



2005 ASSEMBLY BILL 822

November 9, 2005 – Introduced by Representatives KRUSICK, BERCEAU, LEHMAN, SEIDEL, SHERIDAN, TURNER and ZEPNICK, cosponsored by Senators OLSEN, DARLING and CARPENTER. Referred to Committee on Education.

1 **AN ACT** *to amend* 48.345 (intro.), 118.15 (5) (b) 2., 118.16 (5m), 118.16 (6) (a) 2.
2 c. and 118.162 (4) (e); and *to create* 48.02 (9m), 48.13 (6), 48.345 (5), 118.16 (5g)
3 and 118.16 (6) (c) of the statutes; **relating to:** eliminating certain requirements
4 that must be met before a proceeding may be brought against a child under 12
5 years of age for habitual truancy, if the habitual truancy is the result of the
6 neglect, refusal, or inability of the parent or guardian of the child to cause the
7 child to attend school regularly, and requiring the court assigned to exercise
8 jurisdiction under the Children’s Code to order certain dispositions for such a
9 child.

Analysis by the Legislative Reference Bureau

Current law grants the court assigned to exercise jurisdiction under the Children’s Code and the Juvenile Justice Code (juvenile court) exclusive jurisdiction over a juvenile alleged to be in need of protection or services on the grounds of habitual truancy, which is defined as being absent from school without an acceptable excuse for part or all of five or more days on which school is held during a school semester. Current law requires, however, that before any proceeding may be brought against a child for habitual truancy, the school attendance officer must provide evidence that appropriate school personnel have done all of the following:

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1. Met with the child's parent or guardian to discuss the child's truancy or attempted to meet with the child's parent or guardian but received no response or were refused.

2. Provided an opportunity for educational counseling to determine whether a change in the child's curriculum would resolve the child's truancy.

3. Evaluated the child to determine whether learning problems may be a cause of the child's truancy and, if so, have taken steps to overcome the learning problems.

4. Conducted an evaluation to determine whether social problems may be a cause of the child's truancy and, if so, have taken appropriate action or made appropriate referrals.

This bill eliminates, for a child under 12 years of age, the requirements that appropriate school personnel provide an opportunity for educational counseling, evaluate the child for learning problems, and evaluate the child for social problems before a proceeding may be brought against the child for habitual truancy, if the habitual truancy is the result of the neglect, refusal, or inability of the parent or guardian of the child to cause the child to attend school regularly. Accordingly, under the bill, the only requirement that must be met before bringing a habitual truancy proceeding against a child under 12 years of age under those circumstances is that appropriate school personnel have met or attempted to meet with the child's parent or guardian. The bill, however, does require that appropriate school personnel provide an opportunity for educational counseling, evaluate the child for learning problems, and evaluate the child for social problems before a dispositional order may be granted in such a proceeding.

The bill also requires the juvenile court to order one or more of the following dispositions if the juvenile court finds that a child is in need of protection or services for habitual truancy and that the habitual truancy is the result of the neglect, refusal, or inability of the parent or guardian of the child to cause the child to attend school regularly:

1. Counsel the child and the parent or guardian of the child.

2. Order the parent or guardian of the child to cause the child to attend school regularly and to comply with any conditions determined by the juvenile court to be necessary to ensure that the child attends school regularly.

3. Order the parent or guardian of the child to attend scheduled meetings or conferences relating to the child's education with personnel of the child's school.

4. Place the child under the supervision of an agency; the Department of Health and Family Services (DHFS), if DHFS approves; or a suitable adult, including a friend of the child; under conditions prescribed by the juvenile court, including reasonable rules for the child's conduct designed to ensure that the child attends school regularly.

5. Place the child under the supervision of an agency; DHFS, if DHFS approves; or a suitable adult, including a friend of the child; and order the agency or DHFS to provide specified services to the child and the child's family, which may include individual, family, or group counseling, homemaker or parent aide services, parent skills training, and transportation to attend meetings, conferences, and activities at the child's school.

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For further information see the *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.** 48.02 (9m) of the statutes is created to read:

2 48.02 **(9m)** "Habitual truant" has the meaning given in s. 118.16 (1) (a).

3 **SECTION 2.** 48.13 (6) of the statutes is created to read:

4 48.13 **(6)** Who, being under 12 years of age, is a habitual truant, if the habitual
5 truancy is the result of the neglect, refusal, or inability of the parent or guardian of
6 the child to cause the child to attend school regularly as required under s. 118.15 and
7 if evidence is provided by the school attendance officer that the activities under s.
8 118.16 (5g) (a) have been completed or were not required to be completed as provided
9 in s. 118.16 (5m).

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

11 **48.345 Disposition of child or unborn child of child expectant mother**
12 **adjudged in need of protection or services.** (intro.) If the judge finds that the
13 child is in need of protection or services or that the unborn child of a child expectant
14 mother is in need of protection or services, the judge shall enter an order deciding one
15 or more of the dispositions of the case as provided in this section under a care and
16 treatment plan, except that a disposition under sub. (5) may not be combined with
17 any other disposition under this section; the order may not place any child not
18 specifically found under ~~chs. ch.~~ 46, 49, 51, 115 ~~and, or~~ 880 to be developmentally
19 disabled, mentally ill, or to have a disability specified in s. 115.76 (5) in facilities
20 which ~~exclusively treat~~ a facility that exclusively treats those categories of children;
21 and the ~~court~~ order may not place any child expectant mother of an unborn child in

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1 need of protection or services outside of the child expectant mother's home unless the
2 court finds that the child expectant mother is refusing or has refused to accept any
3 alcohol or other drug abuse services offered to her or is not making or has not made
4 a good faith effort to participate in any alcohol or other drug abuse services offered
5 to her. The dispositions under this section are as follows:

6 **SECTION 4.** 48.345 (5) of the statutes is created to read:

7 48.345 (5) (a) If the court finds that the child is in need of protection or services
8 based on habitual truancy under s. 48.13 (6) and if prior to the granting of the
9 dispositional order evidence is provided by the school attendance officer that the
10 activities under s. 118.16 (5g) (b) 1., 2., and 3. have been completed or were not
11 required to be completed as provided in s. 118.16 (5m), the court shall enter an order
12 making one or more of the following dispositions:

13 1. Counsel the child and the parent or guardian of the child.

14 2. Order the parent or guardian of the child to cause the child to attend school
15 regularly as required under s. 118.15 and to comply with any conditions determined
16 by the court to be necessary to ensure that the child attends school regularly.

17 3. Order the parent or guardian of the child to attend scheduled meetings or
18 conferences relating to the child's education with personnel of the child's school.

19 4. Place the child under the supervision of an agency, the department, if the
20 department approves, or a suitable adult, including a friend of the child, under
21 conditions prescribed by the court, including reasonable rules for the child's conduct
22 designed to ensure that the child attends school regularly.

23 5. Place the child under the supervision of an agency, the department, if the
24 department approves, or a suitable adult, including a friend of the child, and order
25 the agency or department to provide specified services to the child and the child's

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1 family, which may include individual, family, or group counseling, homemaker or
2 parent aide services, parent skills training, and transportation to attend meetings,
3 conferences, and activities at the child's school.

4 (b) No order to any parent or guardian under par. (a) 2. or 3. may be entered
5 until the parent or guardian is given an opportunity to be heard on the contemplated
6 order of the court. The court shall cause notice of the time, place, and purpose of the
7 hearing to be served on the parent or guardian personally at least 10 days before the
8 date of the hearing. The procedure in these cases shall, as far as practicable, be the
9 same as in other cases to the court. At the hearing, the parent or guardian may be
10 represented by counsel and may produce and cross-examine witnesses. Any parent
11 or guardian who fails to comply with any order issued by a court under par. (a) 2. or
12 3. may be proceeded against for contempt of court.

13 **SECTION 5.** 118.15 (5) (b) 2. of the statutes is amended to read:

14 118.15 (5) (b) 2. In a prosecution under par. (a), if the defendant proves that he
15 or she is unable to comply with the law because of the disobedience of the child, the
16 action shall be dismissed and the child shall be referred to the court assigned to
17 exercise jurisdiction under ~~ch.~~ chs. 48 and 938.

18 **SECTION 6.** 118.16 (5g) of the statutes is created to read:

19 118.16 (5g) (a) Except as provided in sub. (5m), before any proceeding may be
20 brought against a child under s. 48.13 (6) for habitual truancy, the school attendance
21 officer shall provide evidence that appropriate school personnel in the school or
22 school district in which the child is enrolled have, within the school year during
23 which the habitual truancy occurred, met with the child's parent or guardian to
24 discuss the child's truancy or attempted to meet with the child's parent or guardian
25 and received no response or were refused.

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1 (b) Except as provided in sub. (5m), before any dispositional order may be
2 granted under s. 48.345 (5) for habitual truancy, the school attendance officer shall
3 provide evidence that appropriate school personnel in the school or school district in
4 which the child is enrolled have, within the school year during which the habitual
5 truancy occurred, done all of the following:

6 1. Provided an opportunity for educational counseling to the child to determine
7 whether a change in the child's curriculum would resolve the child's truancy and
8 have considered curriculum modifications under s. 118.15 (1) (d).

9 2. Evaluated the child to determine whether learning problems may be a cause
10 of the child's truancy and, if so, have taken steps to overcome the learning problems,
11 except that the child need not be evaluated if tests administered to the child within
12 the previous year indicate that the child is performing at his or her grade level.

13 3. Conducted an evaluation to determine whether social problems may be a
14 cause of the child's truancy and, if so, have taken appropriate action or made
15 appropriate referrals.

16 **SECTION 7.** 118.16 (5m) of the statutes is amended to read:

17 118.16 (5m) ~~Subsection~~ Subsections (5) (a) ~~does and (5g) (a) do~~ not apply if a
18 meeting under sub. (2) (cg) 3. is not held within 10 school days after the date that the
19 notice under sub. (2) (cg) is sent. ~~Subsection~~ Subsections (5) (b), (c), and (d) ~~does and~~
20 (5g) (b) 1., 2., and 3. do not apply if the school attendance officer provides evidence
21 that appropriate school personnel were unable to carry out the activity due to the
22 child's absences from school.

23 **SECTION 8.** 118.16 (6) (a) 2. c. of the statutes is amended to read:

24 118.16 (6) (a) 2. c. The child has not successfully completed participation in a
25 teen court program during the 2 years before the date on which the school attendance

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1 officer received evidence that activities under sub. (5) have been completed or were
2 not required to be completed ~~due to the child's absence from school~~ as provided in sub.
3 (5m).

4 **SECTION 9.** 118.16 (6) (c) of the statutes is created to read:

5 118.16 (6) (c) If the school attendance officer receives evidence that activities
6 under sub. (5g) (a) have been completed or were not required to be completed as
7 provided in sub. (5m), the school attendance officer may file information on any child
8 who continues to be truant with the court assigned to exercise jurisdiction under chs.
9 48 and 938 in accordance with s. 48.24. Filing information on a child under this
10 subdivision does not preclude concurrent prosecution of the child's parent or
11 guardian under s. 118.15 (5).

12 **SECTION 10.** 118.162 (4) (e) of the statutes is amended to read:

13 118.162 (4) (e) The types of truancy cases to be referred to the district attorney
14 for the filing of information under s. 48.24 or 938.24 or prosecution under s. 118.15
15 (5) and the time periods within which the district attorney will respond to and take
16 action on the referrals.

17 **SECTION 11. Initial applicability.**

18 (1) HABITUAL TRUANCY; CHILDREN UNDER 12 YEARS OF AGE. This act first applies
19 to a child under 12 years of age who is habitually truant from school under the
20 circumstances specified in section 48.13 (6) of the statutes, as created by this act,
21 during the 2006-07 school year.

22 (END)