



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-0609/A
GMM:kmg:pg

2
RMR

Soon -- 12/7

2001 BILL

DUST

Regenerate

1 AN ACT to renumber and amend 48.42 (2m); to amend 48.355 (2d) (c), 48.38
2 (4) (a), 48.38 (5) (c) 7., 48.977 (2) (f), 48.981 (2) and 48.981 (2m) (title); and to
3 create 48.13 (2m), 48.195, 48.355 (2d) (b) 5., 48.415 (1m), 48.42 (2m) (b) and
4 48.981 (2r) of the statutes; relating to: relinquishing custody of a newborn
5 child and granting rule-making authority.

Analysis by the Legislative Reference Bureau

Under current law, a child may be taken into custody under various circumstances, including circumstances under which a law enforcement officer believes on reasonable grounds that the child is in immediate danger from his or her surroundings and removal from those surroundings is necessary. If the child is not returned to his or her parents, the person taking the child into custody must deliver the child to the intake worker of the court assigned to exercise jurisdiction under the Children's Code (juvenile court). The intake worker must then determine whether to release the child or hold the child in custody. The intake worker may determine to hold the child in custody if certain grounds exist for holding the child in custody, for example, there is probable cause to believe that the child is within the jurisdiction of the juvenile court and that the child's parent is unavailable to provide care and supervision for the child and services to ensure the child's safety and well-being are not available or would be inadequate. If the intake worker determines to hold the child in custody, a hearing must be held to determine whether the child shall continue to be held in custody, and a petition alleging that the child is in need of protection or services must be filed with the juvenile court.

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Percent and Take ~~custody~~ the newborn child into custody

If the child is found to be in need of protection or services, the juvenile court may impose certain dispositions to maintain and protect the well-being of the child, including placing the child in a foster home and transferring legal custody of the child to the county department of human services or social services, a licensed child welfare agency, or, in Milwaukee County, the department of health and family services. If the child is placed outside of the child's home, the agency primarily responsible for providing services for the child, subject to certain exceptions, must make reasonable efforts to make it possible for the child to return safely to his or her home and may, at the same time as the agency is making those efforts, make reasonable efforts to place the child for adoption, with a guardian or in some other alternative permanent placement. Before a child may be adopted, however, the juvenile court must terminate the parental rights of the child's parents. A termination of parental rights (TPR) may be ordered either with the voluntary consent of the child's parents or involuntarily. For the juvenile court to order an involuntary TPR, certain grounds must be proven, among them, abandonment.

This bill permits a child whom a law enforcement officer, emergency medical technician, or hospital emergency room staff member reasonably believes to be 72 hours old or younger (newborn child) to be taken into custody under circumstances in which a parent of the newborn child relinquishes custody of the newborn child to the law enforcement officer, emergency medical technician, or hospital emergency room staff member and does not express an intent to return for the newborn child. A law enforcement officer, emergency medical technician, or hospital emergency room staff member that takes a newborn child into custody must take any action necessary to protect the health and safety of the newborn child and, within 24 hours after taking the newborn child into custody, deliver the newborn child to the intake worker.

A parent who relinquishes his or her newborn child under the bill and any person who assists the parent in that relinquishment have the right to leave at any time and to remain anonymous, and no person may follow or pursue the parent or person assisting the parent or induce or coerce a parent or person assisting a parent who wishes to remain anonymous into revealing his or her identity. The bill also prohibits any officer, employee, or agent of the state or a political subdivision of the state from attempting to locate or ascertain the identity of a parent who relinquishes custody of his or her newborn child under the bill or any person who assists the parent in that relinquishment. In addition, the bill provides for the confidentiality, subject to certain exceptions, of all records relating to the relinquishment of a newborn child under the bill.

The bill grants a parent who relinquishes custody of his or her newborn child under the bill and any person who assists a parent in that relinquishment immunity from any civil or criminal liability for any good faith act or omission in connection with that relinquishment, including immunity for exercising the right to remain anonymous or the right to leave at any time and immunity from prosecution for abandonment of a child or for neglecting a child. Similarly, the bill grants a law enforcement officer, an emergency medical technician, or a hospital emergency room staff member immunity from any civil or criminal liability for any good faith act or

and the right not to accept any information made available to the parent

abuse or neglect

unless the person has reasonable cause to suspect that the child has been the victim of abuse or neglect

The bill also permits a parent who wishes to relinquish a newborn child, but who is unable to travel to a place where a law enforcement officer, emergency medical technician, or hospital emergency room staff member is located, to call "911" and request the person receiving the call to dispatch a law enforcement officer or emergency medical technician to meet the parent and take the newborn child into custody.

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omission occurring within the scope of his or her duties under the bill and provides that those persons are not required to report under the child abuse reporting law any suspected abuse or neglect of a newborn child taken into custody under the bill.

Finally, the bill permits a juvenile court to exercise jurisdiction over a newborn child who has been relinquished under the bill and who is alleged to be in need of protection or services and to grant an involuntary TPR over a newborn child on the grounds that custody of the newborn child has been relinquished under the bill.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

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

2 48.13 (2m) Whose parent has relinquished custody of the child under s. 48.195
3 (1);

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

5 **48.195 Taking a newborn child into custody.** (1) TAKING CHILD INTO
6 CUSTODY. In addition to being taken into custody under s. 48.19, a child whom a law
7 enforcement officer, emergency medical technician, or hospital emergency room staff
8 member reasonably believes to be 72 hours old or younger may be taken into custody
9 under circumstances in which a parent of the child relinquishes custody of the child
10 to the law enforcement officer, emergency medical technician, or hospital emergency
11 room staff member and does not express an intent to return for the child. A law
12 enforcement officer, emergency medical technician, or hospital emergency room staff
13 member that takes a child into custody under this subsection shall take any action
14 necessary to protect the health and safety of the child and, within 24 hours after
15 taking the child into custody, deliver the child to the intake worker under s. 48.20.

16 (2) ANONYMITY AND CONFIDENTIALITY. (a) A parent who relinquishes custody of
17 a child under sub. (1) and any person who assists the parent in that relinquishment

Except as provided in this paragraph, a

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as defined in s. 48.981 (1) (d)

1 have the right to remain anonymous. The exercise of that right shall not affect the
2 manner in which a law enforcement officer, emergency medical technician, or
3 hospital emergency room staff member performs his or her duties under this section.

4 No person may induce or coerce or attempt to induce or coerce a parent or person
5 assisting a parent who wishes to remain anonymous into revealing his or her

6 identity, *unless the person has reasonable cause to suspect that the child has been the victim of abuse or neglect*

7 (b) A parent who relinquishes custody of a child under sub. (1) and any person
8 who assists the parent in that relinquishment may leave the presence of the law
9 enforcement officer, emergency medical technician, or hospital emergency room staff
10 member who took custody of the child at any time, and no person may follow or
11 pursue the parent or person assisting the parent.

12 (c) No officer, employee, or agent of this state or of a political subdivision of this
13 state may attempt to locate or ascertain the identity of a parent who relinquishes
14 custody of a child under sub. (1) or any person who assists the parent in that
15 relinquishment, *unless the officer, employee, or agent has reasonable cause to suspect that the child has been the victim of abuse or neglect*

16 (d) All records relating to the relinquishment of a child under sub. (1) are
17 confidential and may not be disclosed, except to the following persons:

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

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

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

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

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

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

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

Insert
5-12

and the right not to accept any information under sub. (3)(b)

13 ~~(13)~~ ⁽¹⁴⁾ IMMUNITY FROM LIABILITY. (a) Any parent who relinquishes custody of his
14 or her child under sub. (1) and any person who assists the parent in that
15 relinquishment are immune from any civil or criminal liability for any good faith act
16 or omission in connection with that relinquishment. The immunity granted under
17 this paragraph includes immunity for exercising the right to remain anonymous
18 under sub. (2) (a) ~~and~~ the right to leave at any time under sub. (2) (b) and immunity
19 from prosecution under s. 948.20 for abandonment of a child or under s. 948.21 for
20 neglecting a child.

21 (b) Any law enforcement officer, emergency medical technician or hospital
22 emergency room staff member who takes a child into custody under sub. (1) is
23 immune from any civil or criminal liability for any good faith act or omission
24 occurring within the scope of that person's duties under this section.

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

4 (B) (5) RULES. The department shall promulgate rules to implement this section.
5 In promulgating those rules, the department shall consider the different
6 circumstances under which a parent might relinquish custody of a child under sub.
7 (1). The rules shall include rules prescribing a means by which a parent who
8 relinquishes custody of his or her child under sub. (1) may, until the granting of an
9 order terminating parental rights, choose to be identified as the child's parent.

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

11 48.355 (2d) (b) 5. That the parent has been found under s. 48.13 (2m) to have
12 relinquished custody of the child under s. 48.195 (1) when the child was 72 hours old
13 or younger.

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

15 48.355 (2d) (c) If the court makes a finding specified in par. (b) 1., 2., 3. ~~or~~ 4.,
16 or 5., the court shall hold a hearing within 30 days after the date of that finding to
17 determine the permanency plan for the child. If a hearing is held under this
18 paragraph, the agency responsible for preparing the permanency plan shall file the
19 permanency plan with the court not less than 5 days before the date of the hearing.

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

21 48.38 (4) (a) The services offered and any service provided in an effort to
22 prevent holding or placing the child outside of his or her home, while assuring that
23 the health and safety of the child are the paramount concerns, and to make it possible
24 for the child to return safely home, except that the permanency plan need not include
25 a description of those services offered or provided with respect to a parent of the child

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1 if any of the circumstances specified in s. 48.355 (2d) (b) 1., 2., 3. ~~or~~ 4., or 5. apply to
2 that parent.

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

4 48.38 (5) (c) 7. Whether reasonable efforts were made by the agency to make
5 it possible for the child to return safely to his or her home, except that the court or
6 panel need not determine whether those reasonable efforts were made with respect
7 to a parent of the child if any of the circumstances specified in s. 48.355 (2d) (b) 1.,
8 2., 3. ~~or~~ 4., or 5. apply to that parent.

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

10 48.415 (1m) RELINQUISHMENT. Relinquishment, which shall be established by
11 proving that a court of competent jurisdiction has found under s. 48.13 (2m) that the
12 parent has relinquished custody of the child under s. 48.195 (1) when the child was
13 72 hours old or younger.

14 **SECTION 8.** 48.42 (2m) of the statutes is renumbered 48.42 (2m) (a) and
15 amended to read:

16 48.42 (2m) (a) *Parent as a result of sexual assault.* Except as provided in this
17 ~~subsection~~ paragraph, notice is not required to be given to a person who may be the
18 father of a child conceived as a result of a sexual assault in violation of s. 940.225 (1),
19 (2) or (3), 948.02 (1) or (2), or 948.025 if a physician attests to his or her belief that
20 a sexual assault as specified in this ~~subsection~~ paragraph has occurred or if the
21 person who may be the father of the child has been convicted of sexual assault as
22 spccified in this ~~subsection~~ paragraph for conduct which may have led to the child's
23 conception. A person who under this ~~subsection~~ paragraph is not given notice does
24 not have standing to appear and contest a petition for the termination of his parental
25 rights. This ~~subsection~~ paragraph does not apply to a person who may be the father

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1 of a child conceived as a result of a sexual assault in violation of s. 948.02 (1) or (2)
2 if that person was under 18 years of age at the time of the sexual assault.

3 **SECTION 9.** 48.42 (2m) (b) of the statutes is created to read:

4 48.42 (2m) (b) *Parent who relinquished child.* Except as provided in this
5 paragraph, notice is not required to be given to a parent who has relinquished
6 custody of his or her child under s. 48.195 (1) and who has exercised his or her right
7 to remain anonymous under s. 48.195 (2) (a). A person who under this paragraph is
8 not given notice does not have standing to appear and contest a petition for the
9 termination of his or her parental rights. This paragraph does not apply to a parent
10 who, prior to the granting of an order terminating parental rights, chooses to be
11 identified as the child's parent.

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

13 48.977 (2) (f) That the agency primarily responsible for providing services to
14 the child under a court order has made reasonable efforts to make it possible for the
15 child to return to his or her home, while assuring that the child's health and safety
16 are the paramount concerns, but that reunification of the child with the child's
17 parent or parents is unlikely or contrary to the best interests of the child and that
18 further reunification efforts are unlikely to be made or are contrary to the best
19 interests of the child, except that the court need not find that the agency has made
20 those reasonable efforts with respect to a parent of the child if any of the
21 circumstances specified in s. 48.355 (2d) (b) 1., 2., 3. ~~or~~ 4., or 5. apply to that parent.

22 **SECTION 11.** 48.981 (2) of the statutes is amended to read:

23 48.981 (2) **PERSONS REQUIRED TO REPORT.** A physician, coroner, medical
24 examiner, nurse, dentist, chiropractor, ~~optometrist~~, acupuncturist, other medical or
25 ~~mental health professional, social worker, marriage and family therapist,~~

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1 professional counselor, public assistance worker, including a financial and
2 employment planner, as defined in s. 49.141 (1) (d), school teacher, administrator or
3 counselor, mediator under s. 767.11, child care worker in a day care center or child
4 caring institution, day care provider, alcohol or other drug abuse counselor, member
5 of the treatment staff employed by or working under contract with a county
6 department under s. 46.23, 51.42, or 51.437, physical therapist, occupational
7 therapist, dietitian, speech-language pathologist, audiologist, emergency medical
8 technician, first responder, or police or law enforcement officer having reasonable
9 cause to suspect that a child seen in the course of professional duties has been abused
10 or neglected or having reason to believe that a child seen in the course of professional
11 duties has been threatened with abuse or neglect and that abuse or neglect of the
12 child will occur shall, except as provided under sub. subs. (2m) and (2r), report as
13 provided in sub. (3). A court-appointed special advocate having reasonable cause to
14 suspect that a child seen in the course of the court-appointed special advocate's
15 activities under s. 48.236 (3) has been abused or neglected or having reason to believe
16 that a child seen in the course of those activities has been threatened with abuse and
17 neglect and that abuse or neglect of the child will occur shall, except as provided in
18 sub. (2m), report as provided in sub. (3). Any other person, including an attorney,
19 having reason to suspect that a child has been abused or neglected or reason to
20 believe that a child has been threatened with abuse or neglect and that abuse or
21 neglect of the child will occur may make such a report. Any person, including an
22 attorney having reason to suspect that an unborn child has been abused or reason
23 to believe that an unborn child is at substantial risk of abuse may report as provided
24 in sub. (3). No person making a report under this subsection may be discharged from
25 employment for so doing.

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1 ~~SECTION 12. 48.981 (2m) (title) of the statutes is amended to read:~~

2 ~~48.981 (2m) (title) EXCEPTION TO REPORTING REQUIREMENT, CONFIDENTIAL HEALTH~~

3 ~~CARE SERVICES.~~

4 ~~SECTION 13. 48.981 (2r) of the statutes is created to read:~~

5 ~~48.981 (2r) EXCEPTION TO REPORTING REQUIREMENT, RELINQUISHMENT OF NEWBORN~~

6 ~~CHILD. A law enforcement officer, emergency medical technician, or hospital~~

7 ~~emergency room staff member is not required to report any suspected abuse or~~

8 ~~neglect of a child taken into custody under s. 48.195 (1).~~

9 **SECTION 14. Initial applicability.**

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

13 (END)

Insert 3 - 11 ✓

(no #)

If a parent who wishes to relinquish custody of his or her child (under this subsection) is unable to travel to a sheriff's office, police station, fire station, hospital emergency room, or other place where a law enforcement officer, emergency medical technician, or hospital emergency room staff member is located, the parent may dial the telephone number "911" or, in an area in which the telephone number "911" is not available, the number for an emergency ~~service~~ medical service provider, and the person receiving the call shall dispatch a law enforcement officer or emergency medical technician to meet the parent and take the child into custody.

(end of insert)

Insert 5-121

(B) (3) INFORMATION FOR PARENT. (a) Subject to par. (b), a law enforcement officer, emergency medical technician, or hospital emergency room staff member who takes a child into custody under sub. (1) shall make available to the parent who relinquishes custody of the child the maternal and child health ^{fall} toll-free telephone number maintained by the department under 42 USC 705^(a)(5)^(E) and the telephone number of the local health department, as defined in s. 250.01⁽⁴⁾.

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

(end of insert)

~~Insert A~~ ✓

Ⓟ The bill requires a law enforcement officer, an emergency medical technician, or a hospital emergency room staff member who takes a newborn child into custody to make available to the parent who relinquishes custody of the child the maternal and child health toll-free telephone number maintained by DHS under the federal Maternal and Child Health Services Block Grant Act and the telephone number of the local health department. The decision whether to accept that information is entirely voluntary on the part of the parent, and no person may induce or coerce a parent into accepting that information.

(end of insert)

DMst

GMM:Kmg:

Representatives Jeskewitz and Plate:

In reviewing this draft and, in particular, the provisions relating to a newborn child who has been abused or neglected, please note all of the following:

1. That the draft sticks with the ch. 48 definitions of "abuse" and "neglect" rather than cross-referencing^(FD to) the criminal prohibitions against abuse and neglect, ss. 948.03[✓] and 948.21[✓]. On further review, referencing those criminal prohibitions does not work because those prohibitions include ~~the~~ the elements that the abuse was committed intentionally or recklessly and that the neglect[✓] was committed intentionally. A doctor examining a baby, however, cannot~~only~~ only tell that the baby has suffered physical injury and that it was no accident (abuse) or that the baby's physical health is ^{seriously} endangered

due to a ^{lack} of care (neglect); the doctor cannot
get into the mind of the perpetrator and determine
whether the abuse was intentional or reckless or
whether the neglect was intentional. Those determinations
can only be made by a judge or jury after hearing
~~such as statements or conduct~~
evidence relating to the suspect's state of mind.

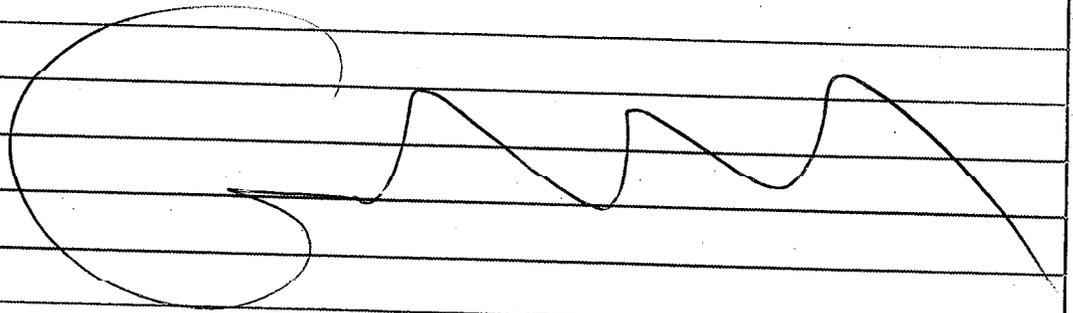


2. That the draft ^{amended} ~~not only~~ ^{48.195} ~~48.195~~ (2) (c),
as created by the draft, but also ^{48.195} (2) (a) and
(b), ^{as} created by the draft, to provide that a
parent who has abused or neglect his or her child does
(I) ~~not~~ have the right to remain anonymous or to leave at
any time. It makes little sense to permit a
law enforcement officer to attempt to locate or ascertain
the identity of a perpetrator after the officer has let the perpetrator go ~~the fact~~ when
the best opportunity to apprehend the perpetrator is
before the perpetrator has been allowed to leave.

3. That [↑] ~~the~~ because this redraft ~~provides~~ that
~~a parent is not immune from~~ ^{for}
does not provide immunity from prosecution for abuse or
neglect that takes place before the relinquishment
the draft removes the provisions in the previous draft
exempting a person who takes a ^{mandatory} child into custody
under the bill from the ^{mandatory} reporting requirement

under the child abuse reporting law.

If you have any questions about this draft,
please do not hesitate to contact me at the
e-mail address ^{or} telephone number listed below.

A large, stylized handwritten signature in black ink, consisting of a large loop on the left and a series of peaks and valleys extending to the right.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0609/2dn
GMM:kmg:km

December 6, 2000

Representatives Jeskewitz and Plale.

In reviewing this draft and, in particular, the provisions relating to a newborn child who has been abused or neglected, please note all of the following:

1. That the draft sticks with the ch. 48 definitions of "abuse" and "neglect" rather than cross-referencing to the criminal prohibitions against abuse and neglect, ss. 948.03 and 948.21. On further review, referencing those criminal prohibitions does not work because those prohibitions include the elements that the abuse was committed intentionally or recklessly and that the neglect was committed intentionally. A doctor examining a baby, however, can only tell that the baby has suffered physical injury and that it was no accident (abuse) or that the baby's physical health is seriously endangered due to a lack of care (neglect); the doctor cannot get into the mind of the perpetrator and determine whether the abuse was intentional or reckless or whether the neglect was intentional. Those determinations can only be made by a judge or jury after hearing evidence relating to the suspect's state of mind.
2. That the draft amends not only s. 48.195 (2) (c), as created by the draft, but also s. 48.195 (2) (a) and (b), as created by the draft, to provide that a parent who has abused or neglected his or her child does *not* have the right to remain anonymous or to leave at any time. It makes little sense to permit a law enforcement officer to attempt to locate or ascertain the identity of a perpetrator after the officer has let the perpetrator go when the best opportunity to apprehend the perpetrator is before the perpetrator has been allowed to leave.
3. That, because this redraft does not provide immunity from prosecution for abuse or neglect that takes place *before* the relinquishment, the draft removes the provisions in the previous draft exempting a person who takes a child into custody under the bill from the mandatory reporting requirement under the child abuse reporting law.

If you have any questions about this draft, please do not hesitate to contact me at the e-mail address or telephone number listed below.

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

12/12/00

□ Provide that child is presumed eligible
for medical assistance

□ Permit child to be relinquished to any
hospital staff member, not just ER
(not all hospitals have ER)

November 29, 2000

Representative Sue Jeskewitz
State Capitol Building
Room 109 West
P.O. Box 8952
Madison, WI 53708

Representative Jeff Plale
State Capitol Building
Room 107 North
P.O. Box 8953
Madison, WI 53708

Dear Representatives Jeskewitz and Plale:

Thank you for chairing the *Speaker's Task Force on Abandoned Babies* and including me as a member of the committee. Children's Hospital of Wisconsin is committed to harboring and caring for abandoned babies, and we support legislation granting immunity and anonymity to desperate mothers looking for a safe haven for their infants. I, myself, have had direct experience in receiving and caring for abandoned babies at Children's and, thus, am personally excited about this legislative initiative.

The legislation as drafted looks very good, although I would like to bring to your attention a provision (s) that has been included in the safe haven laws of Florida, Alabama, Georgia and Illinois and that is absent from our draft bill: an explicit guarantee of presumptive Medicaid eligibility for the abandoned child or, alternatively, an explicit requirement that the state health department reimburse the hospital for any costs incurred prior to the child being placed in the care of the state. Although it appears the prevailing legal opinion is that the child is presumed to be Medicaid eligible, these four states ensured that any costs related to care for the baby would be borne by the state, rather than imposed on the caregivers. I agree with them and would support adding similar language to our draft bill.

To be sure, Children's Hospital, as would any hospital, always provides quality care regardless of the financial implication. I just bring this issue to your attention as a matter of precedent, and I would request that it be a topic of discussion at our final task force meeting in December.

I would also like to see language added to the bill that allows the birth mother the right to reverse her decision to give up the baby within a specified time. A one week time frame seems reasonable. This added language allows for the mother to seek support and reverse her desperate state she may have been in when she dropped off her baby at a safe haven.

Thank you again for providing leadership on this issue of abandoned babies, the most innocent among us. Attached is the statutory language from the four states mentioned above. If you have any questions or concerns, please do not hesitate to call me. I look forward to seeing you at our next scheduled meeting.

Sincerely....



Nancy Korom
VP Patient Care Services
Children's Hospital of Wisconsin
Abandoned Baby Task Force Member

CC: Scott Jensen, Speaker of the Assembly
Vince Biskupic, Outagamie County District Attorney
Susan Armacost, Wisconsin Right to Life, Inc.
Lisa Purtell-Boyce, Planned Parenthood of Wisconsin, Inc.
Helen Healy, Safe Place for Newborns

8 (7) Upon admitting a newborn infant under this
 9 section, the hospital shall immediately contact a local
 10 licensed child-placing agency or alternatively contact the
 11 statewide central abuse hotline for the name of a licensed
 12 child-placing agency for purposes of transferring physical
 13 custody of the newborn infant. The hospital shall notify the
 14 licensed child-placing agency that a newborn infant has been
 15 left with the hospital and approximately when the licensed
 16 child-placing agency can take physical custody of the child.
 17 In cases where there is actual or suspected child abuse or
 18 neglect, the hospital or any of its licensed health care
 19 professionals shall report the actual or suspected child abuse
 20 or neglect in accordance with ss. 39.1023 and 395.1023 in lieu
 21 of contacting a licensed child-placing agency.



22 (8) Any newborn infant admitted to a hospital in
 23 accordance with this section is presumed eligible for coverage
 24 under Medicaid, subject to federal rules.

25 (9) A newborn infant left at a fire station or a
 26 hospital in accordance with this section shall not be deemed
 27 abandoned subject to reporting and investigation requirements
 28 under s. 39.201 unless there is actual or suspected child
 29 abuse or until the department takes physical custody of the
 30 child.

31

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

ENROLLED

2000 Legislature

CS/HB 1901

1 (10) A criminal investigation shall not be initiated
 2 solely because a newborn infant is left at a hospital under

TO: Representative Sue Jeskewitz
Representative Jeff Plale

FROM: Sue Armacost

I am very sorry to have to miss this afternoon's task force meeting. My son had emergency brain surgery in Colorado and I just got back to the office this morning. There are several pressing things I have to take care of today. I do have a few comments.

1. Gordon Malaise's drafter's note was very helpful in noting the three changes that are contained in the current draft (LRB 0609/2). I believe those changes amply reflect the consensus of the task force.
2. We have no objection to the availability of the maternal and child health hotline number or the number of the local health department as long as the acceptance of that information by the parent remains voluntary, as stated in the draft. However, we would have objections if the legislation dictated to the hotline or to local health departments the kind of information they had to provide a parent who called them. While we all care about the lives of women, the focus of this legislation is saving a baby's life.
3. There have been discussions about asking a parent to voluntarily provide genetic information about their child. I think this could scare parents off and result in them leaving without relinquishing the baby. Even though obtaining genetic information is an ideal situation under normal circumstances, it could be misperceived by the parent. The most important thing is saving the baby's life.

Again, I am so very sorry about not being able to attend this meeting.
Best wishes to all!



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-0609/3
GMM:kmg:km RWR

Soon

D-Note

2001 BILL

1 AN ACT to renumber and amend 48.42 (2m); to amend 48.355 (2d) (c), 48.38
2 (4) (a), 48.38 (5) (c) 7. and 48.977 (2) (f); and to create 48.13 (2m), 48.195, 48.355
3 (2d) (b) 5., 48.415 (1m) and 48.42 (2m) (b) of the statutes; relating to:
4 relinquishing custody of a newborn child and granting rule-making authority.

Analysis by the Legislative Reference Bureau

Under current law, a child may be taken into custody under various circumstances, including circumstances under which a law enforcement officer believes on reasonable grounds that the child is in immediate danger from his or her surroundings and removal from those surroundings is necessary. If the child is not returned to his or her parents, the person taking the child into custody must deliver the child to the intake worker of the court assigned to exercise jurisdiction under the Children's Code (juvenile court). The intake worker must then determine whether to release the child or hold the child in custody. The intake worker may determine to hold the child in custody if certain grounds exist for holding the child in custody, for example, there is probable cause to believe that the child is within the jurisdiction of the juvenile court and that the child's parent is unavailable to provide care and supervision for the child and services to ensure the child's safety and well-being are not available or would be inadequate. If the intake worker determines to hold the child in custody, a hearing must be held to determine whether the child shall continue to be held in custody, and a petition alleging that the child is in need of protection or services must be filed with the juvenile court.

BILL

If the child is found to be in need of protection or services, the juvenile court may impose certain dispositions to maintain and protect the well-being of the child, including placing the child in a foster home and transferring legal custody of the child to the county department of human services or social services, a licensed child welfare agency, or, in Milwaukee County, the department of health and family services (DHFS). If the child is placed outside of the child's home, the agency primarily responsible for providing services for the child, subject to certain exceptions, must make reasonable efforts to make it possible for the child to return safely to his or her home and may, at the same time as the agency is making those efforts, make reasonable efforts to place the child for adoption, with a guardian or in some other alternative permanent placement. Before a child may be adopted, however, the juvenile court must terminate the parental rights of the child's parents. A termination of parental rights (TPR) may be ordered either with the voluntary consent of the child's parents or involuntarily. For the juvenile court to order an involuntary TPR, certain grounds must be proven, among them, abandonment.

This bill permits a child whom a law enforcement officer, emergency medical technician, or hospital ~~emergency room~~ staff member reasonably believes to be 72 hours old or younger (newborn child) to be taken into custody under circumstances in which a parent of the newborn child relinquishes custody of the newborn child to the law enforcement officer, emergency medical technician, or hospital ~~emergency room~~ staff member and does not express an intent to return for the newborn child. The bill also permits a parent who wishes to relinquish a newborn child, but who is unable to travel to a place where a law enforcement officer, emergency medical technician, or hospital ~~emergency room~~ staff member is located, to call "911" and requires the person receiving the call to dispatch a law enforcement officer or emergency medical technician to meet the parent and take the newborn child into custody. A law enforcement officer, emergency medical technician, or hospital ~~emergency room~~ staff member ~~that~~ takes a newborn child into custody must take any action necessary to protect the health and safety of the newborn child and, within 24 hours after taking the newborn child into custody, deliver the newborn child to the intake worker.

A parent who relinquishes his or her newborn child under the bill and any person who assists the parent in that relinquishment have the right to leave at any time and to remain anonymous, and no person may follow or pursue the parent or person assisting the parent or induce or coerce a parent or person assisting a parent who wishes to remain anonymous into revealing his or her identity, unless the person has reasonable cause to suspect that the child has been the victim of abuse or neglect. The bill also prohibits any officer, employee, or agent of the state or a political subdivision of the state from attempting to locate or ascertain the identity of a parent who relinquishes custody of his or her newborn child under the bill or any person who assists the parent in that relinquishment, unless the officer, employee, or agent has reasonable cause to suspect that the child has been the victim of abuse or neglect. In addition, the bill provides for the confidentiality, subject to certain exceptions, of all records relating to the relinquishment of a newborn child under the bill.

BILL

* The bill requires a law enforcement officer, an emergency medical technician, or a hospital ~~emergency room~~ staff member who takes a newborn child into custody to make available to the parent who relinquishes custody of the child the maternal and child health toll-free telephone number maintained by DHFS under the federal Maternal and Child Health Services Block Grant Act and the telephone number of the local health department. The decision whether to accept that information is entirely voluntary on the part of the parent, and no person may induce or coerce a parent into accepting that information.

* The bill grants a parent who relinquishes custody of his or her newborn child under the bill and any person who assists a parent in that relinquishment immunity from any civil or criminal liability for any good faith act or omission in connection with that relinquishment, including immunity for exercising the right to remain anonymous, the right to leave at any time, and the right not to accept any information made available to the parent and immunity from prosecution for abandonment of a child or for neglecting a child. Similarly, the bill grants a law enforcement officer, an emergency medical technician, or a hospital ~~emergency room~~ staff member immunity from any civil or criminal liability for any good faith act or omission occurring within the scope of his or her duties under the bill.

Finally, the bill permits a juvenile court to exercise jurisdiction over a newborn child who has been relinquished under the bill and who is alleged to be in need of protection or services and to grant an involuntary TPR over a newborn child on the grounds that custody of the newborn child has been relinquished under the bill.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

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

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

3 (1);

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

5 **48.195 Taking a newborn child into custody.** (1) TAKING CHILD INTO

6 CUSTODY. In addition to being taken into custody under s. 48.19, a child whom a law

7 enforcement officer, emergency medical technician, or hospital ~~emergency room~~ staff

8 member reasonably believes to be 72 hours old or younger may be taken into custody

9 under circumstances in which a parent of the child relinquishes custody of the child

BILL**SECTION 2**

1 to the law enforcement officer, emergency medical technician, or hospital ~~emergency~~
2 ~~room~~ staff member and does not express an intent to return for the child. If a parent
3 who wishes to relinquish custody of his or her child under this subsection is unable
4 to travel to a sheriff's office, police station, fire station, hospital ~~emergency room~~, or
5 other place where a law enforcement officer, emergency medical technician, or
6 hospital ~~emergency room~~ staff member is located, the parent may dial the telephone
7 number "911" or, in an area in which the telephone number "911" is not available, the
8 number for an emergency medical service provider, and the person receiving the call
9 shall dispatch a law enforcement officer or emergency medical technician to meet the
10 parent and take the child into custody. A law enforcement officer, emergency medical
11 technician, or hospital ~~emergency room~~ staff member ^(i.e. he) ~~that~~ takes a child into custody
12 under this subsection shall take any action necessary to protect the health and safety
13 of the child and, within 24 hours after taking the child into custody, deliver the child
14 to the intake worker under s. 48.20.

15 (2) ANONYMITY AND CONFIDENTIALITY. (a) Except as provided in this paragraph,
16 a parent who relinquishes custody of a child under sub. (1) and any person who
17 assists the parent in that relinquishment have the right to remain anonymous. The
18 exercise of that right shall not affect the manner in which a law enforcement officer,
19 emergency medical technician, or hospital ~~emergency room~~ staff member performs
20 his or her duties under this section. No person may induce or coerce or attempt to
21 induce or coerce a parent or person assisting a parent who wishes to remain
22 anonymous into revealing his or her identity, unless the person has reasonable cause
23 to suspect that the child has been the victim of abuse or neglect, as defined in s.
24 48.981 (1) (d).

BILL

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

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

14 (d) All records relating to the relinquishment of a child under sub. (1) are
15 confidential and may not be disclosed, except to the following persons:

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

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

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

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

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

BILL**SECTION 2**

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

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

11 **(3) INFORMATION FOR PARENT.** (a) Subject to par. (b), a law enforcement officer,
12 emergency medical technician, or hospital emergency room staff member who takes
13 a child into custody under sub. (1) shall make available to the parent who
14 relinquishes custody of the child the maternal and child health toll-free telephone
15 number maintained by the department under 42 USC 705 (a) (5) (E) and the
16 telephone number of the local health department, as defined in s. 250.01 (4).

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

20 **(4) IMMUNITY FROM LIABILITY.** (a) Any parent who relinquishes custody of his
21 or her child under sub. (1) and any person who assists the parent in that
22 relinquishment are immune from any civil or criminal liability for any good faith act
23 or omission in connection with that relinquishment. The immunity granted under
24 this paragraph includes immunity for exercising the right to remain anonymous
25 under sub. (2) (a), the right to leave at any time under sub. (2) (b), and the right not

BILL

1 to accept any information under sub. (3) (b) and immunity from prosecution under
2 s. 948.20 for abandonment of a child or under s. 948.21 for neglecting a child. ✓

3 (b) Any law enforcement officer, emergency medical technician or hospital
4 ~~emergency room~~ staff member who takes a child into custody under sub. (1) is
5 immune from any civil or criminal liability for any good faith act or omission
6 occurring within the scope of that person's duties under this section.

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

✓
Insert
2-9
→

10 (6) (5) RULES. The department shall promulgate rules to implement this section.

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

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

17 48.355 (2d) (b) 5. That the parent has been found under s. 48.13 (2m) to have
18 relinquished custody of the child under s. 48.195 (1) when the child was 72 hours old
19 or younger.

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

21 48.355 (2d) (c) If the court makes a finding specified in par. (b) 1., 2., 3. or 4.,
22 or 5., the court shall hold a hearing within 30 days after the date of that finding to
23 determine the permanency plan for the child. If a hearing is held under this
24 paragraph, the agency responsible for preparing the permanency plan shall file the
25 permanency plan with the court not less than 5 days before the date of the hearing.

BILL**SECTION 5**

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

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

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

10 48.38 (5) (c) 7. Whether reasonable efforts were made by the agency to make
11 it possible for the child to return safely to his or her home, except that the court or
12 panel need not determine whether those reasonable efforts were made with respect
13 to a parent of the child if any of the circumstances specified in s. 48.355 (2d) (b) 1.,
14 2., 3. ~~or~~ 4., or 5. apply to that parent.

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

16 48.415 (1m) RELINQUISHMENT. Relinquishment, which shall be established by
17 proving that a court of competent jurisdiction has found under s. 48.13 (2m) that the
18 parent has relinquished custody of the child under s. 48.195 (1) when the child was
19 72 hours old or younger.

20 **SECTION 8.** 48.42 (2m) of the statutes is renumbered 48.42 (2m) (a) and
21 amended to read:

22 48.42 (2m) (a) Parent as a result of sexual assault. Except as provided in this
23 subsection paragraph, notice is not required to be given to a person who may be the
24 father of a child conceived as a result of a sexual assault in violation of s. 940.225 (1),
25 (2) or (3), 948.02 (1) or (2), or 948.025 if a physician attests to his or her belief that

BILL

1 a sexual assault as specified in this ~~subsection~~ paragraph has occurred or if the
2 person who may be the father of the child has been convicted of sexual assault as
3 specified in this ~~subsection~~ paragraph for conduct which may have led to the child's
4 conception. A person who under this ~~subsection~~ paragraph is not given notice does
5 not have standing to appear and contest a petition for the termination of his parental
6 rights. This ~~subsection~~ paragraph does not apply to a person who may be the father
7 of a child conceived as a result of a sexual assault in violation of s. 948.02 (1) or (2)
8 if that person was under 18 years of age at the time of the sexual assault.

9 **SECTION 9.** 48.42 (2m) (b) of the statutes is created to read:

10 48.42 (2m) (b) *Parent who relinquished child.* Except as provided in this
11 paragraph, notice is not required to be given to a parent who has relinquished
12 custody of his or her child under s. 48.195 (1) and who has exercised his or her right
13 to remain anonymous under s. 48.195 (2) (a). A person who under this paragraph is
14 not given notice does not have standing to appear and contest a petition for the
15 termination of his or her parental rights. This paragraph does not apply to a parent
16 who, prior to the granting of an order terminating parental rights, chooses to be
17 identified as the child's parent.

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

19 48.977 (2) (f) That the agency primarily responsible for providing services to
20 the child under a court order has made reasonable efforts to make it possible for the
21 child to return to his or her home, while assuring that the child's health and safety
22 are the paramount concerns, but that reunification of the child with the child's
23 parent or parents is unlikely or contrary to the best interests of the child and that
24 further reunification efforts are unlikely to be made or are contrary to the best
25 interests of the child, except that the court need not find that the agency has made

BILL

1 those reasonable efforts with respect to a parent of the child if any of the
2 circumstances specified in s. 48.355 (2d) (b) 1., 2., 3. ~~or~~ 4., or 5. apply to that parent.

3 **SECTION 11. Initial applicability.**

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

7 (END)

Insert 7-9 ✓

(B) (S)
(S)

MEDICAL ASSISTANCE ELIGIBILITY. A

child who is taken into custody under sub. (1) is
presumed to be eligible for medical assistance
under s. 49.46 ✓ or 49.47 ✓.

(end of insert)

D-Note

:Kmg:

Representatives Jeskewitz and Plale:

This redraft:

1. Permits a newborn child to be relinquished to

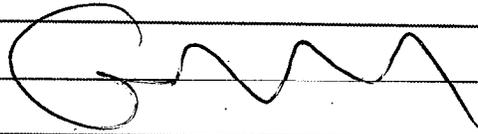
any hospital staff member and not just to

hospital ⁽²⁾ emergency room staff members.

2. Specifies that a child who is relinquished

under the ~~the~~ draft is presumed to be eligible

for medical assistance.



DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0609/3dn
GMM:kmg:km

December 13, 2000

Representatives Jeskewitz and Plale:

This redraft:

1. Permits a newborn child to be relinquished to *any* hospital staff member and not just to hospital *emergency room* staff members.
2. Specifies that a child who is relinquished under the draft is presumed to be eligible for medical assistance.

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



State of Wisconsin

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CHIEF

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Please jacket for Rep. Jeff Pahl -

December 13, 2000

MEMORANDUM

*Thank You -
Eric Bilot
Office of Suzanne Jeskewitz*

To: Representative Jeskewitz

From: Gordon M. Malaise, Senior Legislative Attorney

Re: LRB-0609 Relinquishment of newborn child

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 266-9738 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.