



1997 ASSEMBLY BILL 751

January 27, 1998 - Introduced by Representatives GREEN, WASSERMAN, WALKER, PLALE, JESKEWITZ, DUFF, HARS DORF, LADWIG, SCHA FER, PORTER, MUSSER, AINSWORTH, OWENS, GUNDERSON and POWERS, cosponsored by Senators DARLING, DRZE WIECKI, ROESSLER and ZIEN. Referred to Committee on Judiciary.

1 **AN ACT to renumber and amend** 48.355 (3), 48.428 (6) and 938.355 (3); **to**
2 **amend** 48.345 (3) (a), 48.42 (1m) (b), 48.42 (1m) (c), 48.925 (1) (intro.), 767.245
3 (1) and 938.34 (3) (a); and **to create** 48.355 (3) (b), 48.357 (4d), 48.42 (1m) (d),
4 48.428 (6) (b), 48.925 (1m), 767.245 (1m), 767.247, 767.325 (4m), 880.157,
5 938.355 (3) (b) and 938.357 (4d) of the statutes; **relating to:** prohibiting the
6 granting of visitation or physical placement with a child to a parent or other
7 person who intentionally kills a parent of the child.

Analysis by the Legislative Reference Bureau

Under current law, in a divorce or legal separation that involves a minor child, the court must award legal custody of the child and allocate to the parents physical placement with the child. The court may not deny a parent physical placement unless the court finds that it would endanger the child's physical, mental or emotional health. In an action affecting the family, the court may grant visitation with a minor child to a grandparent, stepparent or person who has had a relationship similar to a parent-child relationship with the child if the court determines that the visitation is in the child's best interest. In a guardianship matter that involves a minor child, the court may grant visitation rights to a grandparent or stepparent of the child if one or both of the child's parents are deceased and the court determines that the visitation is in the child's best interest.

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This bill prohibits a court from granting visitation or physical placement rights with a child to a parent of the child or to another person if that parent or other person has been convicted of first-degree or 2nd-degree intentional homicide of a parent of the child. The prohibition applies in any action affecting the family that involves the child and in any guardianship matter that involves the child. Additionally, on the motion of a party or on its own motion, a court is required to modify an existing physical placement order by denying a parent physical placement with a child if the parent is convicted of first-degree or 2nd-degree intentional homicide of the child's other parent. In all of these situations, however, the court may grant visitation or physical placement if the child wishes to have visitation or physical placement with the parent or other person and is mature enough to make such a decision and if the visitation or physical placement would be in the best interests of the child.

Under current law, the court assigned to exercise jurisdiction under the children's code and the juvenile justice code (juvenile court) may place a child or a juvenile who has been adjudged to be in need of protection or services or a juvenile who has been adjudged delinquent in, among other placements, the home of a parent or other relative. Also, under current law, if the juvenile court places such a child or juvenile outside of his or her home, the juvenile court may set reasonable rules of parental visitation if the juvenile court finds that parental visitation would be in the best interests of the child. In addition, under current law, the juvenile court may issue a temporary restraining order and injunction prohibiting a parent against whom a petition for involuntary termination of parental rights (TPR) has been filed from visitation or contact with the child and may order or prohibit visitation by a birth parent of a child who has been placed in sustaining care following a TPR. Finally, under current law, the juvenile court may grant reasonable visitation rights to a relative, for example, a grandparent, who has maintained a relationship similar to a parent-child relationship with a child who has been adopted by a stepparent or relative.

This bill prohibits a juvenile court from placing a child or a juvenile who has been adjudged to be in need of protection or services or a juvenile who has been adjudged delinquent in the home of a parent or other relative of the child if the parent or other relative has been convicted of first-degree or 2nd-degree intentional homicide of a parent of the child. The bill also prohibits the juvenile court from granting visitation to a parent of such a child or juvenile if the parent has been convicted of first-degree or 2nd-degree intentional homicide of the child's other parent. In addition, the bill requires the juvenile court, on petition, to issue a temporary restraining order and injunction prohibiting a parent against whom a petition for involuntary TPR has been filed from visitation or contact with the child if the parent has been convicted of first-degree or 2nd-degree intentional homicide of the child's other parent. Similarly, the bill prohibits the juvenile court from granting visitation to a birth parent of a child who has been placed in sustaining care following a TPR if the birth parent has been convicted of first-degree or 2nd-degree intentional homicide of the child's other birth parent. Finally, the bill prohibits the juvenile court from granting visitation rights to a relative who has maintained a relationship similar to a parent-child relationship with a child if the relative has

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been convicted of first-degree or 2nd-degree intentional homicide of a parent of the child. In all of these situations, however, the juvenile court may grant the visitation or placement if the child or juvenile wishes to have the visitation or placement and is mature enough to make such a decision and if the visitation or placement would be in the best interests of the juvenile.

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

1 **SECTION 1.** 48.345 (3) (a) of the statutes is amended to read:

2 48.345 (3) (a) The home of a parent or other relative of the child, except that
3 the judge may not designate the home of a parent or other relative of the child as the
4 child's placement if the parent or other relative has been convicted under s. 940.01
5 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree
6 intentional homicide, of a parent of the child, and the conviction has not been
7 reversed, set aside or vacated, unless the judge determines that the child desires to
8 be placed in the home of the parent or other relative and is sufficiently mature to
9 make such a decision and that the placement would be in the best interests of the
10 child.

11 **SECTION 2.** 48.355 (3) of the statutes is renumbered 48.355 (3) (a) and amended
12 to read:

13 48.355 (3) (a) If Except as provided in par. (b), if, after a hearing on the issue
14 with due notice to the parent or guardian, the judge court finds that it would be in
15 the best interest of the child, the judge court may set reasonable rules of parental
16 visitation.

17 **SECTION 3.** 48.355 (3) (b) of the statutes is created to read:

18 48.355 (3) (b) 1. Except as provided in subd. 2., the court may not grant
19 visitation under par. (a) to a parent of a child if the parent has been convicted under

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1 s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the
2 2nd-degree intentional homicide, of the child's other parent, and the conviction has
3 not been reversed, set aside or vacated.

4 2. Subdivision 1. does not apply if the court determines that the child desires
5 to have visitation with the parent and is sufficiently mature to make such a decision
6 and that the visitation would be in the best interests of the child.

7 **SECTION 4.** 48.357 (4d) of the statutes is created to read:

8 48.357 (4d) (a) Except as provided in par. (b), the court may not change a child's
9 placement to a placement in the home of a person who has been convicted under s.
10 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree
11 intentional homicide, of a parent of the child, and the conviction has not been
12 reversed, set aside or vacated.

13 (b) Paragraph (a) does not apply if the court determines that the child desires
14 to be placed in the home of the person and is sufficiently mature to make such a
15 decision and that the placement would be in the best interests of the child.

16 **SECTION 5.** 48.42 (1m) (b) of the statutes is amended to read:

17 48.42 (1m) (b) The Subject to par. (d), the court may issue the temporary order
18 ex parte or may refuse to issue the temporary order and hold a hearing on whether
19 to issue an injunction. The temporary order is in effect until a hearing is held on the
20 issuance of an injunction. The court shall hold a hearing on the issuance of an
21 injunction on or before the date of the hearing on the petition to terminate parental
22 rights under s. 48.422 (1).

23 **SECTION 6.** 48.42 (1m) (c) of the statutes is amended to read:

24 48.42 (1m) (c) Notwithstanding any other order under s. 48.355 (3), the court,
25 subject to par. (d), may grant an injunction prohibiting the respondent from visiting

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1 or contacting the child if the court determines that the prohibition would be in the
2 best interests of the child. An injunction under this subsection is effective according
3 to its terms but may not remain in effect beyond the date the court dismisses the
4 petition for termination of parental rights under s. 48.427 (2) or issues an order
5 terminating parental rights under s. 48.427 (3).

6 **SECTION 7.** 48.42 (1m) (d) of the statutes is created to read:

7 48.42 (1m) (d) 1. Except as provided in subd. 2., the court shall issue a
8 temporary order and injunction prohibiting a parent of a child from visitation or
9 contact with the child if the parent has been convicted under s. 940.01 of the
10 first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional
11 homicide, of the child's other parent, and the conviction has not been reversed, set
12 aside or vacated.

13 2. Subdivision 1. does not apply if the court determines that the child desires
14 to have visitation or contact with the parent and is sufficiently mature to make such
15 a decision and that the visitation or contact would be in the best interests of the child.

16 **SECTION 8.** 48.428 (6) of the statutes is renumbered 48.428 (6) (a) and amended
17 to read:

18 48.428 (6) (a) ~~The~~ Except as provided in par. (b), the court may order or prohibit
19 visitation by a birth parent of a child placed in sustaining care.

20 **SECTION 9.** 48.428 (6) (b) of the statutes is created to read:

21 48.428 (6) (b) 1. Except as provided in subd. 2., the court may not grant
22 visitation under par. (a) to a birth parent of a child who has been placed in sustaining
23 care if the birth parent has been convicted under s. 940.01 of the first-degree
24 intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of

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1 the child's other birth parent, and the conviction has not been reversed, set aside or
2 vacated.

3 2. Subdivision 1. does not apply if the court determines that the child desires
4 to have visitation with the birth parent and is sufficiently mature to make such a
5 decision and that the visitation would be in the best interests of the child.

6 **SECTION 10.** 48.925 (1) (intro.) of the statutes is amended to read:

7 48.925 (1) (intro.) Upon petition by a relative who has maintained a
8 relationship similar to a parent-child relationship with a child who has been adopted
9 by a stepparent or relative, the court, subject to subs. (1m) and (2), may grant
10 reasonable visitation rights to that person if the petitioner has maintained such a
11 relationship within 2 years prior to the filing of the petition, if the adoptive parent
12 or parents, or, if a birth parent is the spouse of an adoptive parent, the adoptive
13 parent and birth parent, have notice of the hearing and if the court determines all
14 of the following:

15 **SECTION 11.** 48.925 (1m) of the statutes is created to read:

16 48.925 (1m) (a) Except as provided in par. (b), the court may not grant
17 visitation rights under sub. (1) to a relative who has maintained a relationship
18 similar to a parent-child relationship with a child if the relative has been convicted
19 under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the
20 2nd-degree intentional homicide, of a parent of the child, and the conviction has not
21 been reversed, set aside or vacated.

22 (b) Paragraph (a) does not apply if the court determines that the child desires
23 to have visitation with the relative and is sufficiently mature to make such a decision
24 and that the visitation would be in the best interests of the child.

25 **SECTION 12.** 767.245 (1) of the statutes is amended to read:

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1 767.245 (1) Except as provided in ~~sub.~~ subs. (1m) and (2m), upon petition by
2 a grandparent, greatgrandparent, stepparent or person who has maintained a
3 relationship similar to a parent-child relationship with the child, the court may
4 grant reasonable visitation rights to that person if the parents have notice of the
5 hearing and if the court determines that visitation is in the best interest of the child.

6 **SECTION 13.** 767.245 (1m) of the statutes is created to read:

7 767.245 (1m) (a) Except as provided in par. (b), the court may not grant
8 visitation rights under sub. (1) to a person who has been convicted under s. 940.01
9 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree
10 intentional homicide, of a parent of the child, and the conviction has not been
11 reversed, set aside or vacated.

12 (b) Paragraph (a) does not apply if the court determines that the child desires
13 to have visitation with the person and is sufficiently mature to make such a decision
14 and that the visitation would be in the best interests of the child.

15 **SECTION 14.** 767.247 of the statutes is created to read:

16 **767.247 Prohibiting visitation or physical placement if a parent kills**
17 **other parent. (1)** Notwithstanding s. 767.24 (1), (4) and (5) and except as provided
18 in sub. (2), in an action under this chapter that affects a minor child, a court may not
19 grant to the child's parent visitation or physical placement rights with the child if the
20 parent has been convicted under s. 940.01 of the first-degree intentional homicide,
21 or under s. 940.05 of the 2nd-degree intentional homicide, of the child's other parent,
22 and the conviction has not been reversed, set aside or vacated.

23 (2) Subsection (1) does not apply if the court determines that the child desires
24 to have visitation or periods of physical placement with the parent and is sufficiently

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1 mature to make such a decision and that the visitation or periods of physical
2 placement would be in the best interests of the child.

3 **SECTION 15.** 767.325 (4m) of the statutes is created to read:

4 767.325 (4m) DENIAL OF PHYSICAL PLACEMENT FOR KILLING OTHER PARENT. (a)
5 Notwithstanding subs. (1) to (4), upon petition, motion or order to show cause by a
6 party or on its own motion, a court shall modify a physical placement order by
7 denying a parent physical placement with a child if the parent has been convicted
8 under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the
9 2nd-degree intentional homicide, of the child's other parent, and the conviction has
10 not been reversed, set aside or vacated.

11 (b) Paragraph (a) does not apply if the court determines that the child desires
12 to have physical placement with the parent and is sufficiently mature to make such
13 a decision and that physical placement with the parent would be in the best interests
14 of the child.

15 **SECTION 16.** 880.155 (2) of the statutes is amended to read:

16 880.155 (2) If one or both parents of a minor child are deceased and the child
17 is in the custody of the surviving parent or any other person, a grandparent or
18 stepparent of the child may petition for visitation privileges with respect to the child,
19 whether or not the person with custody is married. The grandparent or stepparent
20 may file the petition in a guardianship or temporary guardianship proceeding under
21 this chapter that affects the minor child or may file the petition to commence an
22 independent action under this chapter. The Except as provided in sub. (3m), the
23 court may grant reasonable visitation privileges to the grandparent or stepparent if
24 the surviving parent or other person who has custody of the child has notice of the
25 hearing and if the court determines that visitation is in the best interest of the child.

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1 **SECTION 17.** 880.155 (3m) of the statutes is created to read:

2 880.155 **(3m)** (a) Except as provided in par. (b), the court may not grant
3 visitation privileges to a grandparent or stepparent under this section if the
4 grandparent or stepparent has been convicted under s. 940.01 of the first-degree
5 intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of
6 a parent of the child, and the conviction has not been reversed, set aside or vacated.

7 (b) Paragraph (a) does not apply if the court determines that the child desires
8 to have visitation with the grandparent or stepparent and is sufficiently mature to
9 make such a decision and that the visitation would be in the best interests of the
10 child.

11 **SECTION 18.** 880.157 of the statutes is created to read:

12 **880.157 Prohibiting visitation or physical placement if a parent kills**
13 **other parent.** (1) Except as provided in sub. (2), in an action under this chapter
14 that affects a minor child, a court may not grant to a parent of the child visitation or
15 physical placement rights with the child if the parent has been convicted under s.
16 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree
17 intentional homicide, of the child's other parent, and the conviction has not been
18 reversed, set aside or vacated.

19 (2) Subsection (1) does not apply if the court determines that the child desires
20 to have visitation or periods of physical placement with the parent and is sufficiently
21 mature to make such a decision and that visitation or periods of physical placement
22 would be in the best interests of the child.

23 **SECTION 19.** 938.34 (3) (a) of the statutes is amended to read:

24 938.34 **(3)** (a) The home of a parent or other relative of the juvenile, except that
25 the court may not designate the home of a parent or other relative of the juvenile as

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1 the juvenile's placement if the parent or other relative has been convicted under s.
2 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree
3 intentional homicide, of a parent of the juvenile, and the conviction has not been
4 reversed, set aside or vacated, unless the court determines that the juvenile desires
5 to be placed in the home of the parent or other relative and is sufficiently mature to
6 make such a decision and that the placement would be in the best interests of the
7 juvenile.

8 **SECTION 20.** 938.355 (3) of the statutes is renumbered 938.355 (3) (a) and
9 amended to read:

10 938.355 (3) (a) If Except as provided in par. (b), if, after a hearing on the issue
11 with due notice to the parent or guardian, the court finds that it would be in the best
12 interest of the juvenile, the court may set reasonable rules of parental visitation.

13 **SECTION 21.** 938.355 (3) (b) of the statutes is created to read:

14 938.355 (3) (b) 1. Except as provided in subd. 2., the court may not grant
15 visitation under par. (a) to a parent of a juvenile if the parent has been convicted
16 under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the
17 2nd-degree intentional homicide, of the juvenile's other parent, and the conviction
18 has not been reversed, set aside or vacated.

19 2. Subdivision 1. does not apply if the court determines that the juvenile desires
20 to have visitation with the parent and is sufficiently mature to make such a decision
21 and that the visitation would be in the best interests of the juvenile.

22 **SECTION 22.** 938.357 (4d) of the statutes is created to read:

23 938.357 (4d) (a) Except as provided in par. (b), the court may not change a
24 juvenile's placement to a placement in the home of a person who has been convicted
25 under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the

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1 2nd-degree intentional homicide, of a parent of the juvenile, and the conviction has
2 not been reversed, set aside or vacated.

3 (b) Paragraph (a) does not apply if the court determines that the juvenile
4 desires to be placed in the home of the person and is sufficiently mature to make such
5 a decision and that the placement would be in the best interests of the juvenile.

6 **SECTION 23. Initial applicability.**

7 (1) This act first applies to petitions for visitation, physical placement or
8 revision of physical placement orders that are filed on the effective date of this
9 subsection, to petitions to restrain and enjoin visitation and contact with a child that
10 are filed on the effective date of this subsection and to orders of the juvenile court
11 placing a child in the home of a parent, relative or other person or setting parental
12 visitation granted on the effective date of this subsection, regardless of when the
13 conviction of first-degree or 2nd-degree intentional homicide occurred.

14 (END)