

1999 ASSEMBLY BILL 108

February 9, 1999 – Introduced by Representatives MONTGOMERY, LADWIG, AINSWORTH, ALBERS, GOETSCH, GUNDERSON, HANDRICK, LASSA, MUSSER, OWENS, SERATTI, SKINDRUD, SYKORA, WASSERMAN and GUNDRUM, cosponsored by Senators DARLING, DRZEWIECKI and HUELSMAN. Referred to Committee on Family Law.

1 **AN ACT to renumber and amend** 48.355 (3), 48.428 (6) and 938.355 (3); **to**
2 **amend** 48.207 (1) (a), 48.207 (1) (b), 48.345 (3) (a), 48.345 (3) (b), 48.42 (1m) (b),
3 48.42 (1m) (c), 48.925 (1) (intro.), 767.245 (1), 880.155 (2), 938.207 (1) (a),
4 938.207 (1) (b), 938.34 (3) (a) and 938.34 (3) (b); and **to create** 48.355 (3) (b),
5 48.357 (4d), 48.42 (1m) (e), 48.428 (6) (b), 48.925 (1m), 767.245 (1m), 767.247,
6 767.325 (4m), 880.155 (3m), 880.157, 938.355 (3) (b) and 938.357 (4d) of the
7 statutes; **relating to:** prohibiting the granting of visitation or physical
8 placement with a child to a parent or other person who intentionally kills a
9 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 the physical placement 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

ASSEMBLY BILL 108

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.

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 second-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 second-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 is in need of temporary physical custody or who has been adjudged to be delinquent or in need of protection or services in, among other placements, the home of a parent or other relative of the child or, if the placement is for less than 30 days, the home of a guardian of the child. 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 is in need of temporary physical custody or who has been adjudged to be delinquent or in need of protection or services in the home of a parent, other relative of the child if the parent, other relative or guardian has been convicted of first-degree or second-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 second-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 second-degree

ASSEMBLY BILL 108

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 second-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 been convicted of first-degree or second-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 child or juvenile.

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

1 **SECTION 1.** 48.207 (1) (a) of the statutes is amended to read:

2 48.207 (1) (a) The home of a parent or guardian, except that a child may not
3 be held in the home of a parent or guardian if the parent or guardian has been
4 convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05
5 of the 2nd-degree intentional homicide, of a parent of the child, and the conviction
6 has not been reversed, set aside or vacated, unless the person making the custody
7 decision determines that the child desires to be held in the home of the parent or
8 guardian and is sufficiently mature to make such a decision and that the placement
9 would be in the best interests of the child.

10 **SECTION 2.** 48.207 (1) (b) of the statutes is amended to read:

11 48.207 (1) (b) The home of a relative, except that a child may not be held in the
12 home of a relative if the relative has been convicted under s. 940.01 of the
13 first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional
14 homicide, of a parent of the child, and the conviction has not been reversed, set aside
15 or vacated, unless the person making the custody decision determines that the child

ASSEMBLY BILL 108

1 desires to be held in the home of the relative and is sufficiently mature to make such
2 a decision and that the placement would be in the best interests of the child.

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

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

13 **SECTION 4.** 48.345 (3) (b) of the statutes is amended to read:

14 48.345 (3) (b) ~~A home which need not be~~ The home of a person who is not
15 required to be licensed if placement is for less than 30 days, except that the judge may
16 not designate the home of a person who is not required to be licensed as the child's
17 placement if the person has been convicted under s. 940.01 of the first-degree
18 intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of
19 a parent of the child, and the conviction has not been reversed, set aside or vacated,
20 unless the judge determines that the child desires to be placed in that home and is
21 sufficiently mature to make such a decision and that the placement would be in the
22 best interests of the child.

23 **SECTION 5.** 48.355 (3) of the statutes is renumbered 48.355 (3) (a) and amended
24 to read:

ASSEMBLY BILL 108

1 48.355 (3) (a) If Except as provided in par. (b), if, after a hearing on the issue
2 with due notice to the parent or guardian, the judge court finds that it would be in
3 the best interest of the child, the judge court may set reasonable rules of parental
4 visitation.

5 **SECTION 6.** 48.355 (3) (b) of the statutes is created to read:

6 48.355 (3) (b) 1. Except as provided in subd. 2., the court may not grant
7 visitation under par. (a) to a parent of a child if the parent has been convicted under
8 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 2. Subdivision 1. does not apply if the court determines that the child desires
12 to have visitation with the parent and is sufficiently mature to make such a decision
13 and that the visitation would be in the best interests of the child.

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

15 48.357 (4d) (a) Except as provided in par. (b), the court may not change a child's
16 placement to a placement in the home of a person who has been convicted under s.
17 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree
18 intentional homicide, of a parent of the child, if the conviction has not been reversed,
19 set aside or vacated.

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

23 **SECTION 8.** 48.42 (1m) (b) of the statutes is amended to read:

24 48.42 (1m) (b) The Subject to par. (e), the court may issue the temporary order
25 ex parte or may refuse to issue the temporary order and hold a hearing on whether

1 to issue an injunction. The temporary order is in effect until a hearing is held on the
2 issuance of an injunction. The court shall hold a hearing on the issuance of an
3 injunction on or before the date of the hearing on the petition to terminate parental
4 rights under s. 48.422 (1).

5 **SECTION 9.** 48.42 (1m) (c) of the statutes is amended to read:

6 48.42 **(1m)** (c) Notwithstanding any other order under s. 48.355 (3), the court,
7 subject to par. (e), may grant an injunction prohibiting the respondent from visiting
8 or contacting the child if the court determines that the prohibition would be in the
9 best interests of the child. An injunction under this subsection is effective according
10 to its terms but may not remain in effect beyond the date the court dismisses the
11 petition for termination of parental rights under s. 48.427 (2) or issues an order
12 terminating parental rights under s. 48.427 (3).

13 **SECTION 10.** 48.42 (1m) (e) of the statutes is created to read:

14 48.42 **(1m)** (e) 1. Except as provided in subd. 2., the court shall issue a
15 temporary order and injunction prohibiting a parent of a child from visitation or
16 contact with the child if the parent has been convicted under s. 940.01 of the
17 first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional
18 homicide, of the child's other parent, and the conviction has not been reversed, set
19 aside or vacated.

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

23 **SECTION 11.** 48.428 (6) of the statutes is renumbered 48.428 (6) (a) and
24 amended to read:

ASSEMBLY BILL 108

1 48.428 (6) (a) ~~The Except as provided in par. (b), the~~ court may order or prohibit
2 visitation by a birth parent of a child placed in sustaining care.

3 **SECTION 12.** 48.428 (6) (b) of the statutes is created to read:

4 48.428 (6) (b) 1. Except as provided in subd. 2., the court may not grant
5 visitation under par. (a) to a birth parent of a child who has been placed in sustaining
6 care if the birth parent has been convicted under s. 940.01 of the first-degree
7 intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of
8 the child's other birth parent, and the conviction has not been reversed, set aside or
9 vacated.

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

13 **SECTION 13.** 48.925 (1) (intro.) of the statutes is amended to read:

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

22 **SECTION 14.** 48.925 (1m) of the statutes is created to read:

23 48.925 (1m) (a) Except as provided in par. (b), the court may not grant
24 visitation rights under sub. (1) to a relative who has maintained a relationship
25 similar to a parent-child relationship with a child if the relative has been convicted

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

4 (b) Paragraph (a) does not apply if the court determines that the child desires
5 to have visitation with the relative 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 15.** 767.245 (1) of the statutes is amended to read:

8 767.245 (1) Except as provided in ~~sub.~~ subs. (1m) and (2m), upon petition by
9 a grandparent, greatgrandparent, stepparent or person who has maintained a
10 relationship similar to a parent-child relationship with the child, the court may
11 grant reasonable visitation rights to that person if the parents have notice of the
12 hearing and if the court determines that visitation is in the best interest of the child.

13 **SECTION 16.** 767.245 (1m) of the statutes is created to read:

14 767.245 (1m) (a) Except as provided in par. (b), the court may not grant
15 visitation rights under sub. (1) to a person who has been convicted under s. 940.01
16 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree
17 intentional homicide, of a parent of the child, and the conviction has not been
18 reversed, set aside or vacated.

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

22 **SECTION 17.** 767.247 of the statutes is created to read:

23 **767.247 Prohibiting visitation or physical placement if a parent kills**
24 **other parent.** (1) Notwithstanding ss. 767.23 (1) (am), 767.24 (1), (4) and (5),
25 767.51 (3) and 767.62 (4) (a) and except as provided in sub. (2), in an action under this

ASSEMBLY BILL 108

1 chapter that affects a minor child, a court or family court commissioner may not
2 grant to the child's parent visitation or physical placement rights with the child if the
3 parent has been convicted under s. 940.01 of the first-degree intentional homicide,
4 or under s. 940.05 of the 2nd-degree intentional homicide, of the child's other parent,
5 and the conviction has not been reversed, set aside or vacated.

6 (2) Subsection (1) does not apply if the court or family court commissioner
7 determines that the child desires to have visitation or periods of physical placement
8 with the parent and is sufficiently mature to make such a decision and that the
9 visitation or periods of physical placement would be in the best interests of the child.

10 **SECTION 18.** 767.325 (4m) of the statutes is created to read:

11 767.325 (4m) DENIAL OF PHYSICAL PLACEMENT FOR KILLING OTHER PARENT. (a)
12 Notwithstanding subs. (1) to (4), upon petition, motion or order to show cause by a
13 party or on its own motion, a court shall modify a physical placement order by
14 denying a parent physical placement with a child if the parent has been convicted
15 under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the
16 2nd-degree intentional homicide, of the child's other parent, and the conviction has
17 not been reversed, set aside or vacated.

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

22 **SECTION 19.** 880.155 (2) of the statutes is amended to read:

23 880.155 (2) If one or both parents of a minor child are deceased and the child
24 is in the custody of the surviving parent or any other person, a grandparent or
25 stepparent of the child may petition for visitation privileges with respect to the child,

ASSEMBLY BILL 108

1 whether or not the person with custody is married. The grandparent or stepparent
2 may file the petition in a guardianship or temporary guardianship proceeding under
3 this chapter that affects the minor child or may file the petition to commence an
4 independent action under this chapter. The Except as provided in sub. (3m), the
5 court may grant reasonable visitation privileges to the grandparent or stepparent if
6 the surviving parent or other person who has custody of the child has notice of the
7 hearing and if the court determines that visitation is in the best interest of the child.

8 **SECTION 20.** 880.155 (3m) of the statutes is created to read:

9 880.155 **(3m)** (a) Except as provided in par. (b), the court may not grant
10 visitation privileges to a grandparent or stepparent under this section if the
11 grandparent or stepparent has been convicted under s. 940.01 of the first-degree
12 intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of
13 a parent of the child, and the conviction has not been reversed, set aside or vacated.

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

18 **SECTION 21.** 880.157 of the statutes is created to read:

19 **880.157 Prohibiting visitation or physical placement if a parent kills**
20 **other parent. (1)** Except as provided in sub. (2), in an action under this chapter
21 that affects a minor child, a court may not grant to a parent of the child visitation or
22 physical placement rights with the child if the parent has been convicted under s.
23 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree
24 intentional homicide, of the child's other parent, and the conviction has not been
25 reversed, set aside or vacated.

ASSEMBLY BILL 108

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

5 **SECTION 22.** 938.207 (1) (a) of the statutes is amended to read:

6 938.207 **(1)** (a) The home of a parent or guardian, except that a juvenile may
7 not be held in the home of a parent or guardian if the parent or guardian has been
8 convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05
9 of the 2nd-degree intentional homicide, of a parent of the juvenile, and the conviction
10 has not been reversed, set aside or vacated, unless the person making the custody
11 decision determines that the juvenile desires to be held in the home of the parent or
12 guardian and is sufficiently mature to make such a decision and that the placement
13 would be in the best interests of the juvenile.

14 **SECTION 23.** 938.207 (1) (b) of the statutes is amended to read:

15 938.207 **(1)** (b) The home of a relative, except that a juvenile may not be held
16 in the home of a relative if the relative has been convicted under s. 940.01 of the
17 first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional
18 homicide, of a parent of the juvenile, and the conviction has not been reversed, set
19 aside or vacated, unless the person making the custody decision determines that the
20 juvenile desires to be held in the home of the relative and is sufficiently mature to
21 make such a decision and that the placement would be in the best interests of the
22 juvenile.

23 **SECTION 24.** 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

ASSEMBLY BILL 108

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 25.** 938.34 (3) (b) of the statutes is amended to read:

9 938.34 (3) (b) ~~A home which need not be~~ The home of a person who is not
10 required to be licensed if placement is for less than 30 days, except that the judge may
11 not designate the name of a person who is not required to be licensed as the juvenile's
12 placement if the person has been convicted under s. 940.01 of the first-degree
13 intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of
14 a parent of the juvenile, and the conviction has not been reversed, set aside or
15 vacated, unless the judge determines that the juvenile desires to be placed in that
16 home and is sufficiently mature to make such a decision and that the placement
17 would be in the best interests of the juvenile.

18 **SECTION 26.** 938.355 (3) of the statutes is renumbered 938.355 (3) (a) and
19 amended to read:

20 938.355 (3) (a) ~~If~~ Except as provided in par. (b), if, after a hearing on the issue
21 with due notice to the parent or guardian, the court finds that it would be in the best
22 interest of the juvenile, the court may set reasonable rules of parental visitation.

23 **SECTION 27.** 938.355 (3) (b) of the statutes is created to read:

24 938.355 (3) (b) 1. Except as provided in subd. 2., the court may not grant
25 visitation under par. (a) to a parent of a juvenile if the parent has been convicted

ASSEMBLY BILL 108

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

4 2. Subdivision 1. does not apply if the court determines that the juvenile 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 juvenile.

7 **SECTION 28.** 938.357 (4d) of the statutes is created to read:

8 938.357 **(4d)** (a) Except as provided in par. (b), the court may not change a
9 juvenile's placement to a placement in the home of a person who has been convicted
10 under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the
11 2nd-degree intentional homicide, of a parent of the juvenile, if the conviction has not
12 been reversed, set aside or vacated.

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

16 **SECTION 29. Initial applicability.**

17 (1) This act first applies to petitions for visitation or physical placement, and
18 to petitions, motions or orders to show cause for revision of physical placement
19 orders, that are filed on the effective date of this subsection; to petitions to restrain
20 and enjoin visitation and contact with a child that are filed on the effective date of
21 this subsection; and to orders of the juvenile court placing a child in the home of a
22 parent, guardian or relative or setting parental visitation granted on the effective
23 date of this subsection; regardless of when the conviction of first-degree or
24 2nd-degree intentional homicide occurred.

25

(END)