



2011 ASSEMBLY BILL 747

March 15, 2012 - Introduced by Representatives KRUSICK and BERCEAU. Referred to Committee on Children and Families.

1 **AN ACT** *to amend* 48.345 (intro.), 118.16 (5) (intro.), 118.16 (5m), 118.16 (6) (a)
2 (intro.), 118.16 (6) (a) 2. c., 118.162 (4) (e), 938.125 (2), 938.13 (6) and 938.17 (2)
3 (a) 1.; and *to create* 48.02 (8b), 48.13 (6), 48.345 (5), 118.16 (5g) and 118.16 (6)
4 (c) of the statutes; **relating to:** eliminating certain requirements that must be
5 met before a proceeding may be brought against a child under 12 years of age
6 for habitual truancy and requiring the court assigned to exercise jurisdiction
7 under the Children's Code to order certain dispositions if the habitual truancy
8 of a child under 12 years of age is the result of the neglect, refusal, or inability
9 of the parent or guardian of the child to cause the child to attend school
10 regularly.

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

ASSEMBLY BILL 747

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:

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, either in juvenile court or under a municipal ordinance prohibiting habitual truancy. 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 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 under 12 years of age 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 Children and Families (DCF), if DCF 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; DCF, if DCF approves; or a suitable adult, including a friend of the child; and order the agency or DCF 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

ASSEMBLY BILL 747

skills training, and transportation to attend meetings, conferences, and activities at the child's school.

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 (8b) of the statutes is created to read:
- 2 48.02 (8b) "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, 54, or 115 to be developmentally disabled,
- 19 mentally ill, or to have a disability specified in s. 115.76 (5) in facilities ~~that~~
- 20 ~~exclusively treat~~ a facility that exclusively treats those categories of children; and

ASSEMBLY BILL 747**SECTION 3**

1 the court order may not place any child expectant mother of an unborn child in need
2 of protection or services outside of the child expectant mother's home unless the court
3 finds that the child expectant mother is refusing or has refused to accept any alcohol
4 or other drug abuse services offered to her or is not making or has not made a good
5 faith effort to participate in any alcohol or other drug abuse services offered to her.

6 The dispositions under this section are as follows:

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

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

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

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

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

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

24 5. Place the child under the supervision of an agency, the department, if the
25 department approves, or a suitable adult, including a friend of the child, and order

ASSEMBLY BILL 747

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

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

14 **SECTION 5.** 118.16 (5) (intro.) of the statutes is amended to read:

15 118.16 (5) (intro.) Except as provided in sub. (5m), before any proceeding may
16 be brought against a child 12 years of age or older under s. 938.13 (6) for habitual
17 truancy or under s. 938.125 (2) or 938.17 (2) for a violation of an ordinance enacted
18 under s. 118.163 (2) or against the ~~child's~~ parent or guardian of a child under s. 118.15
19 for failure to cause the child to attend school regularly, the school attendance officer
20 shall provide evidence that appropriate school personnel in the school or school
21 district in which the child is enrolled have, within the school year during which the
22 truancy occurred, done all of the following:

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

24 118.16 (5g) (a) Except as provided in sub. (5m), before any proceeding may be
25 brought against a child under 12 years of age under s. 48.13 (6) or 938.13 (6) for

ASSEMBLY BILL 747**SECTION 6**

1 habitual truancy or under s. 938.125 (2) or 938.17 (2) for a violation of an ordinance
2 enacted under s.118.163 (2), the school attendance officer shall provide evidence that
3 appropriate school personnel in the school or school district in which the child is
4 enrolled have, within the school year during which the habitual truancy occurred,
5 met with the child's parent or guardian to discuss the child's truancy or attempted
6 to meet with the child's parent or guardian and received no response or were refused.

7 (b) Except as provided in sub. (5m), before any dispositional order may be
8 granted under s. 48.345 (5), 938.342 (1g), or 938.345 for the habitual truancy of a
9 child under 12 years of age, the school attendance officer shall provide evidence that
10 appropriate school personnel in the school or school district in which the child is
11 enrolled have, within the school year during which the habitual truancy occurred,
12 done all of the following:

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

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

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

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

24 118.16 (5m) ~~Subsection~~ Subsections (5) (a) ~~does and (5g) (a) do~~ not apply if a
25 meeting under sub. (2) (cg) 3. is not held within 10 school days after the date that the

ASSEMBLY BILL 747

1 notice under sub. (2) (cg) is sent. ~~Subsection~~ Subsections (5) (b), (c), and (d) ~~does and~~
2 (5g) (b) 1., 2., and 3. do not apply if the school attendance officer provides evidence
3 that appropriate school personnel were unable to carry out the activity due to the
4 child's absences from school.

5 **SECTION 8.** 118.16 (6) (a) (intro.) of the statutes is amended to read:

6 118.16 (6) (a) (intro.) If the school attendance officer receives evidence that
7 activities under sub. (5) or (5g) (a) have been completed or were not required to be
8 completed as provided in sub. (5m), the school attendance officer may do any of the
9 following:

10 **SECTION 9.** 118.16 (6) (a) 2. c. of the statutes is amended to read:

11 118.16 (6) (a) 2. c. The child has not successfully completed participation in a
12 teen court program during the 2 years before the date on which the school attendance
13 officer received evidence that activities under sub. (5) have been completed or were
14 not required to be completed due to the child's absence from school as provided in sub.
15 (5m).

16 **SECTION 10.** 118.16 (6) (c) of the statutes is created to read:

17 118.16 (6) (c) If the school attendance officer receives evidence that activities
18 under sub. (5g) (a) have been completed or were not required to be completed as
19 provided in sub. (5m), the school attendance officer may file information on any child
20 who continues to be truant with the court assigned to exercise jurisdiction under chs.
21 48 and 938 in accordance with s. 48.24. Filing information on a child under this
22 subdivision does not preclude concurrent prosecution of the child's parent or
23 guardian under s. 118.15 (5).

24 **SECTION 11.** 118.162 (4) (e) of the statutes is amended to read:

ASSEMBLY BILL 747**SECTION 11**

1 118.162 (4) (e) The types of truancy cases to be referred to the district attorney
2 for the filing of information under s. 48.24 or 938.24 or prosecution under s. 118.15
3 (5) and the time periods within which the district attorney will respond to and take
4 action on the referrals.

5 **SECTION 12.** 938.125 (2) of the statutes is amended to read:

6 938.125 (2) The court has exclusive jurisdiction over a juvenile 12 years of age
7 or older who is alleged to have violated an ordinance enacted under s. 118.163 (2) only
8 if evidence is provided by the school attendance officer that the activities under s.
9 118.16 (5) have been completed or were not required to be completed as provided in
10 s. 118.16 (5m) and the court has exclusive jurisdiction over any juvenile under 12
11 years of age who is alleged to have violated an ordinance enacted under s. 118.163
12 (2) only if evidence is provided by the school attendance officer that the activities
13 under s. 118.16 (5g) (a) have been completed or were not required to be completed as
14 provided in s. 118.16 (5m) and if the circumstances specified in s. 118.13 (6) do not
15 apply.

16 **SECTION 13.** 938.13 (6) of the statutes is amended to read:

17 938.13 (6) HABITUALLY TRUANT FROM SCHOOL. Except as provided under s. 938.17
18 (2), the juvenile is 12 years of age or over and is habitually truant from school and
19 evidence is provided by the school attendance officer that the activities under s.
20 118.16 (5) have been completed or were not required to be completed as provided in
21 s. 118.16 (5m) or the juvenile is under 12 years of age and is habitually truant from
22 school, evidence is provided by the school attendance officer that the activities under
23 s. 118.16 (5g) (a) have been completed or were not required to be completed as the
24 provided in s. 118.16 (5m), and the circumstances specified in s. 48.13 (6) do not apply.

25 **SECTION 14.** 938.17 (2) (a) 1. of the statutes is amended to read:

