



## 1995 ASSEMBLY BILL 507

August 14, 1995 - Introduced by Representatives R. YOUNG, MORRIS-TATUM, NOTESTEIN and BOYLE, cosponsored by Senators MOORE and DARLING. Referred to Committee on Children and Families.

1     **AN ACT to renumber** 301.01 (1); **to renumber and amend** 48.415 (1) (b); **to**  
2     **amend** 48.355 (2c) (a) (intro.), 48.355 (2c) (b), 48.38 (5) (b), 48.38 (5) (c) 7, 48.38  
3     (6) (c), 48.415 (2) (c) and 972.15 (1); and **to create** 48.02 (9r) and (14r), 48.27 (4)  
4     (c), 48.274, 48.355 (2d), 48.38 (4) (f) 4, 48.38 (5) (c) 8, 48.415 (1) (b) 2, 301.01 (1d),  
5     301.01 (1g), 301.042 and 301.043 of the statutes; **relating to:** participation of  
6     an inmate-parent in certain court hearings relating to his or her child,  
7     permanency planning for a child whose parent is an inmate, reasonable efforts  
8     requirements applicable to inmate-parents and their children, assessment of  
9     needs of primary caretaker inmate-parents, visitation and other  
10    communication between an inmate-parent and his or her child, a defendant's  
11    parental status as an item of consideration in a presentence investigation  
12    report after certain criminal convictions and granting rule-making authority.

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### ***Analysis by the Legislative Reference Bureau***

Current law provides for an array of dispositions that a court assigned to exercise jurisdiction under the children's code (juvenile court) may impose on a child who has been adjudicated delinquent or found to be in need of protection or services. This bill provides for a new disposition that the juvenile court may impose if a parent of the child is an inmate in a state prison. Under the bill, if a parent of the child is an inmate, the juvenile court, applying certain factors specified in the bill, must determine the nature and extent of any contact or other communication between the

parent and child that would assist in the child's treatment and rehabilitation and may order the parent and the agency that is primarily responsible for providing services under the dispositional order to perform any activities specified by the juvenile court that are designed to support positive and nurturing communication between the parent and child.

Under current law, a dispositional order placing a child out of his or her home must contain a finding as to whether the county department of human services or social services (county department) or the agency responsible for providing services under the dispositional order has made reasonable efforts to prevent the removal of the child from the home or, if applicable, has made reasonable efforts to make it possible for the child to return to his or her home. Current law requires a juvenile court to consider certain factors in making its reasonable efforts finding. Those factors include whether a comprehensive assessment of the family's situation was completed, whether financial assistance was provided to the family, whether services were offered or provided to the family, whether monitoring of the family's progress was provided and whether alternative ways of addressing the family's needs were considered. This bill creates a separate reasonable efforts standard for families in which a parent is an inmate. Under the bill, in addition to the reasonable efforts factors under current law, the juvenile court must also consider whether a comprehensive assessment of the family's needs during the parent's imprisonment was completed, whether financial assistance was provided to enable reasonable visitation between the inmate-parent and the child, whether services such as transportation to enable reasonable visitation and assistance in arranging communication were offered or provided and whether efforts were made to coordinate services among the divisions of adult institutions, probation and parole and intensive sanctions in the department of corrections (DOC).

Under current law, subject to certain exceptions, for each child who is living in an out-of-home placement the agency that placed the child or that is primarily responsible for providing services for the child under the dispositional order must prepare a permanency plan that is designed to ensure that the child is reunified with his or her family whenever possible or that the child quickly attains a placement or home providing long-term stability. Currently, a permanency plan must include a description of the services that will be provided to the child and the child's family to carry out the dispositional order. This bill requires a permanency plan for a child of a primary caretaker inmate-parent, as defined in the bill, to include services planned to improve the relationship between the parent and child during the parent's imprisonment, to facilitate continued communication and a continuing parental relationship during that imprisonment and to facilitate reunification of the parent and child after the imprisonment ends. The bill also requires a juvenile court or permanency plan review panel conducting a permanency plan review to determine whether reasonable efforts were made to facilitate that continued communication, that continuing parental relationship and that reunification. The bill defines "primary caretaker inmate-parent" as a parent who before his or her imprisonment had assumed responsibility for the housing, health and safety of his or her child or who before that imprisonment had primary physical placement of his

or her child or as a woman who gives birth in prison or within 6 months before her imprisonment.

Under current law, DOC does an initial assessment and evaluation of persons who are sentenced to prison. This bill requires DOC, during that initial assessment and evaluation, to assess the current family situation of an inmate who is a primary caretaker inmate-parent, to consider, subject to security requirements, placing the inmate as close as possible to the inmate's child and to make recommendations regarding the services needed to assist the inmate in maintaining contact with his or her child and in assuming as much responsibility as possible for decision-making regarding the child. The bill also creates a procedure under which an inmate may sign a form declaring his or her status as a primary caretaker inmate-parent and DOC must send that form to the juvenile court having jurisdiction over the inmate's child and the county department of the county of that juvenile court so that the juvenile court may provide notice of certain hearings and permanency plan reviews to the inmate-parent. If an inmate-parent wishes to participate in a juvenile court hearing, the juvenile court must either issue a summons commanding that parent to appear personally or arrange for the parent to participate by telephone. If a primary caretaker inmate-parent wishes to participate in a permanency plan review, the juvenile court must arrange for that parent to participate by telephone.

The bill also creates certain provisions relating to visitation, telephone calls and other forms of communication between an inmate-parent and his or her child. The bill requires an inmate's social worker or other appropriate staff member, during the inmate's initial assessment and evaluation, to determine whether the inmate has a child and, if so, to determine whether the inmate desires visitation with the child and to inquire whether there are any court-ordered restrictions on visitation with the inmate's child and family. The bill also requires DOC to permit an inmate to have not less than one telephone conversation per week with his or her child, to encourage an inmate to have that telephone conversation and to make available to inmates a written policy that contains procedures for arranging those telephone conversations. The bill also prohibits DOC from prohibiting an inmate from visiting, telephoning or corresponding with his or her child except as discipline for misconduct that is directly related to those types of communications and except that DOC may suspend the telephone privileges of an inmate who is in segregation status.

Finally, under current law, after a defendant is convicted of a felony, the court may order DOC to conduct a presentence investigation of that defendant. This bill requires DOC to include in a presentence report the parental status of a defendant, including the number and ages of the defendant's children, the defendant's legal custody and physical placement rights to those children, the current placement of those children and any other relevant information that the court may request.

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

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

1           **SECTION 1.** 48.02 (9r) and (14r) of the statutes are created to read:

2           48.02 **(9r)** "Inmate" means any person who is imprisoned in a state prison  
3 named in s. 302.01.

4           **(14r)** "Primary caretaker inmate-parent" has the meaning given in s. 301.042  
5 (1).

6           **SECTION 2.** 48.27 (4) (c) of the statutes is created to read:

7           48.27 **(4)** (c) If the parent is an inmate, notify the parent of his or her  
8 opportunity under s. 48.274 to attend the hearing or to take part in the hearing by  
9 telephone conference. Once notified, the parent shall, not less than 10 days before  
10 the hearing, advise the court in writing whether he or she intends to participate in  
11 the hearing. The department of corrections shall assist the parent in advising the  
12 court under this paragraph.

13           **SECTION 3.** 48.274 of the statutes is created to read:

14           **48.274 Inmate-parent's participation in certain court proceedings**  
15 **relating to his or her child. (1) PARTICIPATION IN HEARINGS.** (a) A parent who  
16 receives notice under s. 48.27 (4) (c) of a hearing specified in par. (b) shall advise the  
17 court whether he or she intends to participate in the hearing as provided in s. 48.27  
18 (4) (c). If the court receives timely notice under that paragraph that the parent  
19 intends to participate in the hearing, the court shall ensure that the parent has an  
20 opportunity to participate in the hearing by doing one of the following:

21           1. Issuing a summons requiring the parent to appear in court for the  
22 proceeding.

23           2. Arranging for a telephone conference with the parent in lieu of an in-person  
24 appearance at the hearing.

25           (b) Paragraph (a) applies to the following hearings under this chapter:

- 1           1. A contested adoption hearing.
- 2           2. An involuntary termination of parental rights hearing.
- 3           3. A fact-finding hearing or a dispositional hearing in a proceeding under s.
- 4           48.12 or 48.13 involving an out-of-home placement of a child.

5           (c) The sheriff of the county in which a summons under par. (a) 1. is issued shall  
6           ensure compliance with the summons.

7           (d) A telephone conference under par. (a) 2. shall be at the expense of the county  
8           in which the hearing is held and not at the parent's expense.

9           **(2) TELEPHONE CONFERENCE FOR PERMANENCY PLAN REVIEW.** If a primary  
10          caretaker inmate-parent who has received notice of a permanency plan review  
11          under s. 48.38 (5) (b) indicates in writing not less than 10 days before the review that  
12          he or she intends to take part in the review, the court or agency under s. 48.38 (5) shall  
13          arrange for the primary caretaker inmate-parent to participate in the review  
14          through the use of a telephone conference. The telephone conference shall be at the  
15          expense of the county in which the hearing is held and not at the primary caretaker  
16          inmate-parent's expense.

17          **SECTION 4.** 48.34 (16) of the statutes is created to read:

18          **48.34 (16) DISPOSITION WHEN PARENT IS AN INMATE.** (a) If the child has a parent  
19          who is an inmate, the court shall determine the nature and extent of any contact or  
20          other communication between the parent and child that would assist in the child's  
21          treatment or rehabilitation and may order the parent and the agency that is  
22          primarily responsible for providing services under the dispositional order to perform  
23          any activities specified by the court that are designed to support positive and  
24          nurturing communication between the parent and the child.

1 (b) In determining the nature and extent of contact or communication between  
2 the parent and child under par. (a), the court may consider all of the following:

3 1. The relationship between the parent and child before the parent's  
4 incarceration.

5 2. The wishes of the child as expressed directly by the child or through the  
6 child's counsel, guardian ad litem or social worker.

7 3. A recommendation contained in a report of an examination made under s.  
8 48.295.

9 4. The child's permanency plan under s. 48.38.

10 5. Any special needs of the child and any plan of special treatment and care for  
11 those special needs.

12 6. The recommendations of the child's parents, guardian, legal custodian and  
13 social worker and any evidence or argument presented at the dispositional hearing.

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

15 48.355 (2c) (a) (intro.) When a court makes a finding under sub. (2) (b) 6. as to  
16 whether a county department which provides social services or the agency primarily  
17 responsible for providing services to the child under a court order has made  
18 reasonable efforts to prevent the removal of the child from his or her home, the court's  
19 consideration of reasonable efforts shall include, ~~but not be limited to,~~ consideration  
20 of whether all of the following have occurred:

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

22 48.355 (2c) (b) When a court makes a finding under sub. (2) (b) 6. as to whether  
23 the agency primarily responsible for providing services to the child under a court  
24 order has made reasonable efforts to make it possible for the child to return to his  
25 or her home, the court's consideration of reasonable efforts shall include, ~~but not be~~

1 ~~limited to~~, the considerations listed under par. (a) 1. to 5. and whether visitation  
2 schedules between the child and his or her parents were implemented, unless  
3 visitation was denied or limited by the court.

4 **SECTION 6.** 48.355 (2d) of the statutes is created to read:

5 48.355 **(2d)** REASONABLE EFFORTS STANDARDS; INMATE-PARENT. (a) If a parent is  
6 an inmate at the time of a finding under sub. (2) (b) 6. as to whether a county  
7 department which provides social services or the agency primarily responsible for  
8 providing services to the child under a court order has made reasonable efforts to  
9 prevent the removal of the child from his or her home, the court's consideration of  
10 reasonable efforts shall include, in addition to the considerations specified in sub.  
11 (2c), consideration of whether all of the following have occurred:

12 1. A comprehensive assessment of the family's situation during the parent's  
13 imprisonment was completed, including a determination of the likelihood of  
14 reunification after the parent's imprisonment ends.

15 2. Financial assistance, if applicable, was provided to the family and the parent  
16 to enable reasonable visitation and contact between the parent and the child.

17 3. Services were offered or provided to the family, if applicable, and whether  
18 any assistance was provided to the family to enable the family to use the services.  
19 Examples of the types of services that may have been offered include the following:

20 a. Transportation of the child to and from the state prison named in s. 302.01  
21 in which the parent is an inmate or transportation of the parent from that state  
22 prison to a location that is convenient to the child to enable reasonable visitation and  
23 contact between the parent and the child.

24 b. Assistance in arranging adequate communication between the parent and  
25 the child.

1           4. Efforts were made to coordinate services among the division of adult  
2 institutions, the division of probation and parole and the division of intensive  
3 sanctions in the department of corrections.

4           (b) When a court makes a finding under sub. (2) (b) 6. as to whether the agency  
5 primarily responsible for providing services to the child under a court order has made  
6 reasonable efforts to make it possible for the child to return to his or her home, the  
7 court's consideration of reasonable efforts shall include the considerations listed  
8 under par. (a) 1. to 4. and whether visitation schedules between the child and his or  
9 her parents were implemented, unless visitation was denied or limited by the court.

10           **SECTION 7.** 48.38 (4) (f) 4. of the statutes is created to read:

11           48.38 (4) (f) 4. If the parent is a primary caretaker inmate-parent, improve the  
12 relationship between the parent and his or her child during the parent's  
13 imprisonment, facilitate continued communication and a continuing parental  
14 relationship between that parent and the child during the parent's imprisonment,  
15 and facilitate reunification of the child and that parent after the parent's  
16 imprisonment ends.

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

18           48.38 (5) (c) 7. Whether reasonable efforts, including reasonable efforts under  
19 s. 48.355 (2d) when applicable, were made by the agency to make it possible for the  
20 child to return to his or her home.

21           **SECTION 10.** 48.38 (5) (c) 8. of the statutes is created to read:

22           48.38 (5) (c) 8. Whether reasonable efforts were made by the agency to facilitate  
23 communication and a parental relationship between a parent who is an inmate and  
24 the child, and to facilitate reunification between the child and a parent who is a  
25 primary caretaker inmate-parent.

1           **SECTION 11.** 48.38 (6) (c) of the statutes is amended to read:

2           48.38 **(6)** (c) Standards for reasonable efforts, including reasonable efforts  
3 under s. 48.355 (2d) when applicable, to prevent placement of children outside of  
4 their homes and to make it possible for children to return to their homes if they have  
5 been placed outside of their homes.

6           **SECTION 15.** 301.01 (1) of the statutes is renumbered 301.01 (1m).

7           **SECTION 16.** 301.01 (1d) of the statutes is created to read:

8           301.01 **(1d)** "Assessment and evaluation" means the initial process in which  
9 an inmate participates in order to be oriented to the state correctional system and  
10 facilities, receive a security classification and an assignment to a state correctional  
11 institution and be offered a vocational, job, school or program assignment.

12           **SECTION 17.** 301.01 (1g) of the statutes is created to read:

13           301.01 **(1g)** "Child" means a person who is less than 18 years of age.

14           **SECTION 18.** 301.042 of the statutes is created to read:

15           **301.042     Assessment and evaluation:     primary caretaker**  
16 **inmate-parents.   (1)   DEFINITION.** In this section, "primary caretaker  
17 inmate-parent" means any of the following:

18           (a) A parent who is an inmate and who, before his or her imprisonment,  
19 assumed responsibility for the housing, including temporary placement in the home  
20 of a responsible adult, health and safety of his or her child.

21           (b) A parent who is an inmate and who, before his or her imprisonment, had  
22 primary physical placement, as defined in s. 767.001 (5), of his or her child.

23           (c) A woman who is an inmate and who gives birth, or is expected to give birth,  
24 to a child during the term for which the woman is imprisoned.

1 (d) A woman who is an inmate and who gives birth to a child within 6 months  
2 before her imprisonment.

3 **(2) DECLARATION OF STATUS AS PRIMARY CARETAKER INMATE-PARENT.** As soon as the  
4 department considers practicable during assessment and evaluation of an inmate,  
5 the department shall give the inmate the opportunity to declare his or her status as  
6 a primary caretaker inmate-parent. The department shall provide the inmate with  
7 a form to make that declaration and shall inform the inmate, orally and on the form,  
8 of the reasons for the declaration. The department shall, within 10 days after the  
9 declaration is signed, forward a copy of the signed declaration to the court assigned  
10 to exercise jurisdiction under chapter 48 that has jurisdiction over the declared  
11 primary caretaker inmate-parent's child and to the county department under s.  
12 46.215, 46.22 or 46.23 in the county of that court. The county department shall  
13 ensure that a copy of the declaration is given to the child's caseworker, if any. A  
14 declaration under this subsection is for purposes of notice only and has no effect on  
15 the inmate's actual status as a primary caretaker inmate-parent.

16 **(3) ASSESSMENT OF PRIMARY CARETAKER INMATE-PARENT'S SITUATION AND NEEDS.**  
17 During assessment and evaluation at the admitting state correctional institution of  
18 an inmate who is a primary caretaker inmate-parent, the department shall assess,  
19 among other things, all of the following:

20 (a) Where the inmate's child is currently living.

21 (b) Who is the current caregiver of the inmate's child.

22 (c) Whether adequate arrangements can be made for contact between the  
23 inmate and the child.

24 (d) Whether the child is the subject of a petition or a dispositional order under  
25 ch. 48.

1 (e) The need for the inmate to maintain contact with his or her child.

2 (4) CONSIDERATION OF PLACEMENT NEAR CHILD. In developing a final assessment  
3 and evaluation report, and in any subsequent review of the placement of an inmate  
4 who is a primary caretaker inmate-parent, the department shall, subject to security  
5 requirements, consider the feasibility of placing the inmate in a facility that is as  
6 close as possible to his or her child. The department shall specify in writing its  
7 reasons for placing or not placing the inmate in the closest possible facility to the  
8 inmate's child.

9 (5) RECOMMENDATIONS IN REPORT. A final assessment and evaluation report of  
10 an inmate who is a primary caretaker inmate-parent shall include  
11 recommendations regarding the services needed to assist the inmate in maintaining  
12 contact with his or her child and in assuming as much responsibility as possible for  
13 decision-making regarding the child.

14 **SECTION 19.** 301.043 of the statutes is created to read:

15 **301.043 Visitation and other communication with inmate-parent's**  
16 **child.** (1) VISITATION WITH CHILD. During the orientation portion of an inmate's  
17 assessment and evaluation, the inmate's social worker or other appropriate staff  
18 member at the institution shall do all of the following:

19 (a) Determine whether the inmate has a child and, if so, determine whether the  
20 inmate desires visitation with that child.

21 (b) Inquire whether there are any court-imposed restrictions on visits by the  
22 inmate's child or on contact with the inmate's family.

23 (c) Provide the inmate with information describing selected resources that are  
24 available to assist the inmate in achieving visitation with his or her child.

1           **(2) TELEPHONE CALLS TO CHILD.** (a) Except as provided in sub. (4), the  
2 department shall permit an inmate to have not less than one telephone conversation  
3 per week with his or her child. The department shall designate one or more  
4 appropriate persons, including the child's other parent or foster parent, treatment  
5 foster parent or a relative of the child who is caring for the child in the parent's  
6 absence, as persons who may accept telephone calls from the inmate to his or her  
7 child and place the child on the telephone for purposes of the call.

8           (b) Except if the inmate's social worker determines that it would be detrimental  
9 to the child, the department shall encourage an inmate to have telephone contact  
10 with his or her child and to telephone his or her child not less than one time per week.

11           (c) The department shall ensure that each state correctional institution makes  
12 available to inmates a written policy that contains a specific procedure for arranging  
13 telephone calls between an inmate and his or her child.

14           **(3) DEPARTMENT RULES.** The department shall promulgate rules to implement  
15 this section. The rules shall encourage communication between an inmate and his  
16 or her child, through visits, telephone calls and correspondence, as a means of  
17 fostering reintegration into the community and maintenance of family ties and shall  
18 require the department to designate staff at each state correctional institution to  
19 facilitate communication between an inmate and his or her child, unless that  
20 communication is prohibited by court order.

21           **(4) LIMITATIONS ON PROHIBITING COMMUNICATION AS SANCTION.** (a) The  
22 department may not prohibit an inmate from visiting, telephoning or corresponding  
23 with his or her child unless the inmate has been disciplined by the department for  
24 misconduct that is directly related to visiting, telephoning or corresponding with the  
25 inmate's child.

1 (b) If an inmate is in segregation status, his or her telephone privileges may  
2 be suspended.

3 **SECTION 17.** 972.15 (1) of the statutes is amended to read:

4 972.15 (1) After a conviction the court may order a presentence investigation,  
5 except that the court may order an employe of the department to conduct a  
6 presentence investigation only after a conviction for a felony. In its presentence  
7 investigation report, the department shall provide information regarding a  
8 defendant's parental status, including the number and ages of the defendant's  
9 children, the defendant's legal custody and physical placement rights to those  
10 children, the current placement status of those children and any other relevant  
11 information that the court may request.

12 **SECTION 18. Initial applicability.**

13 (1) The treatment of section 301.042 of the statutes first applies to any  
14 assessment and evaluation, as defined in section 301.01 (1d) of the statutes, as  
15 created by this act, commenced on the effective date of this subsection.

16 **SECTION 19. Effective dates.** This act takes effect on the day after  
17 publication, except as follows:

18 (1) ASSESSMENT AND EVALUATION OF PRIMARY CARETAKER INMATE-PARENTS. The  
19 treatment of section 301.042 of the statutes and SECTION 18 of this act take effect on  
20 the first day of the 3rd month beginning after publication.

21 (END)