicators used for determining substantial conformity. The on-site review instrument and stakeholder interview guide have been revised to increase objectivity in drawing conclusions regarding the State's performance in achieving the outcomes and in implementing the systemic factors. Copies of the instruments will be distributed to all State agencies and posted on the ACF web site immediately following the effective date of this regulation.

List of Subjects

45 CFR Part 1355

Adoption and foster care, Child welfare, Grant programs-Social programs.

45 CFR Part 1356

Adoption and foster care, Grant programs-social programs

45 CFR Part 1357

Child and family services, Child welfare, Grant programs-Social programs

(Catalog of Federal Domestic Assistance Program Numbers 93.658, Foster Care Maintenance; 93.659, Adoption Assistance; and 93.645, Child Welfare Services—State Grants)

Approved: September 23, 1999.

Donna E. Shalala,
Secretary.

Dated: August 25, 1999.

Olivia A. Golden,
Assistant Secretary for Children and Families.

For the reasons set forth in the preamble we are amending 45 CFR parts 1355, 1356, and 1357 to read as follows:

PART 1355—GENERAL

1. The authority citation for part 1355 continues to read as follows:

Authority: 42 U.S.C. 620 *et seq.*, 42 U.S.C. 670 *et seq.*, 42 U.S.C. 1302.

2. Section 1355.20 is amended by revising the definition of *Foster care* and by adding the following definitions in alphabetical order to read as follows:

§ 1355.20 Definitions.

(a) * * *

Child care institution means a private child care institution, or a public child care institution which accommodates no more than twenty-five children, and is licensed by the State in which it is situated or has been approved by the agency of such State or tribal licensing authority (with respect to child care institutions on or near Indian Reservations) responsible for licensing or approval of institutions of this type as meeting the standards established for such licensing. This definition must not include detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent.

* * * * *

Date a child is considered to have entered foster care means the earlier of: The date of the first judicial finding that the child has been subjected to child abuse or neglect; or, the date that is 60 calendar days after the date on which the child is removed from the home pursuant to § 1356.21(k). A State may use a date earlier than that required in this paragraph, such as the date the child is physically removed from the home. This definition determines the date used in calculating all time period requirements for the periodic reviews, permanency hearings, and termination of parental rights provision in section 475(5) of the Act and for providing time-limited reunification services described at section 431(a)(7) of the Act. The

definition has no relationship to establishing initial title IV-E eligibility.

* * * * *

Entity, as used in § 1355.38, means any organization or agency (e.g., a private child placing agency) that is separate and independent of the State agency; performs title IV-E functions pursuant to a contract or subcontract with the State agency; and, receives title IV-E funds. A State court is not an "entity" for the purposes of § 1355.38 except if an administrative arm of the State court carries out title IV-E administrative functions pursuant to a contract with the State agency.

Foster care means 24-hour substitute care for children placed away from their parents or guardians and for whom the State agency has placement and care responsibility. This includes, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and preadoptive homes. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the State or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of an adoption, or whether there is Federal matching of any payments that are made.

Foster care maintenance payments are payments made on behalf of a child eligible for title IV-E foster care to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel for a child's visitation with family, or other caretakers. Local travel associated with providing the items listed above is also an allowable expense. In the case of child care institutions, such term must include the reasonable costs of administration and operation of such institutions as are necessarily required to provide the items described in the preceding sentences. "Daily supervision" for which foster care maintenance payments may be made includes:

(1) *Foster family care*—licensed child care, when work responsibilities preclude foster parents from being at home when the child for whom they have care and responsibility in foster care is not in school, licensed child care when the foster parent is required to participate, without the child, in activities associated with parenting a child in foster care that are beyond the scope of ordinary parental duties, such as attendance at administrative or

continuation of residence in the home would be contrary to the welfare, or that placement would be in the best interest, of the child. The contrary to the welfare determination must be made in the first court ruling that sanctions (even temporarily) the removal of a child from home. If the determination regarding contrary to the welfare is not made in the first court ruling pertaining to removal from the home, the child is not eligible for title IV-E foster care maintenance payments for the duration of that stay in foster care.

(d) *Documentation of judicial determinations.* The judicial determinations regarding contrary to the welfare, reasonable efforts to prevent removal, and reasonable efforts to finalize the permanency plan in effect, including judicial determinations that reasonable efforts are not required, must be explicitly documented and must be made on a case-by-case basis and so stated in the court order.

(1) If the reasonable efforts and contrary to the welfare judicial determinations are not included as required in the court orders identified in paragraphs (b) and (c) of this section, a transcript of the court proceedings is the only other documentation that will be accepted to verify that these required determinations have been made.

(2) Neither affidavits nor nunc pro tunc orders will be accepted as verification documentation in support of reasonable efforts and contrary to the welfare judicial determinations.

(3) Court orders that reference State law to substantiate judicial determinations are not acceptable, even if State law provides that a removal must be based on a judicial determination that remaining in the home would be contrary to the child's welfare or that removal can only be ordered after reasonable efforts have been made.

(e) *Trial home visits.* A trial home visit may not exceed six months in duration, unless a court orders a longer trial home visit. If a trial home visit extends beyond six months and has not been authorized by the court, or exceeds the time period the court has deemed appropriate, and the child is subsequently returned to foster care, that placement must then be considered a new placement and title IV-E eligibility must be newly established. Under these circumstances the judicial determinations regarding contrary to the welfare and reasonable efforts to prevent removal are required.

(f) *Case review system.* In order to satisfy the provisions of section 471(a)(16) of the Act regarding a case review system, each State's case review

system must meet the requirements of sections 475(5) and 475(6) of the Act.

(g) *Case plan requirements.* In order to satisfy the case plan requirements of sections 471(a)(16), 475(1) and 475(5)(A) and (D) of the Act, the State agency must promulgate policy materials and instructions for use by State and local staff to determine the appropriateness of and necessity for the foster care placement of the child. The case plan for each child must:

(1) Be a written document, which is a discrete part of the case record, in a format determined by the State, which is developed jointly with the parent(s) or guardian of the child in foster care; and

(2) Be developed within a reasonable period, to be established by the State, but in no event later than 60 days from the child's removal from the home pursuant to paragraph (k) of this section;

(3) Include a discussion of how the case plan is designed to achieve a safe placement for the child in the least restrictive (most family-like) setting available and in close proximity to the home of the parent(s) when the case plan goal is reunification and a discussion of how the placement is consistent with the best interests and special needs of the child. (FFP is not available when a court orders a placement with a specific foster care provider);

(4) Include a description of the services offered and provided to prevent removal of the child from the home and to reunify the family; and

(5) Document the steps to finalize a placement when the case plan goal is or becomes adoption or placement in another permanent home in accordance with sections 475(1)(E) and (5)(E) of the Act. When the case plan goal is adoption, at a minimum, such documentation shall include child-specific recruitment efforts such as the use of State, regional, and national adoption exchanges including electronic exchange systems.

(This requirement has been approved by the Office of Management and Budget (OMB) under OMB control number 0980-0140)

(h) *Application of the permanency hearing requirements.*

(1) To meet the requirements of the permanency hearing, the State must, among other requirements, comply with section 475(5)(C) of the Act.

(2) In accordance with paragraph (b)(3) of this section, when a court determines that reasonable efforts to return the child home are not required, a permanency hearing must be held within 30 days of that determination, unless the requirements of the

permanency hearing are fulfilled at the hearing in which the court determines that reasonable efforts to reunify the child and family are not required.

(3) If the State concludes, after considering reunification, adoption, legal guardianship, or permanent placement with a fit and willing relative, that the most appropriate permanency plan for a child is placement in another planned permanent living arrangement, the State must document to the court the compelling reason for the alternate plan. Examples of a compelling reason for establishing such a permanency plan may include:

(i) The case of an older teen who specifically requests that emancipation be established as his/her permanency plan;

(ii) The case of a parent and child who have a significant bond but the parent is unable to care for the child because of an emotional or physical disability and the child's foster parents have committed to raising him/her to the age of majority and to facilitate visitation with the disabled parent; or,

(iii) the Tribe has identified another planned permanent living arrangement for the child.

(4) When an administrative body, appointed or approved by the court, conducts the permanency hearing, the procedural safeguards set forth in the definition of *permanency hearing* must be so extended by the administrative body.

(i) *Application of the requirements for filing a petition to terminate parental rights at section 475(5)(E) of the Social Security Act.* (1) Subject to the exceptions in paragraph (i)(2) of this section, the State must file a petition (or, if such a petition has been filed by another party, seek to be joined as a party to the petition) to terminate the parental rights of a parent(s):

(i) Whose child has been in foster care under the responsibility of the State for 15 of the most recent 22 months. The petition must be filed by the end of the child's fifteenth month in foster care. In calculating when to file a petition for termination of parental rights, the State:

(A) Must calculate the 15 out of the most recent 22 month period from the date the child entered foster care as defined at section 475(5)(F) of the Act;

(B) Must use a cumulative method of calculation when a child experiences multiple exits from and entries into foster care during the 22 month period;

(C) Must not include trial home visits or runaway episodes in calculating 15 months in foster care; and,

(D) Need only apply section 475(5)(E) of the Act to a child once if the State



State of Wisconsin
2001 - 2002 LEGISLATURE

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LRB-0440/2
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DOA:.....Fossum - Court-ordered placements

FOR 2001-03 BUDGET - NOT READY FOR INTRODUCTION

Do Not Gen.

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

✓ HEALTH AND HUMAN SERVICES

✓ CHILDREN

Under current law, the court assigned to exercise jurisdiction under the children's code and the juvenile justice code (juvenile court) may, in a dispositional order, designate an out-of-home placement as the placement for a child found to be in need of protection or services or a juvenile adjudged delinquent or found to be in need of protection or services (child). A juvenile court may also change the placement of a child who is subject to a dispositional order to an out-of-home placement. The state receives federal foster care and adoption assistance funding under Title IV-E of the federal Social Security Act (generally referred to as IV-E funds) in reimbursement of moneys expended to provide care for children placed in out-of-home placements. The federal government recently, however, changed its rules relating to eligibility for IV-E funds to provide that IV-E funds are not available when a court orders a child to be placed in a specific out-of-home placement. Accordingly, this bill prohibits a juvenile court from designating a specific placement for a child when granting a dispositional order or ordering a change in placement. Instead, the juvenile court must designate the type of placement in which the child shall be placed and order the agency primarily responsible for providing services to the child to place the child in a placement of the type designated.

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:

SECTION 1. 48.33 (5) of the statutes is amended to read:

48.33 (5) ~~IDENTITY OF FOSTER PARENT OR TREATMENT FOSTER PARENT~~ NAME AND ADDRESS OF OUT-OF-HOME PLACEMENT; CONFIDENTIALITY. If the report recommends placement in a foster home or a treatment foster home an out-of-home placement, and the name and address of the foster parent or treatment foster parent ~~out-of-home placement~~ is not available at the time the report is filed, the agency shall provide the court and the child's parent or guardian, and legal custodian with the name and address of the foster parent or treatment foster parent placement within ~~21~~ 14 days after the dispositional order is entered, except that the court may order the information withheld from the child's parent or guardian, or legal custodian if the court finds that disclosure would result in imminent danger to the child or to the foster parent or treatment foster parent any person with whom the child is placed. After notifying the child's parent or guardian, and legal custodian, the court shall hold a hearing prior to ordering the information withheld.

History: 1977 c. 354; 1979 c. 300; 1983 a. 399; 1984 a. 27, 339; 1989 a. 31, 41, 107; 1993 a. 377, 385, 446, 481; 1995 a. 27, 77, 201; 1997 a. 27, 292.

SECTION 2. 48.345 (2m) of the statutes is amended to read:

48.345 (2m) Place the child in the child's home of a parent of the child under the supervision of an agency or the department, if the department approves, and order the agency or department to provide specified services to the child and the child's family, which may include but are not limited to individual, family, or group counseling, homemaker or parent aide services, respite care, housing assistance, day care parent skills training, or prenatal development training or education, except

strike comma

1 that the judge may not place the child in the home of a parent of the child if the parent
 2 has been convicted under s. 940.01 of the first-degree intentional homicide, or under
 3 s. 940.05 of the 2nd-degree intentional homicide, of the other parent of the child, and
 4 the conviction has not been reversed, set aside, or vacated, unless the judge
 5 determines by clear and convincing evidence that the placement would be in the best
 6 interests of the child. The judge shall consider the wishes of the child in making that
 7 determination.

History: 1971 c. 125; 1977 c. 354; 1979 c. 300; 1987 a. 285; 1989 a. 31, 107; 1993 a. 363, 377, 385, 491; 1995 a. 27; 1995 a. 77 ss. 235 to 237, 239, 241, 249, 250, 257 to 263; 1995 a. 225, 448; 1997 a. 27, 80, 164, 292; 1999 a. 9, 149.

8 **SECTION 3.** 48.345 (3) (intro.) of the statutes is amended to read:

9 48.345 (3) (intro.) Designate one of the following types of placements as the
 10 placement for the child and order the agency primarily responsible for providing
 11 services to the child to place the child in a placement of the type designated and to
 12 notify the judge and the child's parent, guardian, and legal custodian of the name and
 13 address of the placement within 14 days after the order is entered:

History: 1971 c. 125; 1977 c. 354; 1979 c. 300; 1987 a. 285; 1989 a. 31, 107; 1993 a. 363, 377, 385, 491; 1995 a. 27; 1995 a. 77 ss. 235 to 237, 239, 241, 249, 250, 257 to 263; 1995 a. 225, 448; 1997 a. 27, 80, 164, 292; 1999 a. 9, 149.

14 **SECTION 4.** 48.345 (3) (a) of the statutes is amended to read:

15 48.345 (3) (a) The home of a ~~parent or other~~ relative, other than a parent, of
 16 the child, except that the judge may not designate the home of a ~~parent or other~~
 17 relative of the child as the child's placement if the ~~parent or other~~ relative has been
 18 convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05
 19 of the 2nd-degree intentional homicide, of a parent of the child, and the conviction
 20 has not been reversed, set aside, or vacated, unless the judge determines by clear and
 21 convincing evidence that the placement would be in the best interests of the child.
 22 The judge shall consider the wishes of the child in making that determination.

History: 1971 c. 125; 1977 c. 354; 1979 c. 300; 1987 a. 285; 1989 a. 31, 107; 1993 a. 363, 377, 385, 491; 1995 a. 27; 1995 a. 77 ss. 235 to 237, 239, 241, 249, 250, 257 to 263; 1995 a. 225, 448; 1997 a. 27, 80, 164, 292; 1999 a. 9, 149.

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

1 48.355 (2) (b) 2. If the child is placed outside the home, the ~~name of the place~~
2 ~~or facility type of placement~~, including the types of transitional placements, where
3 the child shall be cared for or treated, ~~except that if the placement is a foster home~~
4 ~~or treatment foster home and the name and address of the foster parent or treatment~~
5 ~~foster parent is not available at the time of the order, the name and address of the~~
6 ~~foster parent or treatment foster parent shall be furnished and an order for the~~
7 agency primarily responsible for providing services to the child to place the child in
8 a placement of the type designated in the order and to furnish the name and address
9 of the placement to the court and the parent, guardian, and legal custodian of the
10 child within 21 14 days of the order. If, after a hearing on the issue with due notice
11 to the parent ~~or~~, guardian, and legal custodian of the child, the judge finds that
12 disclosure of the identity of the ~~foster parent or treatment foster parent~~ name and
13 address of the placement would result in imminent danger to the child, ~~the foster~~
14 ~~parent or the treatment foster parent~~ or to any person with whom the child is placed,
15 the judge may order the name and address of the prospective ~~foster parents or~~
16 ~~treatment foster parents~~ placement to be withheld from the parent or, guardian, or
17 legal custodian.

18 **SECTION 6.** 48.355^X (2m) of the statutes is amended to read:

19 48.355 (2m) TRANSITIONAL PLACEMENTS. The court order may include the ~~name~~
20 types of transitional placements in which a child may be placed under s. 48.345 (3)
21 or the names of transitional placements in which an adult expectant mother may be
22 placed under s. 48.347 (3), but may not designate a specific placement as a
23 transitional placement for a child or a specific time when transitions are to take
24 place. The procedures of ss. 48.357 and 48.363 shall govern when such transitions
25 take place. However, the The court may, however, place specific time limitations on

1 interim arrangements made for the care of the child or for the treatment of the
2 expectant mother pending the availability of the dispositional placement.

History: 1977 c. 354; 1979 c. 295, 300, 359; 1983 a. 27, 102, 399, 538; 1985 a. 29; 1987 a. 27, 339, 383; 1989 a. 31, 41, 86, 107, 121, 359; 1991 a. 39; 1993 a. 98, 334, 377,
385, 395, 446, 481, 491; 1995 a. 27, 77, 201, 225, 275; 1997 a. 27, 205, 237, 292; 1999 a. 9, 103, 149, 186.

3 SECTION 7. 48.357 (1) of the statutes is renumbered 48.357 (1) (b) and amended
4 to read:

5 48.357 (1) (b) The If a proposed change in placement of a child is to a placement
6 of a type that is not authorized in the dispositional order, the person or agency
7 primarily responsible for implementing the dispositional order, the district attorney,
8 or the corporation counsel may request a change in the placement of the child or
9 expectant mother, whether or not the change requested is authorized in the
10 dispositional order shall request the court to approve the change in placement and
11 shall cause written notice to be sent to the child, the parent, guardian, and legal
12 eustodian of the child, any foster parent, treatment foster parent, or other physical
13 eustodian described in s. 48.62 (2) of the child, the child's court-appointed special
14 advocate, and, if the child is the expectant mother of an unborn child under s. 48.133,
15 the unborn child by the unborn child's guardian ad litem. If the expectant mother
16 is an adult, written notice shall be sent to the adult expectant mother and the unborn
17 child by the unborn child's guardian ad litem. The notice shall contain the name and
18 address of the new placement, the reasons for the change in placement, a statement
19 describing why the new placement is preferable to the present placement, and a
20 statement of how the new placement satisfies objectives of the treatment plan
21 ordered by the court as provided in par. (d). Any person receiving the notice under
22 this subsection or notice of a specific placement under s. 48.355 (2) (b) 2. paragraph,
23 other than a court-appointed special advocate, may obtain a hearing on the matter
24 by filing an objection with the court within 10 days after receipt of the notice.

1 Placements may not be changed until 10 days after that notice is sent to the court
2 unless the parent, guardian, or legal custodian and the child, if 12 years of age or
3 over, or the child expectant mother, if 12 years of age or over, her parent, guardian,
4 or legal custodian and the unborn child by the unborn child's guardian ad litem, or
5 ~~the adult expectant mother and the unborn child by the unborn child's guardian ad~~
6 ~~litem, sign written waivers of objection, except that placement changes which were~~
7 ~~authorized in the dispositional order may be made immediately if notice is given as~~
8 ~~required in this subsection. In addition, a hearing is not required for placement~~
9 ~~changes authorized in the dispositional order except when an objection filed by a~~
10 ~~person who received notice alleges that new information is available which affects~~
11 ~~the advisability of the court's dispositional order.~~

History: 1977 c. 354; 1979 c. 300; 1987 a. 27; 1989 a. 31, 107; 1993 a. 16, 385, 395, 446, 481, 491; 1995 a. 27, 77, 275, 404; 1997 a. 3, 35, 80, 237, 292;
1999 a. 9, 103, 149.

12 SECTION 8. 48.357 (1) (a) of the statutes is created to read:

13 48.357 (1) (a) The person or agency primarily responsible for implementing the
14 dispositional order may change the placement of a child to another placement of the
15 type authorized in the dispositional order immediately on providing notice of the
16 change in placement as provided in par. (d). Any person receiving the notice under
17 this paragraph or notice of a specific placement under s. 48.355 (2) (b) 2., other than
18 a court-appointed special advocate, may obtain a hearing on the matter by filing an
19 objection with the court within 10 days after receipt of the notice and alleging in that
20 objection that new information is available that affects the advisability of the court's
21 dispositional order.

22 SECTION 9. 48.357 (1) (c) of the statutes is created to read:

23 48.357 (1) (c) If the proposed change in placement is of an adult expectant
24 mother, the person or agency primarily responsible for implementing the

1 dispositional order, the district attorney, or the corporation counsel shall request the
2 court to approve the change in placement and shall cause written notice to be sent
3 as provided in par. (d). Any person receiving the notice under this paragraph or
4 notice of a specific placement under s. 48.355 (2) (b) 2m. may obtain a hearing on the
5 matter by filing an objection with the court within 10 days after receipt of the notice.
6 Placements may not be changed until 10 days after that notice is sent to the court
7 unless the adult expectant mother and the unborn child by the unborn child's
8 guardian ad litem sign written waivers of objection, except that placement changes
9 that were authorized in the dispositional order may be made immediately if notice
10 is given as required in this paragraph. In addition, a hearing is not required for
11 placement changes authorized in the dispositional order except when an objection
12 filed by a person who received notice alleges that new information is available that
13 affects the advisability of the court's dispositional order.

14 SECTION 10. 48.357 (1) (d) of the statutes is created to read:

15 48.357 (1) (d) A notice under par. (a), (b), or (c) shall contain the name, address,
16 and type of the new placement, the reasons for the change in placement, a statement
17 describing why the new placement is preferable to the present placement, and a
18 statement of how the new placement satisfies the objectives of the treatment plan
19 ordered by the court. A notice under par. (a) or (b) shall be sent to the child, the
20 parent, guardian, and legal custodian of the child, any foster parent, treatment foster
21 parent, or other physical custodian described in s. 48.62 (2) of the child, the child's
22 court-appointed special advocate, and, if the child is the expectant mother of an
23 unborn child under s. 48.133, the unborn child by the unborn child's guardian ad
24 litem. A notice under par. (c) shall be sent to the adult expectant mother, the person

1 with whom the adult expectant mother is placed under s. 48.347 (3), and the unborn
2 child by the unborn child's guardian ad litem.

3 **SECTION 11.** 48.357 (2) of the statutes is amended to read:

4 48.357 (2) If emergency conditions necessitate an immediate change in the
5 placement of a child or adult expectant mother placed outside the home, the person
6 or agency primarily responsible for implementing the dispositional order may
7 remove the child or adult expectant mother to a new placement, whether or not
8 authorized by the existing dispositional order, without the prior notice provided in
9 sub. (1) (a), (b), or (c). The notice shall, however, be sent within 48 hours after the
10 emergency change in placement. Any party receiving notice may demand a hearing
11 under sub. (1) (a), (b), or (c). In emergency situations, a child may be placed in a
12 licensed public or private shelter care facility as a transitional placement for not
13 more than 20 days, as well as in any placement authorized under s. 48.345 (3).

History: 1977 c. 354; 1979 c. 300; 1987 a. 27; 1989 a. 31, 107; 1993 a. 16, 385, 395, 446, 481, 491; 1995 a. 27, 77, 275, 404; 1997 a. 3, 35, 80, 237, 292;
1999 a. 9, 103, 149

14 **SECTION 12.** 48.357 (2m) of the statutes is renumbered 48.357 (2m) (b) and
15 amended to read:

16 48.357 (2m) (b) ~~The~~ If the child, the parent, guardian, or legal custodian of the
17 child, ~~the expectant mother,~~ the unborn child of a child expectant mother by the
18 unborn child's guardian ~~ad litem,~~ ^(ad) or any person or agency primarily bound by the
19 dispositional order, other than the person or agency responsible for implementing
20 the order, ~~may request a~~ proposes a change in placement of a child to a placement
21 of a type that is not authorized in the dispositional order, that person or unborn child
22 shall request the court to approve the change in placement under this subsection.
23 ~~The request shall contain the name and address of the place of the new placement~~
24 ~~requested and shall state what new information is available which affects the~~

by the unborn child's guardian ad litem

1 advisability of the current placement. This request shall be submitted to the court
2 and shall cause notice to be sent as provided in par. (d). In addition, the court may
3 propose a change in placement on its own motion. The court shall hold a hearing on
4 the matter prior to ordering any change in placement under this subsection
5 paragraph if the request states that new information is available which that affects
6 the advisability of the current placement, unless written waivers of objection to the
7 proposed change in placement are signed by all persons entitled to receive notice
8 under sub. (1) par. (d), other than a court-appointed special advocate, and the court
9 approves.

10 (d) If a hearing is scheduled, the court shall notify A notice under par. (a), (b),
11 or (c) shall contain the name, address, and type of the new placement and shall state
12 what new information is available that affects the advisability of the current
13 placement. A notice under par. (a) or (b) shall be sent to the child, the parent,
14 guardian, and legal custodian of the child, any foster parent, treatment foster parent,
15 or other physical custodian described in s. 48.62 (2) of the child, the child's
16 court-appointed special advocate, all parties who are bound by the dispositional
17 order, and, if the child is the expectant mother of an unborn child under s. 48.133,
18 the unborn child by the unborn child's guardian ad litem, or shall notify the adult
19 expectant mother, the unborn child by the unborn child's guardian ad litem, and all
20 parties who are bound by the dispositional order, at least 3 days prior to the hearing.
21 A notice under par. (c) shall be sent to the adult expectant mother, the person with
22 whom the adult expectant mother is placed under s. 48.347 (3), the unborn child by
23 the unborn child's guardian ad litem, and all parties who are bound by the
24 dispositional order at least 3 days prior to the hearing. A copy of the request or

1 proposal for the change in placement shall be attached to the notice. If all the parties
2 consent, the court may proceed immediately with the hearing.

History: 1977 c. 354; 1979 c. 300; 1987 a. 27; 1989 a. 31, 107; 1993 a. 16, 385, 395, 446, 481, 491; 1995 a. 27, 77, 275, 404; 1997 a. 3, 35, 80, 237, 292; 1999 a. 9, 103, 149.

3 **SECTION 13.** 48.357 (2m) (a) of the statutes is created to read:

4 48.357 (2m) (a) The child, the parent, guardian, or legal custodian of the child,
5 the unborn child of a child expectant mother by the unborn child's guardian ad litem,
6 or any person or agency primarily bound by the dispositional order, other than the
7 person or agency responsible for implementing the order, may request the person or
8 agency responsible for implementing the order to change the placement of the child
9 to another placement of the type authorized in the dispositional order. If that person
10 or agency agrees to the change in placement, the person or agency may, without a
11 hearing, change the placement of the child immediately on providing notice of the
12 change in placement to the court and the persons specified in par. (d). Any person
13 receiving the notice under this paragraph, other than a court-appointed special
14 advocate, may obtain a hearing on the matter by filing an objection with the court
15 within 10 days after receipt of the notice and alleging in that objection that new
16 information is available that affects the advisability of the court's dispositional order.

17 **SECTION 14.** 48.357 (2m) (c) of the statutes is created to read:

18 48.357 (2m) (c) If the adult expectant mother, the unborn child of the adult
19 expectant mother by the unborn child's guardian ^{of ADA} ad litem, or any person or agency
20 primarily bound by a dispositional order under s. 48.347, other than the person or
21 agency responsible for implementing the order, proposes a change in placement of
22 the adult expectant mother, that person or unborn child shall request the court to
23 approve the change in placement and shall cause notice to be sent as provided in par.
24 (d). In addition, the court may propose a change in placement on its own motion. The

by the unborn child's guardian ad litem

1 court shall hold a hearing on the matter prior to ordering any change in placement
 2 under this paragraph if the request states that new information is available that
 3 affects the advisability of the current placement, unless written waivers of objection
 4 to the proposed change in placement are signed by all persons entitled to receive
 5 notice under par^d(d) and the court approves.

6 SECTION 15. 48.357^x (2r) of the statutes is amended to read:

7 48.357 (2r) If a hearing is held under sub. (1) (a) or (b) or (2m) (a) or (b) and the
 8 change in placement would remove a child from a foster home, treatment foster
 9 home, or other placement with a physical custodian described in s. 48.62 (2), the court
 10 shall give the foster parent, treatment foster parent, or other physical custodian
 11 described in s. 48.62 (2) an opportunity to be heard at the hearing by permitting the
 12 foster parent, treatment foster parent, or other physical custodian to make a written
 13 or oral statement during the hearing or to submit a written statement prior to the
 14 hearing, relating to the child and the requested change in placement. Any written
 15 or oral statement made under this subsection shall be made under oath or
 16 (a) affirmation. A foster parent, treatment foster parent, or other physical custodian
 17 described in s. 48.62 (2) who receives notice of a hearing under sub. (1) (a) or (b) or
 18 (2m) (a) or (b) and an opportunity to be heard under this subsection does not become
 19 a party to the proceeding on which the hearing is held solely on the basis of receiving
 20 that notice and opportunity to be heard.

History: 1977 c. 354; 1979 c. 300; 1987 a. 27; 1989 a. 31, 107; 1993 a. 16, 385, 395, 446, 481, 491; 1995 a. 27, 77, 275, 404; 1997 a. 3, 35, 80, 237, 292; 1999 a. 9, 103, 149.

21 SECTION 16. 48.357 (2v) of the statutes is created to read:

22 48.357 (2v) If a hearing is held under sub. (1) (a) or (b) or (2m) (a) or (b) and
 23 the change in placement would place a child in an out-of-home placement, the court
 24 shall designate the type of placement in which the child shall be placed, but may not

1 designate a specific placement for the child, and shall order the person or agency
2 primarily responsible for implementing the dispositional order to place the child in
3 a placement of the type designated by the court and to notify the court, the parent,
4 guardian, and legal custodian of the child, the child's court-appointed special
5 advocate, all parties that are bound by the dispositional order, and, if the child is the
6 expectant mother of an unborn child, the unborn child by the unborn child's guardian
7 ad litem of the name and address of the placement within 14 days after the order is
8 entered.

9 **SECTION 17.** 938.33⁴ (5) of the statutes is amended to read:

10 938.33 (5) ~~IDENTITY OF FOSTER PARENT OR TREATMENT FOSTER PARENT~~ NAME AND
11 ADDRESS OF OUT-OF-HOME PLACEMENT; CONFIDENTIALITY. If the report recommends
12 placement in a ~~foster home or a treatment foster home~~ an out-of-home placement,
13 and the name and address of the ~~foster parent or treatment foster parent~~
14 ~~out-of-home placement~~ is not available at the time the report is filed, the agency
15 shall provide the court and the juvenile's parent or, guardian, and legal custodian
16 with the name and address of the ~~foster parent or treatment foster parent~~ placement
17 within ~~21~~ 14 days after the dispositional order is entered, except that the court may
18 order the information withheld from the juvenile's parent or, guardian, or legal
19 custodian if the court finds that disclosure would result in imminent danger to the
20 juvenile or to the ~~foster parent or treatment foster parent~~ any person with whom the
21 child is placed. After notifying the juvenile's parent or, guardian, and legal
22 custodian, the court shall hold a hearing prior to ordering the information withheld.

23 History: 1995 a. 77, 417; 1997 a. 27, 35, 237, 252; 1999 a. 9.

SECTION 18. 938.34 (2) (b) of the statutes is amended to read:

1 938.34 (2) (b) If Place the juvenile is placed in the juvenile's home of a parent
 2 of the juvenile under the supervision of an agency or the department, and order the
 3 agency or department to provide specified services to the juvenile and the juvenile's
 4 family, which may include but are not limited to individual, family, or group
 5 counseling, homemaker, or parent aide services, respite care, housing assistance, day
 6 care or parent skills training, except that the court may not place the juvenile in the
 7 home of a parent of the juvenile if the parent has been convicted under s. 940.01 of
 8 the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree
 9 intentional homicide, of the other parent of the juvenile, and the conviction has not
 10 been reversed, set aside, or vacated, unless the court determines by clear and
 11 convincing evidence that the placement would be in the best interests of the juvenile.
 12 The court shall consider the wishes of the juvenile in making that determination.

History: 1995 a. 77, 352, 440, 448; 1997 a. 27, 35, 36, 84, 130, 164, 183, 205; 1999 a. 9, 32, 57, 89, 185.
 History: 1995 a. 77, 352, 440, 448; 1997 a. 27, 35, 36, 84, 130, 164, 183, 205; 1999 a. 9, 32, 57, 89, 185.

13 SECTION 19. 938.34 (3) (intro.) of the statutes is amended to read:

14 938.34 (3) PLACEMENT OUT-OF-HOME PLACEMENT. (intro.) Designate one of the
 15 following types of placements as the placement for the juvenile and order the agency
 16 primarily responsible for providing services to the juvenile to place the juvenile in
 17 a placement of the type designated and to notify the court and the juvenile's parent,
 18 guardian, and legal custodian of the name and address of the placement within 14
 19 days after the order is entered:

History: 1995 a. 77, 352, 440, 448; 1997 a. 27, 35, 36, 84, 130, 164, 183, 205; 1999 a. 9, 32, 57, 89, 185.

20 SECTION 20. 938.34 (3) (a) of the statutes is amended to read:

21 938.34 (3) (a) The home of a parent or other relative, other than a parent, of
 22 the juvenile, except that the court may not designate the home of a parent or other
 23 relative of the juvenile as the juvenile's placement if the parent or other relative has
 24 been convicted under s. 940.01 of the first-degree intentional homicide, or under s.

1 940.05 of the 2nd-degree intentional homicide, of a parent of the juvenile, and the
2 conviction has not been reversed, set aside, or vacated, unless the court determines
3 by clear and convincing evidence that the placement would be in the best interests
4 of the juvenile. The court shall consider the wishes of the juvenile in making that
5 determination.

6 History: 1995 a. 77, 352, 440, 448; 1997 a. 27, 35, 36, 84, 130, 164, 183, 205; 1999 a. 9, 32, 57, 89, 185.

SECTION 21. 938.355 (2) (b) 2. of the statutes is amended to read:

7 938.355 (2) (b) 2. If the juvenile is placed outside the home, the ~~name of the~~
8 ~~place or facility~~ type of placement, including the types of transitional placements,
9 where the juvenile shall be cared for or treated, ~~except that if the placement is a foster~~
10 ~~home or treatment foster home and the name and address of the foster parent or~~
11 ~~treatment foster parent is not available at the time of the order, the name and~~
12 ~~address of the foster parent or treatment foster parent shall be furnished and an~~
13 order for the agency primarily responsible for providing services to the juvenile to
14 place the juvenile in a placement of the type designated in the order and to furnish
15 the name and address of the placement to the court and the parent, guardian, and
16 legal custodian of the juvenile within 21 14 days of after the order. If, after a hearing
17 on the issue with due notice to the parent ~~or~~, guardian, and legal custodian of the
18 juvenile, the court finds that disclosure of the ~~identity of the foster parent or~~
19 ~~treatment foster parent~~ name and address of the placement would result in
20 imminent danger to the juvenile, the ~~foster parent or the treatment foster parent or~~
21 to any person with whom the juvenile is placed, the court may order the name and
22 address of the prospective ~~foster parents or treatment foster parents~~ placement to
23 be withheld from the parent or, guardian, or legal custodian.

24 History: 1995 a. 77, 352; 1997 a. 27, 35, 205, 237, 239, 254; 1999 a. 9, 32, 103.

SECTION 22. 938.355 (2m) of the statutes is amended to read:

1 938.355 (2m) TRANSITIONAL PLACEMENTS. The court order may include the name
2 types of transitional placements in which a juvenile may be placed, but may not
3 designate a specific placement as a transitional placement for a juvenile or a specific
4 time when transitions are to take place. The procedures of ss. 938.357 and 938.363
5 shall govern when such transitions take place. The court, however, may place
6 specific time limitations on interim arrangements made for the care of the juvenile
7 pending the availability of the dispositional placement.

8 History: 1995 a. 77, 352; 1997 a. 27, 35, 205, 237, 239, 252; 1999 a. 9, 32, 103.

8 **SECTION 23.** 938.357 (1) of the statutes is renumbered 938.357 (1) (b) and
9 amended to read:

10 938.357 (1) (b) The If a proposed change in placement of a child is to a
11 placement of a type that is not authorized in the dispositional order, the person or
12 agency primarily responsible for implementing the dispositional order or the district
13 attorney ~~may request a change in the placement of the juvenile, whether or not the~~
14 ~~change requested is authorized in the dispositional order~~ shall request the court to
15 approve the change in placement and shall cause written notice to be sent to the
16 ~~juvenile or the juvenile's counsel or guardian ad litem, parent, foster parent,~~
17 ~~treatment foster parent or other physical custodian described in s. 48.62 (2),~~
18 ~~guardian and legal custodian. The notice shall contain the name and address of the~~
19 ~~new placement, the reasons for the change in placement, a statement describing why~~
20 ~~the new placement is preferable to the present placement,~~ and a statement of how
21 the new placement satisfies objectives of the treatment plan ordered by the court as
22 provided in par. (c). Any person receiving the notice under this subsection or notice
23 of the ~~specific foster or treatment foster placement under s. 938.355 (2) (b) 2.~~
24 paragraph may obtain a hearing on the matter by filing an objection with the court

1 within 10 days after receipt of the notice. Placements ~~shall~~ may not be changed until
2 10 days after ~~such~~ that notice is sent to the court unless the parent, guardian, or legal
3 custodian and the juvenile, if 12 ~~or more~~ years of age or over, sign written waivers
4 of objection, ~~except that placement changes which were authorized in the~~
5 ~~dispositional order may be made immediately if notice is given as required in this~~
6 ~~subsection. In addition, a hearing is not required for placement changes authorized~~
7 ~~in the dispositional order except where an objection filed by a person who received~~
8 ~~notice alleges that new information is available which affects the advisability of the~~
9 ~~court's dispositional order.~~

History: 1995 a. 27 s. 9126 (19); 1995 a. 77, 275, 352; 1997 a. 27, 35, 80, 205, 237; 1999 a. 9, 103.

10 **SECTION 24.** 938.357 (1) (a) of the statutes is created to read:

11 938.357 (1) (a) The person or agency primarily responsible for implementing
12 the dispositional order may change the placement of a juvenile to another placement
13 of the type authorized in the dispositional order immediately on providing notice of
14 the change in placement as provided in par. (c). Any person receiving the notice under
15 this paragraph or notice of a specific placement under s. 938.355 (2) (b) 2. may obtain
16 a hearing on the matter by filing an objection with the court within 10 days after
17 receipt of the notice and alleging in that objection that new information is available
18 that affects the advisability of the court's dispositional order.

19 **SECTION 25.** 938.357 (1) (c) of the statutes is created to read:

20 938.357 (1) (c) A notice under par. (a) or (b) shall contain the name, address,
21 and type of the new placement, the reasons for the change in placement, a statement
22 describing why the new placement is preferable to the present placement, and a
23 statement of how the new placement satisfies objectives of the treatment plan
24 ordered by the court. A notice under par. (a) or (b) shall be sent to the juvenile, the

1 parent, guardian, and legal custodian of the juvenile, and any foster parent,
2 treatment foster parent, or other physical custodian described in s. 48.62 (2) of the
3 juvenile.

4 **SECTION 26.** 938.357 (2) of the statutes is amended to read:

5 938.357 (2) If emergency conditions necessitate an immediate change in the
6 placement of a juvenile placed outside the home, the person or agency primarily
7 responsible for implementing the dispositional order may remove the juvenile to a
8 new placement, whether or not authorized by the existing dispositional order,
9 without the prior notice provided in sub. (1) (a) or (b). The notice shall, however, be
10 sent within 48 hours after the emergency change in placement. Any party receiving
11 notice may demand a hearing under sub. (1) (a) or (b). In emergency situations, the
12 juvenile may be placed in a licensed public or private shelter care facility as a
13 transitional placement for not more than 20 days, as well as in any placement
14 authorized under s. 938.34 (3).

15 **History:** 1995 a. 27 s. 9126 (19); 1995 a. 77, 275, 352; 1997 a. 27, 35, 80, 205, 237; 1999 a. 9, 103.

16 **SECTION 27.** 938.357 (2m) of the statutes is renumbered 938.357 (2m) (b) and
17 amended to read:

18 938.357 (2m) (b) ~~The~~ If the juvenile, the parent, guardian, or legal custodian
19 of the juvenile, or any person or agency primarily bound by the dispositional order,
20 other than the person or agency responsible for implementing the order, ~~may request~~
21 a proposes a change in placement of a juvenile to a placement of a type that is not
22 authorized in the dispositional order, that person shall request the court to approve
23 the change in placement under this subsection. The request shall contain the name
24 and address of the place of the new placement requested and shall state what new
~~information is available which affects the advisability of the current placement. This~~

1 request shall be submitted to the court and shall cause notice to be sent as provided
2 in par. (c). In addition, the court may propose a change in placement on its own
3 motion. The court shall hold a hearing on the matter prior to ordering any change
4 in placement under this subsection paragraph if the request states that new
5 information is available ~~which~~ that affects the advisability of the current placement,
6 unless written waivers of objection to the proposed change in placement are signed
7 by all parties entitled to receive notice under sub. (1) par. (c) and the court approves.

8 (c) If a hearing is scheduled, the court shall notify A notice under par. (a) or (b)
9 shall contain the name, address, and type of the new placement and shall state what
10 new information is available that affects the advisability of the current placement.

11 A notice under par. (a) or (b) shall be sent to the juvenile, the parent, guardian, and
12 legal custodian of the juvenile, any foster parent, treatment foster parent, or other
13 physical custodian described in s. 48.62 (2) of the juvenile, and all parties who are
14 bound by the dispositional order at least 3 days prior to the hearing. A copy of the
15 request or proposal for the change in placement shall be attached to the notice. If
16 all the parties consent, the court may proceed immediately with the hearing.

17 **History:** 1995 a. 27 s. 9126 (19); 1995 a. 77, 275, 352, 397 a. 27, 35, 80, 205, 237; 1999 a. 9, 103.

18 **SECTION 28.** 938.357 (2m) (a) of the statutes is created to read:

19 938.357 (2m) (a) The juvenile, the parent, guardian, or legal custodian of the
20 juvenile, or any person or agency primarily bound by the dispositional order, other
21 than the person or agency responsible for implementing the order, may request the
22 person or agency responsible for implementing the order to change the placement of
23 the juvenile to another placement of the type authorized in the dispositional order.
24 If that person or agency agrees to the change in placement, the person or agency may,
without a hearing, change the placement of the juvenile immediately on providing

1 notice of the change in placement to the court and the persons specified in par. (c).
2 Any person receiving the notice under this paragraph may obtain a hearing on the
3 matter by filing an objection with the court within 10 days after receipt of the notice
4 and alleging in that objection that new information is available that affects the
5 advisability of the court's dispositional order.

6 **SECTION 29.** 938.357 (2r) of the statutes is amended to read:

7 938.357 (2r) If a hearing is held under sub. (1) (a) or (b) or (2m) (a) or (b) and
8 the change in placement would remove a juvenile from a foster home, treatment
9 foster home, or other placement with a physical custodian described in s. 48.62 (2),
10 the court shall give the foster parent, treatment foster parent, or other physical
11 custodian described in s. 48.62 (2) an opportunity to be heard at the hearing by
12 permitting the foster parent, treatment foster parent, or other physical custodian to
13 make a written or oral statement during the hearing or to submit a written
14 statement prior to the hearing relating to the juvenile and the requested change in
15 placement. Any written or oral statement made under this subsection shall be made
16 under oath or affirmation. A foster parent, treatment foster parent, or other physical
17 custodian described in s. 48.62 (2) who receives notice of a hearing under sub. (1) (a)
18 or (b) or (2m) (a) or (b) and an opportunity to be heard under this subsection does not
19 become a party to the proceeding on which the hearing is held solely on the basis of
20 receiving that notice and opportunity to be heard.

21 **History:** 1995 a. 27 s. 9126 (19); 1995 a. 77, 275, 352; 1997 a. 27, 35, 80, 205, 237; 1999 a. 9, 103.

22 **SECTION 30.** 938.357 (2v) of the statutes is created to read:

23 938.357 (2v) If a hearing is held under sub. (1) (a) or (b) or (2m) (a) or (b) and
24 the change in placement would place a juvenile in an out-of-home placement, the
court shall designate the type of placement in which the juvenile shall be placed, but

1 may not designate a specific placement for the juvenile, and shall order the person
2 or agency primarily responsible for implementing the dispositional order to place the
3 juvenile in a placement of the type designated by the court and to notify the court,
4 the parent, guardian, and legal custodian of the juvenile, and all parties that are
5 bound by the dispositional order of the name and address of the placement within
6 14 days after the order is entered.

7 **SECTION 31.** 938.357 (3) of the statutes is amended to read:

8 938.357 (3) Subject to sub. (4) (b) and (c) and (5) (e), if the proposed change in
9 placement would involve placing a juvenile in a secured correctional facility, a
10 secured child caring institution, or a secured group home, notice shall be given as
11 provided in sub. (1) (c). A hearing shall be held, unless waived by the juvenile,
12 parent, guardian, and legal custodian, before the judge makes a decision on the
13 request. The juvenile shall be entitled to counsel at the hearing, and any party
14 opposing or favoring the proposed new placement may present relevant evidence and
15 cross-examine witnesses. The proposed new placement may be approved only if the
16 judge finds, on the record, that the conditions set forth in s. 938.34 (4m) have been
17 met.

18 History: 1995 a. 27 s. 9126 (19); 1995 a. 77, 275, 352; 1997 a. 27, 35, 80, 205, 237; 1999 a. 9, 103.

18 **SECTION 32.** 938.357 (4) (b) 2. of the statutes is amended to read:

19 938.357 (4) (b) 2. If a juvenile whom the court has placed in a Type 2 child
20 caring institution under s. 938.34 (4d) violates a condition of his or her placement in
21 the Type 2 child caring institution, the child welfare agency operating the Type 2
22 child caring institution shall notify the county department that has supervision over
23 the juvenile and, if the county department agrees to a change in placement under this
24 subdivision, the child welfare agency shall notify the department and the

16
Insert
17
20-17

1 department, after consulting with the child welfare agency, may place the juvenile
2 in a Type 1 secured correctional facility under the supervision of the department,
3 without a hearing ~~under sub. (1)~~, for not more than 10 days. If a juvenile is placed
4 in a Type 1 secured correctional facility under this subdivision, the county
5 department that has supervision over the juvenile shall reimburse the child welfare
6 agency operating the Type 2 child caring institution in which the juvenile was placed
7 at the rate established under s. 46.037, and that child welfare agency shall reimburse
8 the department at the rate specified in s. 301.26 (4) (d) 2., 3., or 4., whichever is
9 applicable, for the cost of the juvenile's care while placed in a Type 1 secured
10 correctional facility.

11 **History:** 1995 a. 27 s. 9126 (19); 1995 a. 77, 275, 352; 1997 a. 27, 35, 80, 205, 237; 1999 a. 9, 103.

SECTION 33. 938.357 (4) (c) 1. of the statutes is amended to read:

12 938.357 (4) (c) 1. If a juvenile is placed in a Type 2 secured correctional facility
13 operated by a child welfare agency under par. (a) and it appears that a less restrictive
14 placement would be appropriate for the juvenile, the department, after consulting
15 with the child welfare agency that is operating the Type 2 secured correctional
16 facility in which the juvenile is placed, may place the juvenile in a less restrictive
17 placement, and may return the juvenile to the Type 2 secured correctional facility
18 without a hearing ~~under sub. (1)~~. The child welfare agency shall establish a rate for
19 each type of placement in the manner provided in s. 46.037.

20 **History:** 1995 a. 27 s. 9126 (19); 1995 a. 77, 275, 352; 1997 a. 27, 35, 80, 205, 237; 1999 a. 9, 103.

SECTION 34. 938.357 (4) (c) 2. of the statutes is amended to read:

21 938.357 (4) (c) 2. If a juvenile is placed in a Type 2 child caring institution under
22 s. 938.34 (4d) and it appears that a less restrictive placement would be appropriate
23 for the juvenile, the child welfare agency operating the Type 2 child caring
24 institution shall notify the county department that has supervision over the juvenile

1 and, if the county department agrees to a change in placement under this
2 subdivision, the child welfare agency may place the juvenile in a less restrictive
3 placement. A child welfare agency may also, with the agreement of the county
4 department that has supervision over a juvenile who is placed in a less restrictive
5 placement under this subdivision, return the juvenile to the Type 2 child caring
6 institution without a hearing ~~under sub. (1)~~. The child welfare agency shall establish
7 a rate for each type of placement in the manner provided in s. 46.037.

8 **History:** 1995 a. 27 s. 9126 (19); 1995 a. 77, 275, 352; ~~1997 a. 27, 35, 80, 205, 237~~; 1999 a. 9, 103.

8 **SECTION 35. 938.357 (4) (d) of the statutes is amended to read:**

9 938.357 (4) (d) The department may transfer a juvenile who is placed in a Type
10 1 secured correctional facility to the Racine youthful offender correctional facility
11 named in s. 302.01 if the juvenile is 15 years of age or over and the office of juvenile
12 offender review in the department has determined that the conduct of the juvenile
13 in the Type 1 secured correctional facility presents a serious problem to the juvenile
14 or others. The factors that the office of juvenile offender review may consider in
15 making that determination shall include, but are not limited to, whether and to what
16 extent the juvenile's conduct in the Type 1 secured correctional facility is violent and
17 disruptive, the security needs of the Type 1 secured correctional facility, and whether
18 and to what extent the juvenile is refusing to cooperate or participate in the
19 treatment programs provided for the juvenile in the Type 1 secured correctional
20 facility. ~~Notwithstanding sub. (1)~~, a juvenile is not entitled to a hearing regarding
21 the department's exercise of authority under this paragraph unless the department
22 provides for a hearing by rule. A juvenile may seek review of a decision of the
23 department under this paragraph only by the common law writ of certiorari. If the
24 department transfers a juvenile under this paragraph, the department shall send

1 written notice of the transfer to the parent, guardian, legal custodian, and
2 committing court.

NOTE: NOTE: The provisions of par. (d) that subject a juvenile to placement in an adult (Type 1) prison were held to violate Article I, s. 7 of the Wisconsin Constitution and the 6th and 14th amendments of the U. S. Constitution and to be severed from the remainder of ch. 938 by the Supreme Court in State of Wisconsin v. Hezzie R. 219 Wis. 2d 849, 580 N.W.2d 668 (1998). NOTE:
History: 1995 a. 27 s. 9126 (19); 1995 a. 77, 275, 352; 1997 a. 27, 35, 80, 205, 237; 1999 a. 9, 103.

3 **SECTION 36. 938.357 (5) (a)** of the statutes is amended to read:

4 938.357 (5) (a) The department or a county department, whichever has been
5 designated as a juvenile's aftercare provider under s. 938.34 (4n), may revoke the
6 aftercare status of that juvenile. Revocation of aftercare supervision shall not
7 require prior notice under sub. (1) (a).

8 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0440/1dn

GMM:...

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hnh
js

Gretchen:

As you will see on reviewing this draft, the draft involves considerably more complexity than merely amending s. 48.345 (3) (intro.) to prohibit a judge from designating a specific placement for a child who is placed outside of the child's home under a dispositional order. That additional complexity is due to the need to amend various related statutes to conform those related statutes to the change made to s. 48.345 (3) (intro.). Accordingly, to assist you and the staff from DHFS in reviewing this draft, this drafter's note will describe those related changes and the reasons for those related changes.

At the outset, you will see that the draft amends not only the relevant provisions of ch. 48, but also the parallel provisions of ch. 938. Similarly, you will see that the draft prohibits the judge from designating a specific placement for a child not only in the original dispositional order, but also in ordering a change in placement of a child. Pursuant to Andy Forsaith's instructions, however, the draft does not apply to a temporary custody order under s. 48.21 or 938.21.

The core provisions of the draft are the amendments of ss. ~~938.345~~⁴ 345 (3) (intro.) and 938.34 (3) (intro.) relating to dispositional orders and the creation of ss. 48.357 (2v) and 938.357 (2v) relating to changes in placement. Those changes require the judge to designate a type of placement for the child and to order the agency to place the child in a placement of the type designated and to notify the court and the child's parents of the placement within 14 days after the date of the order.

Numerous additional changes, however, were made necessary due to those changes. Those additional changes are as follows:

1. Sections 48.33 (5) and 938.33 (5), relating to providing the name of a child's foster parent or treatment foster parent and to withholding that information in the case of imminent danger, were amended to require the agency to provide that information within 14 days, rather than 21 days, after the dispositional order to conform those provisions ~~with~~ the timeline requested by DHFS. The draft also expands the applicability of those provision to include all out-of-home placements and not just foster or treatment foster placements.

2. Sections 48.345 (2m) and (3) (a) and 938.34 (2) (b) and (3) (a) were amended to move the authority to place a child in the home of the child's parent from ss. 48.345 (3) and

to

938.34 (3) to 48.345 (2m) and 938.34 (2) (b), respectively. Those changes were necessary because the prohibition on designating a specific placement for a child applies only to an out-of-home placement funded with IV-E funds and not to a placement of a child in his or her own home.

3. Sections 48.355 (2) (b) 2. and 938.355 (2) (b) 2. set forth certain information that must be included in a dispositional order. Those provisions were changed to conform to the changes made in ss. 48.345 (3) (intro.) and 938.34 (3) (intro.).

* 4. Similarly, ss. 48.355 (2m) and 938.355 (2m), relating to transitional placements, were changed to permit the judge to designated types of transitional placements, but not specific transitional placements.

5. Section 48.357 (1) and (2m) and to a lesser extent s. 938.357 (1) and (2m) have grown long, confusing, and unwieldy due to language added over the last few sessions. Accordingly, the draft breaks those subsections down into paragraphs to improve their readability and the logic of their organization. Under the draft, s. 48.357 (1) (a) and (2m) (a) and 938.357 (1) (a) and (2m) (a) cover a change to a placement that was authorized in the dispositional order, that is, a change to a placement of the same type as the placement authorized in the dispositional order. Similarly, s. 48.357 (1) (b) and (2m) (b) and 938.357 (1) (b) and (2m) (b) cover a change to a placement that was not authorized in the dispositional order, that is, a change to a placement of a different type from the placement authorized in the dispositional order. Section 48.357 (1) (c) and (2m) (c) cover changes in placement of an adult expectant mother, and section 48.357 (1) (d) and (2m) (d) and 938.357 (1) (c) and (2m) (c) govern the notice required for any of those changes in placement.

* 6. Finally, the breakup of ss. 48.357 (1) and (2m) and 938.357 (1) and (2m) necessitated numerous cross reference changes. Those cross reference changes are found at ss. 48.357 (2) and (2r) and 938.357 (2), (2r), (3), and (5) (a). The draft also deletes several unnecessary cross references in s. 938.357 (4) (b) 2., (c) 1. and 2., and (d).

Please do not hesitate to contact me at the phone number or e-mail address listed below if you have any questions about this draft.

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266-9738
E-mail: gordon.malaise@legis.state.wi.us

Insert 2-17

Section #. 938.357 (4) (b) 1. of the statutes is amended to read:

938.357 (4) (b) 1. If a juvenile whom the department has placed in a Type 2 secured correctional facility operated by a child welfare agency violates a condition of his or her placement in the Type 2 secured correctional facility, the child welfare agency operating the Type 2 secured correctional facility shall notify the department and the department, after consulting with the child welfare agency, may place the juvenile in a Type 1 secured correctional facility under the supervision of the department without a hearing ~~under sub. (1)~~.

History: 1995 a. 27 s. 9126 (19); 1995 a. 77, 275, 352; 1997 a. 27, 35, 80, 205, 237; 1999 a. 9, 103.

(end & insert)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0440/1dn
GMM:hmh&ejs:pg

October 26, 2000

Gretchen:

As you will see on reviewing this draft, the draft involves considerably more complexity than merely amending s. 48.345 (3) (intro.) to prohibit a judge from designating a specific placement for a child who is placed outside of the child's home under a dispositional order. That additional complexity is due to the need to amend various related statutes to conform those related statutes to the change made to s. 48.345 (3) (intro.). Accordingly, to assist you and the staff from DHFS in reviewing this draft, this drafter's note will describe those related changes and the reasons for those related changes.

At the outset, you will see that the draft amends not only the relevant provisions of ch. 48, but also the parallel provisions of ch. 938. Similarly, you will see that the draft prohibits the judge from designating a specific placement for a child not only in the original dispositional order, but also in ordering a change in placement of a child. Pursuant to Andy Forsaith's instructions, however, the draft does not apply to a temporary custody order under s. 48.21 or 938.21.

The core provisions of the draft are the amendments of ss. 48.345 (3) (intro.) and 938.34 (3) (intro.) relating to dispositional orders and the creation of ss. 48.357 (2v) and 938.357 (2v) relating to changes in placement. Those changes require the judge to designate a type of placement for the child and to order the agency to place the child in a placement of the type designated and to notify the court and the child's parents of the placement within 14 days after the date of the order.

Numerous additional changes, however, were made necessary due to those changes. Those additional changes are as follows:

1. Sections 48.33 (5) and 938.33 (5), relating to providing the name of a child's foster parent or treatment foster parent and to withholding that information in the case of imminent danger, were amended to require the agency to provide that information within 14 days, rather than 21 days, after the dispositional order to conform those provisions to the timeline requested by DHFS. The draft also expands the applicability of those provision to include all out-of-home placements and not just foster or treatment foster placements.
2. Sections 48.345 (2m) and (3) (a) and 938.34 (2) (b) and (3) (a) were amended to move the authority to place a child in the home of the child's parent from ss. 48.345 (3) and

938.34 (3) to 48.345 (2m) and 938.34 (2) (b), respectively. Those changes were necessary because the prohibition on designating a specific placement for a child applies only to an out-of-home placement funded with IV-E funds and not to a placement of a child in his or her own home.

3. Sections 48.355 (2) (b) 2. and 938.355 (2) (b) 2. set forth certain information that must be included in a dispositional order. Those provisions were changed to conform to the changes made in ss. 48.345 (3) (intro.) and 938.34 (3) (intro.).

4. Similarly, ss. 48.355 (2m) and 938.355 (2m), relating to transitional placements, were changed to permit the judge to designate types of transitional placements, but not specific transitional placements.

5. Section 48.357 (1) and (2m) and to a lesser extent s. 938.357 (1) and (2m) have grown long, confusing, and unwieldy due to language added over the last few sessions. Accordingly, the draft breaks those subsections down into paragraphs to improve their readability and the logic of their organization. Under the draft, s. 48.357 (1) (a) and (2m) (a) and 938.357 (1) (a) and (2m) (a) cover a change to a placement that was authorized in the dispositional order, that is, a change to a placement of the same type as the placement authorized in the dispositional order. Similarly, s. 48.357 (1) (b) and (2m) (b) and 938.357 (1) (b) and (2m) (b) cover a change to a placement that was not authorized in the dispositional order, that is, a change to a placement of a different type from the placement authorized in the dispositional order. Section 48.357 (1) (c) and (2m) (c) cover changes in placement of an adult expectant mother, and section 48.357 (1) (d) and (2m) (d) and 938.357 (1) (c) and (2m) (c) govern the notice required for any of those changes in placement.

6. Finally, the breakup of ss. 48.357 (1) and (2m) and 938.357 (1) and (2m) necessitated numerous cross reference changes. Those cross reference changes are found at ss. 48.357 (2) and (2r) and 938.357 (2), (2r), (3), and (5) (a). The draft also deletes several unnecessary cross references in s 938.357 (4) (b) 1. and 2., (c) 1. and 2., and (d).

Please do not hesitate to contact me at the phone number or e-mail address listed below if you have any questions about this draft.

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266-9738
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Malaise, Gordon

From: Fossum, Gretchen
Sent: Friday, January 05, 2001 3:12 PM
To: Malaise, Gordon
Subject: FW: Court ordered placement



IVEFAQ2000_1.htm

Gordon:

These are the comments Therese Durkin has on LRB 0440/1. When talking to Therese today she felt if the draft used the language from the ACF clarification we probably would not need all the other changes in the draft. Please amend the draft so that it tracks the clarification rather than then the regulation per se.

Gretchen A. Fossum
State Budget Office
January 5, 2001.

-----Original Message-----

From: Forsaith, Andrew
Sent: Thursday, December 14, 2000 5:38 PM
To: Fossum, Gretchen
Cc: Durkin, Therese; Witt, Jason; Mitchell, Mark; Kraus, Jennifer
Subject: Court ordered placement

ACF recently has issued clarifications of 45 CFR 1356.21(g), the regulation regarding an agency's responsibility for the child's placement and care. As you know, the the final rule indicates that FFP for IV-E funding may not be claimed when a court orders a placement with a specific foster care provider. As we originally requested, the draft attempts to implement the prohibition as stated in the regulation.

However, recently issued subsequent ACF clarifications [contained in FAQs section of the ACF web site, see attached] provide that payments will not be disallowed if the court orders a specific placement after bona fide consideration of the agency's recommendation regarding placement, even if the court's order differs from the agency recommendation. The clarification provides that:

"...(I)f the court hears relevant testimony and works with all parties, including the agency with placement and care responsibility, to make appropriate placement decisions, we will not disallow the payments. The prohibition in the rule also does not apply to situations where the court merely names the child's placement in the court order as an endorsement or approval of the agency's placement choice."

In other words, in order to receive IV-E funds, where the judge orders a placement with a specific foster care provider but does not concur with the agency recommendation, the judge must give bona fide consideration to the agency recommendation, including hearing relevant testimony and working with the parties to agree on the placement. Alternatively, if there is agreement between the judge and the agency, the order must refer back to the agency recommendation to receive IV-E funds. (See attached ACF FAQ, Question 1).

In our opinion, we should revise the draft so that it tracks the clarification rather than the regulation per se. If we do not spell out the requirements as

explained in the clarification, the judges will not know and will not comply with process required for IV-E funding as spelled out in the clarification. In addition, judges may resist the restrictions on specific placements imposed in the draft and in the literal language of the federal rule. If we proceed with the language given the recent clarification, we will have no basis or justification for our strict prohibition because the clarification makes it clear that there is no strict prohibition against the judge exercising discretion allowed by the clarification. Also, at some point, we can expect the clarification to be issued more formally, and if by chance the the feds backtrack at any point, we can always change the statute based on any new requirements.

However, if we choose to merely tract the regulation as written rather than the clarification, it is our opinion that the draft does not clearly convey the express language of the regulation. (What we're really saying is that our original drafting instructions did not recommend language that was clear enough, since Gordon has basically followed those instructions.) In general the draft basically says the judge may designate "the type of placement," but does not expressly prohibit the judge making a specific placement. Many judges who read that phrase may merely interpret this language to allow a type of placement to be designated, but will not interpret this language to forbid judicial discretion to also designate a specific placement. Although we don't suggest we tract the express language of the regulation as explained above, if you choose to merely tract the express language of the regulation I can provide further drafting suggestions.

Frequently Asked Questions About the Title IV-E Final Rule

Question 1: The final rule specifies that Federal financial participation (FFP) for title IV-E foster care maintenance payments may not be claimed when a court orders a placement with a specific foster care provider. In situations where the court specifies the placement in a court order after hearing testimony from various sources, including the State IV-E agency, is FFP available? Is availability of FFP affected when the court disagrees with the agency's placement recommendation and specifies another placement in the order?

Answer 1: Title IV-E requires, as a condition of eligibility, that a child's placement and care responsibility be vested either with the State agency, or another public agency with which the State has an agreement. The purpose of the regulatory provision in question is to assure that the authority of the State title IV-E agency with placement and care responsibility for the child is not usurped. A "court-ordered" placement, as prohibited in the rule, involves the court taking placement and care responsibility away from the agency and assuming placement and care responsibility by choosing the child's placement without bona fide consideration of the agency's recommendation regarding placement. This does not mean that the court must always concur with the agency's recommendation in order for the child to be eligible for title IV-E foster care payments. As long as the court hears the relevant testimony and works with all parties, including the agency with placement and care responsibility, to make appropriate placement decisions, we will not disallow the payments. The prohibition in the rule also does not apply to situations where the court merely names the child's placement in the court order as an endorsement or approval of the agency's placement choice.

Question 2: Licenses for foster family homes and child-care institutions often go into effect or may lapse on a day other than the first or last day of the month. How should the State claim Federal financial participation (FFP) for a title IV-E eligible child who is placed in a foster family home or child-care institution that is licensed for a portion of a month?

Answer 2: If a foster family home or child-care institution is licensed for a portion of a month, the State may claim FFP for the entire month when an otherwise eligible child has resided in that home for the entire month. The State must prorate any claims when the otherwise eligible child has resided in the home or institution for a portion of the month.

Question 3: Can a State claim title IV-E reimbursement for an eligible child placed in a child-care institution that has a provisional license? Can the State claim title IV-E if the child care institution has a probationary license due to a violation of State procedures?

Answer 3: If a child-care institution is granted a provisional license or placed on probationary status due to its failure to fully satisfy all of the State's licensing standards, then children placed in such facility are not eligible for title IV-E foster care maintenance payments. The child-care institution becomes eligible for Federal financial participation when it comes into full compliance with the State's licensing standards.

Question 4: The preamble to the final rule states that no adverse action will be taken related to the requirement at 1356.21(b)(2) for making reasonable efforts to make and finalize a permanency plan. Please explain what is meant by "no adverse action will be taken..."

Answer 4: In the preamble to the final rule, we recognized that States would need transition time to implement this requirement for children who had been in foster care for more than 12 months at the time the rule was published. Therefore, our decision not to take adverse action for 12 months from the effective date of the final rule (March 27, 2000) should be understood as a transition rule. States have until March 27, 2001 to satisfy this requirement for every child who was in foster care on March 27, 2000.

Question 5: For what population of children must the section 422 protections be provided?

Answer 5: Section 422 of the Act requires that all of the protections set forth therein be provided to all children