

1999 DRAFTING REQUEST

Bill

Received: **02/10/1999**

Received By: **malaigm**

Wanted: **As time permits**

Identical to LRB:

For: **Bonnie Ladwig (608) 266-9171**

By/Representing: **Joyce Kiel**

This file may be shown to any legislator: NO

Drafter: **malaigm**

May Contact:

Alt. Drafters:

Subject: **Children - delinquency**
Children -juvenile ct procedure
Children - miscellaneous
Children - out-of-home placement
Children - TPR and adoption

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Federal adoption act conformity; technical changes

Instructions:

See Attached

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<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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CORRESPONDENCE/MEMORANDUM

STATE OF WISCONSIN

LEGISLATIVE COUNCIL STAFF
ONE EAST MAIN STREET, Sum 40 1
P.O. Box 2536
MADISON, WI 53701-2536
TELEPHONE: (608) 266-1304
FAX: (608) 266-3830
EMAIL: leg.council@legis.state.wi.us

DATE: February 8, 1999

TO: GORDON M. MALAISE, SENIOR ATTORNEY, LEGISLATIVE
REFERENCE BUREAU

FROM: Joyce L. Kiel, Senior Staff Attorney

SUBJECT: Drafting Request for Representative Ladwig Relating to Compliance with the
Federal Adoption and Safe Families Act

1997 Wisconsin Act 237 (the Biennial Budget Adjustment Act) included provisions which were intended to comply with P.L. 105-89, the federal Adoption and Safe Families Act (ASFA). However, several provisions in Act 237 do not appear to have implemented the requirements of ASFA or appear to have implemented them in a way not required by ASFA.

Please draft a bill for Representative Bonnie Ladwig which does the following:

1. Amends s. 20.435 (3) (pm), Stats., to refer to "42 USC 673b," rather than "42 USC 473A".

Comment: The purpose of this change is to reflect how Section 473A of the Social Security Act is codified.

new 2. Amends ss. 48.355 (2b) and 938.355 (2b), Stats., to refer to "~~s. 48.57~~", rather than "s. 48.57 (1) (e) or (hm)". and ch. welfare agency

Comment: Currently, ss. 48.355 (2b) and 938.355 (2b), Stats., provide that, at the same time reasonable efforts required under s. 48.355 (2) (b) 6. or 938.355 (2) (b) 6., Stats., to prevent the removal of the child from the home are being made, a county department of human services or county department of social services (county department) or, in Milwaukee County, the Department of Health and Family Services (DHFS) or a child welfare agency may also work with "[DHFS], a county department under s. 48.57 (1) (e) or (hm) or a child welfare agency licensed under s. 48.61 (5) in making reasonable efforts to place the child for adoption, with a guardian or in some other alternative permanent placement." However, s. 48.57 (1) (e) and (hm), Stats., refer, respectively, only to the authority of the Milwaukee County Department of Human Services to accept children for guardianship and place them for adoption and to the authority of county departments in other than Milwaukee County to do foster parent conversion adoptions. Because the concurrent reasonable efforts may encompass permanent placements other than adoption, it appears to be inappropriate to cross-reference only s. 48.57 (1) (e) and (hm), Stats.

~~new~~ Amends s. 48.415 (2) (a) 2. a. and b., Stats., to refer to “diligent effort”, rather than “reasonable effort”.

Comment: Section 48.415 (2) (a), Stats., is one of the grounds for involuntary termination of parental rights (TPR) and is based on a child’s being in continuing need of protection or services. Under this ground, a child must have been adjudged to be in need of protection or services (CHIPS) under s. 48.13, Stats., or a juvenile in need of protection or services (JIPS) under s. 938.13, Stats., and must have been placed outside the home under a court order for six months or longer. Other elements also must be proved to establish this ground for involuntary TPR, including proving that the agency responsible for the care of the child has made a “reasonable effort” to provide the services ordered by the court. Prior to the passage of Act 237, this was referred to as a “diligent effort” to provide the services ordered by the court.

The provision in Act 237 which changed the term “diligent effort” in s. 48.415 (2) (a) 2. a. and b., Stats., to “reasonable effort” was not required by ASFA. This provision in the TPR law relates to a finding as to whether the agency has made an effort to provide the services ordered by the juvenile court. It does not relate to the separate requirements in s. 48.355 (2) (b) 6. or 938.355 (2) (b) 6., Stats., concerning “reasonable efforts” to prevent the removal of the child from the home. Because the statutes now use the same term for both concepts, this is likely to result in confusion. This is especially true in light of the fact that Act 237 created exceptions to the reasonable efforts requirement relating to preventing the removal of the child from the home, whereas there are no exceptions to the finding which a court must make that the agency has made a “diligent effort” to provide court-ordered services in order to establish s. 48.415 (2), Stats., as a ground for involuntary TPR. Therefore, please amend s. 48.415 (2) (a) 2. a. and b., Stats., so that they once again refer to a “diligent effort.”

~~4.~~ Amends ss. 48.355 (2d) (b) 4. and 938.355 (2d) (b) 4., Stats., as follows: “. . . have been ~~involuntarily~~ terminated, as evidenced by a final order terminating those parental rights.” This will also necessitate deleting the phrase “, as evidenced by a final judgment of conviction,” from ss. 48.355 (2d) (b) (intro.) and 938.355 (2d) (b) (intro.), Stats., and adding appropriate language about a conviction to ss. 48.355 (2d) (b) 1., 2. and 3. and 938.355 (2d) (b) 1., 2. and 3., Stats.

Comment: Sections 48.355 (2d) (b) (intro.) and 938.355 (2d) (b) (intro.), Stats., provide, respectively, that reasonable efforts to prevent the removal of the child from the home are not required if there is a final judgment of conviction for anything specified in s. 48.355 (2d) (b) 1. to 4. or 938.355 (2d) (b) 1. to 4., Stats. Sections 48.355 (2d) (b) 4. and 938.355 (2d) (b) 4., Stats., specify “[t]hat the parental rights of the parent to another child have been involuntarily terminated.” However, while a court may determine that there has been a prior involuntary TPR, there will be no final judgment of “conviction” for an involuntary TPR inasmuch as an involuntary TPR is not a criminal proceeding.

This drafting request would change this to address the situation when a court of competent jurisdiction has determined that the parental rights of a parent have been terminated involuntarily with respect to another child, rather than requiring a “conviction” for this. This change would be consistent with ASFA, which refers to a finding by a court of competent jurisdiction of a prior involuntary TPR, but does not refer to a conviction.

^{new} (5) Creates provisions to define the term “torture” which is used in the definition of “aggravated circumstances” in ss. 48.355 (2d) (a) 1. and 938.355 (2d) (a) 1., Stats.; or alternatively, eliminates the term “torture” and refers instead to a conviction for causing mental harm to that child or another child of the parent in violation of s. 948.04 (1), Stats., or a violation of the law of any other state or federal law, if that violation would be a violation of s. 948.04 (1), Stats., if committed in this state.

Comment: ASFA provides, in pertinent part, that reasonable efforts to prevent the removal of a child from the home are not required “if a court of competent jurisdiction has determined that . . . the parent has subjected the child to aggravated circumstances (as defined in State law, which definition may include but need not be limited to abandonment, torture, chronic abuse and sexual abuse) . . .” [42 U.S.C. s. 671 (15) (D) (intro.) and (i).] Thus, a state has latitude as to what to define as “aggravated circumstances” and is not required to include torture.

Currently, ss. 48.355 (2d) (b) (intro.) and 1. and 938.355 (2d) (b) (intro.) and 1., Stats., provide that reasonable efforts are not required if the court finds, as evidenced by a final judgment of conviction, that the parent has subjected the child to “aggravated circumstances,” which is defined in ss. 48.355 (2d) (a) 1. and 938.355 (2d) (a) 1., Stats., as including “torture.”

Because there is no crime of “torture” under Wisconsin statutes, it is impossible to have a final judgment of conviction for “torture.” The term must be defined if it is used in a way that requires a final judgment of conviction for the crime. Another possibility is to eliminate its use and provide instead that aggravated circumstances includes a conviction under s. 948.04 (1), Stats., for causing mental harm to a child. If this change were made, the statutes would then include various crimes involving physical abuse, sexual abuse or causing mental harm as circumstances under which reasonable efforts are not required. (Under current law, reasonable efforts are required even if the parent has been convicted of causing mental harm to that child or another child in the family.)

^{new} (6) Creates provisions to define the term “chronic abuse” which is used in the definition of “aggravated circumstances” in ss. 48.355 (2d) (a) 1. and 938.355 (2d) (a) 1., Stats.

Comment: Currently, ss. 48.355 (2d) (b) (intro.) and 1. and 938.355 (2d) (b) (intro.) and 1., Stats., provide that reasonable efforts are not required if the court finds, as evidenced by a final judgment of conviction, that the parent has subjected the child to “aggravated circumstances,” which is defined as including “chronic abuse.” Because there is no crime of “chronic abuse” under Wisconsin statutes, it is impossible to have a final judgment of conviction for chronic abuse.

Under ss. 48.355 (2d) (a) 3. and 938.355 (2d) (a) 3., Stats., one conviction is all that is necessary to eliminate the reasonable efforts requirement if there was a conviction for battery under s. 940.19 (2), (3), (4) or (5), Stats., or physical abuse of a child under s. 948.03 (2) (a) or (3) (a), Stats., which resulted in **great bodily harm**, as defined in s. 939.22 (14), Stats., or **substantial bodily harm**, as defined in s. 939.22 (38), Stats., to the child or another child of the parent. However, a conviction for battery or physical abuse of a child which resulted only in **bodily harm**, as defined in s. 939.22 (4), Stats., does not eliminate the reasonable efforts requirement.

subjected the child

A definition of "chronic abuse" could be created for cases in which there are multiple convictions for causing bodily harm, but not great bodily harm or substantial bodily harm, for example, by specifying that chronic abuse means two or more violations of s. 948.03 (2) (b) or (c) or (3) (b) or (c) or 940.19 (1) or (6), Stats., or of the law of any other state or federal law, if those violations would be a violation of s. 948.03 (2) (b) or (c) or (3) (b) or (c) or 940.19 (1) or (6), Stats., if committed in this state and the violations resulted in bodily harm to that child ~~or another child of the parent.~~

^(new) ~~7~~ Amends ss. 48.355 (2d) (a) 1. and 938.255 (2d) (a) 1., Stats., defining "aggravated circumstances" to also include a finding by a court of abandonment by that parent under s. 48.13 (2), Stats., which is the CHIPS jurisdictional ground of abandonment. This will necessitate adding appropriate language to ss. 48.355 (2d) (b) 1. and 938.355 (2d) (b) 1., Stats., which currently requires evidence of a final judgment of conviction with respect to the crime of abandonment so that it also refers to a final order from a court of competent jurisdiction of a finding under s. 48.13 (2), Stats.

Comment: Under current law as created by Act 237, reasonable efforts to prevent the removal of the child from the home are not required if the parent has been convicted for subjecting the child to "aggravated circumstances." Abandonment is an aggravated circumstance if there is a final judgment of conviction that the parent has subjected the child to abandonment under s. 948.20, Stats. (the crime of leaving, with intent to abandon, a child in any place where the child may suffer because of neglect). This means that a finding of "abandonment" under s. 48.13 (2), Stats., as a CHIPS jurisdictional ground does not constitute an aggravated circumstance, even though ASFA would allow, but not require, that result. This drafting request would establish a CHIPS finding of abandonment as an aggravated circumstance.

~~8~~. Amends s. 938.365 (1), Stats., as follows: ". . . first placed outside of his or her home pursuant to an order under ~~this section or s. 938.345, or 938.357 or 938.363~~ or on"

Comment: This change is suggested because a juvenile cannot first be placed outside the home under an order under s. 938.365, Stats., which relates to an extension of a delinquency or JIPS dispositional order, or under an order under s. 938.363, Stats., which relates to the revision of a delinquency or JIPS dispositional order.

~~9~~. Makes the following changes relating to statements of foster parents, treatment foster parents or other physical custodians under s. 48.62 (2), Stats. (collectively referred to herein as "substitute care providers"), at certain hearings:

~~1~~. Repeals ss. 48.27 (3) (a) Im. and 938.27 (3) (a) Im., Stats., which were created by Act 237.

Comment: Act 237 made several changes relating to providing substitute care providers with notice of and an opportunity to be heard at certain hearings under chs. 48 and 938, Stats., that do not appear to have been required by ASFA. It appears that ASFA did not require the creation of s. 48.27 (3) (a) Im., Stats., which provides that a substitute care provider be permitted to make a written or oral statement at **all** of the hearings relating to a CHIPS

petition--which would include a CHIPS plea hearing, fact-finding hearing and dispositional hearing. This same comment applies to s. 938.27 (3) (a) Im., Stats., which applies to all the hearings relating to delinquency, civil law or municipal ordinance violation or JIPS proceedings in juvenile court.

ASFA added the following provision in 42 U.S.C. s. 675 (5) (G) to the definition of “case review system” in 42 U.S.C. s. 675 (5), which essentially *relates to the permanency plan process and requires a permanency hearing and periodic reviews of the status of the child*:

[T]he foster parents (if any) of a child and any preadoptive parent or relative providing care for the child are provided with notice of, and an opportunity to be heard in, any review or hearing with respect to the child, except that this subparagraph shall not be construed to require that any foster parent, preadoptive parent, or relative providing care for the child be made a party to such a review or hearing solely on the basis of such notice and opportunity to be heard.

According to proposed federal regulations which would implement this provision, this means that:

The State must provide the foster parent(s) of a child and any preadoptive parent or relative providing care for the child with notice of and an opportunity to be heard in *permanency planning hearings and reviews* held with respect to the child during the time the child is in the care of such foster parent, preadoptive parent, or relative caregiver. Notice of and an opportunity to be heard does not provide a foster parent, preadoptive parent, or a relative caring for the child with standing as a party to the case. [63 Fed. Reg. 50057 (Sept. 18, 1998) proposed 45 C.F.R. s. 1356.21 (o); emphasis added.]

Proposed federal regulations define a “permanency hearing,” in pertinent part, as the hearing required by 42 U.S.C. s. 675 (5) (C), to determine the permanency plan for a child in foster care. [63 Fed. Reg. 50057 (Sept. 18, 1998); proposed 45 C.F.R. s. 1355.20 (a).] The permanency hearing is held by a juvenile court or other court of competent jurisdiction or by an administrative body appointed or approved by the court and must be held no later than 12 months after the child entered foster care and at least every 12 months thereafter if the child remains in foster care. This appears to be most similar to the permanency plan hearings in ss. 48.38 and 938.38, Stats.

Proposed federal regulations have a separate definition for a “full hearing,” which they note is often referred to by states as the evidentiary hearing, jurisdictional hearing, fact-finding hearing, merits or adjudication hearing. Proposed federal regulations have another separate definition of a “temporary custody hearing.” These are clearly distinct from a permanency hearing, and ASFA’s provisions relating to substitute care providers do not apply to these “full hearings” or “temporary custody hearings.”

ASFA did not require that substitute care providers be given notice of and an opportunity to be heard at every hearing that may be held under chs. 48 and 938, Stats. Rather, ASFA required that substitute care providers be given notice of and the opportunity to appear at permanency plan hearings and permanency plan reviews required in a state's IV-E plan. (It is unclear whether ASFA requires that substitute care providers also be given notice of and an opportunity to appear at a revision of dispositional order hearing under s. 48.363 or 938.363, Stats., an extension of dispositional order hearing under s. 48.365 or 938.365, Stats., and a change-in-placement hearing under s. 48.357 or 938.357, Stats. However, these rights were already provided to substitute care providers prior to Act 237 and are unaffected by this drafting request.)

Repealing ss. 48.427 (3) (a) Im. and 938.27 (3) (a) Im., Stats., would delete the provisions created by Act 237 which allow substitute care providers to make a statement at CHIPS, delinquency and JIPS plea hearings, fact-finding hearings and dispositional hearings because ASFA did not require that they be provided with such rights. A substitute care provider may be called as a witness if one of the parties chooses to do so. Current law (which was in effect prior to Act 237), provides that substitute care providers are to be given notice of such hearings, and this drafting request does not affect this notice requirement.

~~b.~~ Deletes the last sentence of ss. 48.27 (6) and 938.27 (6), Stats. This removes language which was added by Act 237.

Comment: ASFA did not require the amendment of s. 48.27 (6), Stats., to provide that for all proceedings initiated under s. 48.14, Stats., the substitute care provider must be given notice and the opportunity to be heard. Section 48.14, Stats., relates to many types of proceedings involving children, including, for example, guardianship appointments, adoptions, proceedings under ch. 51 or 55, Stats., consent to marry proceedings, consent to donate blood marrow proceedings, child abuse and neglect restraining orders or injunctions, harassment restraining orders and injunctions and appeals under s. 115.81, Stats., relating to education programs. As discussed in item a., above, because these are not permanency hearings required in a IV-E plan, ASFA did not require that substitute care providers be given notice of and an opportunity to be heard at such hearings. A similar comment applies to s. 938.27 (6), Stats., which applies to proceedings initiated under s. 938.14, Stats., that is, proceedings under the interstate compact for juveniles.

/Repeals s. 48.42 (2g) (am), Stats., which was created by Act 237.

Comment: ASFA did not require the creation of s. 48.42 (2g) (am), Stats., to require that a court give substitute care providers notice of and an opportunity to be heard at all TPR hearings. Prior to amendment by Act 237, Wisconsin statutes already required that substitute care providers be given notice of a TPR fact-finding hearing and a TPR dispositional hearing. Further, as amended by 1997 Wisconsin Act 80, the statutes prior to amendment by Act 237 already required that substitute care providers be given the opportunity to make a statement in connection with the TPR dispositional hearing. (1997 Wisconsin Act 80 eliminated the right of substitute care providers to make a statement at the TPR fact-finding hearing, which had been created by 1995 Wisconsin Act 275, because it apparently is reversible error if any information

is presented at the TPR fact-finding hearing as to what is in the best interests of the child and that is the issue which a substitute care provider is most likely to address in a statement.)

Again, because the TPR fact-finding hearing and TPR dispositional hearing are not permanency hearings, ASFA did not require that substitute care providers be given notice of and an opportunity to be heard at such hearings. Thus, in light of the rationale behind the provision in 1997 Wisconsin Act 80 which eliminated the right of substitute care providers to be heard at the TPR fact-finding hearing, it seems inappropriate that Act 237 reinstated this right at the TPR fact-finding hearing. However, it should be noted that this drafting request does not modify current law which requires that substitute care providers be notified of both hearings and which provides that substitute care providers may make a statement at the TPR dispositional hearing.

4. Adds language in the second sentence of ss. 48.27 (3) (a) 2. and 938.27 (3) (a) 2., Stats., as follows: “. . . is not given notice of a hearing under subd. 1. and if the court is required under this chapter to permit that person to make a written or oral statement during the hearing or to submit a written statement prior to the hearing and that person does not make or submit such statement, that person . . .”; and adds language in the second sentence of s. 48.42 (2g) (b), Stats., as follows: “. . . is not given notice of a hearing under par. (a) and if the court is required under s. 48.427 (1m) to permit that person to make a written or oral statement during the hearing or to submit a written statement prior to the hearing and that person does not make or submit such statement, that person . . .” These changes reinstate language which was deleted by Act 237.

Comment: It is unclear why Act 237 amended ss. 48.27 (3) (a) 2., 48.42 (2g) (b) and 938.27 (3) (a) 2., Stats., by deleting the phrase “and if the court is required under . . . to permit that person to make a written or oral statement during the hearing or to submit a written statement prior to the hearing and that person does not make or submit such statement.” The effect of deleting this provision is that for all hearings where notice is required to be given and is not given, the substitute care provider may request a rehearing during the pendency of the order and the court must order a rehearing. This means that even in cases where a substitute care provider was not given notice but independently learned of the hearing and made a statement at the hearing, a rehearing must be ordered if requested. Under the law prior to Act 237, if the substitute care provider independently learned of the hearing and made a statement, the statutes provided that the substitute care provider could not request a mandatory rehearing.

ASFA did not require that any remedy be provided for a substitute care provider if notice and an opportunity to be heard are not provided. This drafting request provides the same remedy as that provided under prior law before the enactment of Act 237, namely, a mandatory rehearing must be granted in those cases in which the substitute care provider was required to be given notice of a hearing, was not given notice, would have had the right to make a statement, ***did not make a statement*** and requested a rehearing during the pendency of the order resulting from the hearing (or with respect to a TPR case, requested a rehearing before the TPR dispositional order was entered).

- ~~e.~~ Creates ss. 48.355 (2d) (d) 1. and 2. and 938.355 (2d) (d) 1. and 2., Stats., to read as shown on Attachment 1 to this memorandum.

Comment: It appears that ASFA required that a substitute care provider be given notice of and an opportunity to be heard at a hearing under ss. 48.355 (2d) (c) and 938.355 (2d) (c), Stats., as created by Act 237. These sections require a permanency plan hearing after a court makes a finding that reasonable efforts are not required, as discussed above. Because ASFA requires this hearing, it appears that ASFA also requires that the substitute care providers be given notice of and an opportunity to be heard. [See 42 U.S.C. s. 675 (5) (G).] Because current law does not provide for this, it is included in this drafting request.

- ~~f.~~ Renumbers s. 48.43 (5) (b) to s. 48.43 (5) (b) 1., Stats.; and creates s. 48.43 (5) (b) 2., Stats., to read as shown on Attachment 2 to this memorandum.

Comment: It appears that ASFA required that a substitute care provider be provided an opportunity to make a statement at the hearing under s. 48.43 (5) (b), Stats., relating to a review of a permanency plan following a TPR. This was not included in Act 237, thus current law provides only notice of the hearing, not an opportunity to make a statement.

- ~~g.~~ Amends ss. 48.38 (5) (b) and 938.38 (5) (b), Stats., to add the following as the next to last sentence: "Any written or oral statement made under this paragraph shall be made under oath or affirmation."; and amends s. 48.427 (1m), Stats., to add the following as the next to last sentence: "Any written or oral statement made under this subsection shall be made under oath or affirmation.".

Comment: To be consistent with other provisions, as amended by 1997 Wisconsin Act 80, this drafting request adds a requirement that any statement made at a hearing by a substitute care provider must be made under oath or affirmation. Act 237 included such a provision only under ss. 48.357 (2r), 48.363 (1m), 48.365 (2m) (ag), 938.357 (2r), 938.363 (1m) and 938.365 (2m) (ag), Stats. This drafting request would extend the requirement to other statements by substitute care providers.

If you have any questions, please call me at 266-3 137.

JLK:tl;wu

Attachments

cc: Representative Bonnie Ladwig

8 “(d) 1. If a hearing is held under par. (c), at least 10 days before the date of the
9 hearing the court shall notify the child, if 12 years of age or over, any parent,
10 guardian and legal custodian of the child and any foster parent, treatment foster
11 parent or other physical custodian described in s. 48.62 (2) of the child of the time,
12 place and purpose of the hearing.

13 2. The court shall give a foster parent, treatment foster parent or other physical
14 custodian described in s. 48.62 (2) who is notified of a hearing under subd. 1. an
15 opportunity to be heard at the hearing by permitting the foster parent, treatment
16 foster parent or other physical custodian to make a written or oral statement during
17 the hearing, or to submit a written statement prior to the hearing, relevant to the
18 issues to be determined at the hearing. Any written or oral statement made under
19 this subdivision shall be made upon oath or affirmation. A foster parent, treatment
20 foster parent or other physical custodian described in s. 48.62 (2) who receives a
21 notice of a hearing under subd. 1. and an opportunity to be heard under this
22 subdivision does not become a party to the proceeding on which the hearing is held
23 solely on the basis of receiving that notice and opportunity to be heard.”.

7 48.43 (5) (b) 2. The court shall give a foster parent, treatment foster parent or
8 other physical custodian described in s. 48.62 (2) who is notified of a hearing under
9 subd. 1. an opportunity to be heard at the hearing by permitting the foster parent,
10 treatment foster parent or other physical custodian to make a written or oral
11 statement during the hearing, or to submit a written statement prior to the hearing,
12 relevant to the issues to be determined at the hearing. Any written or oral statement
13 made under this subdivision shall be made upon oath or affirmation. A foster parent,
14 treatment foster parent or other physical custodian described in s. 48.62 (2) who
15 receives a notice of a hearing under subd. 1. and an opportunity to be heard under
16 this subdivision does not become a party to the proceeding on which the hearing is
17 held solely on the basis of receiving that notice and opportunity to be heard.“ .



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-2177/A
GMM.....
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Gen. cat.

1 **AN ACT . . . relating to:** the efforts that are required to prevent the removal of a
 2 child from the home or to make it possible for a child to return safely to his or
 3 home when a juvenile court order places the child outside ^{of} the home and notice ^{her}
 4 and an opportunity to be heard at certain proceedings under the children's code
 5 and the juvenile justice code by a child's foster parent, treatment foster parent
 6 or other substitute care provider.

Analysis by the Legislative Reference Bureau

Under current law, an order of the court assigned to exercise jurisdiction under the children's code and the juvenile justice code (juvenile court) that places a child outside of his or her home must include a finding as to whether the county department of human services or social services (county department), the department of health and family services (DHFS), in a county having a population of 500,000 or more, or the agency primarily responsible for providing services under a juvenile court order (collectively "agency") has made reasonable efforts to prevent the removal of the child from the home, while assuring that the health and safety of the child are the paramount concerns or, if applicable, has made reasonable efforts to make it possible for the child to return safely to his or her home, except that a juvenile court is not required to find that those reasonable efforts have been made with respect to a parent of the child if the juvenile court finds that the parent has committed certain crimes of homicide against a child of the parent; has committed battery, sexual assault or physical or sexual abuse resulting in great bodily harm or substantial bodily harm to the child or another child of the parent; has had his or her

define

parental rights ~~terminated~~ with respect to another child; or has subjected the child to aggravated circumstances, which are defined under current law as including criminal abandonment, torture, chronic abuse and sexual abuse. Current law, in turn, defines sexual abuse as a violation of certain sex crimes. Current law, however, does not ~~define~~, in turn, abandonment, torture or chronic abuse.

This bill defines those terms and expands the definition of sexual abuse for purposes of determining when a parent has subjected a child to aggravated circumstances. Specifically, the bill defines abandonment as a violation of the criminal law against abandonment or an action or inaction that results in a finding that the child is in need of protection or services on the grounds of abandonment. The bill defines chronic abuse as two or more violations of the criminal laws against battery or physical abuse of a child that result in bodily harm (as opposed to great bodily harm or substantial bodily harm) or two or more actions that result in a finding that the child is in need of protection or services on the grounds of physical abuse. The bill defines torture as a violation of the criminal law against causing mental harm to a child or an action or inaction that results in a finding that the child is in need of protection or services on the grounds of emotional damage. Finally, the bill expands the definition of sexual abuse to include an action that results in a finding that the child is in need of protection or services on the grounds of sexual abuse.

Current law permits an agency, at the same time as the agency is making reasonable efforts to prevent the removal of a child from the home or to make it possible for a child to return to his or her home, to work with DHFS, or a county department or child welfare agency that is authorized to place children for adoption, in making reasonable efforts to place the child for adoption, with a guardian or in some other alternative permanent placement. This bill permits an agency to do that work with any county department or child welfare agency, not just one that is authorized to place children for adoption.

Under current law, a foster parent, treatment foster parent or other physical custodian (substitute care provider) of a child who is the subject of a child in need of protection or services proceeding is entitled to receive an opportunity to be heard at all hearings involving the child, except hearings on motions for which notice need only be provided to the child and his or her counsel. A substitute care provider is also entitled to receive an opportunity to be heard at all hearings on a termination of parental rights (TPR) proceeding and at all hearings on certain other matters over which the juvenile court has jurisdiction, such as the appointment and removal of a guardian of a child, the adoption of a child and proceedings under the Mental Health Act concerning ~~the child.~~

This bill eliminates the requirement that a substitute care provider receive an opportunity to be heard at *all* hearings involving a child in need of protection or services, such as a plea hearing, a fact-finding hearing or a dispositional hearing, but leaves intact the requirement that a substitute care provider receive an opportunity to be heard at a change in placement hearing or hearing on a ~~revision~~ or extension of a dispositional order. Similarly, the bill eliminates the requirement that a substitute care provider receive an opportunity to be heard at *all* TPR

two
findings,
on or more
separate
occasions,



1 hearing under subd. 1. and if the court is required under this chapter to permit that
 2 person to make a written or oral statement during the hearing or to submit a written
 3 statement prior to the hearing; and that person does not make or submit such a
 4 statement, that person may request a rehearing on the matter during the pendency
 5 of an order resulting from the hearing. If the request is made, the court shall order
 6 a rehearing.

History: 1977 c. 354; 1979 c. 300, 331, 359; 1983 a. 27; Sup. Ct. Order, 141 W (2d) xiv (1987), 1987 a. 403; 1991 a. 263,315; 1993 a. 98,395; 1995 a. 27, 77, 275; 1997 a. 237, 292; 13.93 (1) (b).

7 **SECTION 4. 48.27 (6)** of the statutes is amended to read:

8 48.27 (6) When a proceeding is initiated under s. 48.14, all interested parties
 9 shall receive notice and appropriate summons shall be issued in a manner specified
 10 by the court, consistent with applicable governing statutes. ~~In addition, if the child~~
 11 ~~who is the subject of the proceeding is in the care of a foster parent, treatment foster~~
 12 ~~parent or other physical custodian described in s. 48.62 (2), or~~ ● ○
 13 ~~foster parent, treatment foster parent or other physical custodian notice and an~~
 14 ~~opportunity to be heard as provided in sub. (2) (a).~~

History: 1977 c. 354; 1979 c. 300, 331, 359; 1983 a. 27; Sup. Ct. Order, 141 W (2d) xiv (1987), 1987 a. 403; 1991 a. 263,315; 1993 a. 98, 395, 1995 a. 27, 77, 275; 1997 a. 237, 292; 13.93 (1) (b).

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

16 48.355 (2b) **CONCURRENT REASONABLE EFFORTS PERMITTED.** A county
 17 department, the department, in a county having a population of 500,000 or more, or
 18 the agency primarily responsible for providing services to a child under a court order
 19 may, at the same time as the county department, department or agency is making
 20 the reasonable efforts required under sub. (2) (b) 6., work with the department, a
 21 county department ~~under s. 48.57 (1) (c) or (hm)~~ or a child welfare agency licensed

1 ~~under s. 48.61 (5)~~ in making reasonable efforts to place the child for adoption, with
2 a guardian or in some other alternative permanent placement.

History: 1977 c. 354; 1979 c. 295, 300, 359; 1983 a. 27, 102, 399, 538; 1985 a. 29; 1987 a. 27, 339, 383; 1989 a. 31, 41, 86, 107, 121, 359; 1991 a. 39; 1993 a. 98, 334, 377, 385, 395, 446, 481, 491; 1995 a. 27, 77, 201, 225, 275; 1997 a. 27, 205, 237, 292.

3 SECTION 6. 48.355 (2d) (a) 1. of the statutes is amended to read:

4 48.355 (2d) (a) 1. ~~“Aggravated circumstances” i~~_a

5 “Abandonment” means a violation of s. 948.20 or in a violation of the law of any other
6 state or federal law if that violation would be a violation of s. 948.20 if committed in
7 this state, torture, chronic abuse and sexual abuse, as evidenced by a final judgment
8 of conviction, or an action or inaction that results in a finding of abandonment under
9 s. 48.13 (2) or under a law of any other state or a federal law that is comparable to
10 s. 48.13 (2), as evidenced by a final order of a court of competent jurisdiction.

History: 1977 c. 354; 1979 c. 295, 300, 359; 1983 a. 27, 102, 399, 538; 1985 a. 29; 1987 a. 27, 339, 383; 1989 a. 31, 41, 86, 107, 121, 359; 1991 a. 39; 1993 a. 98, 334, 377, 385, 395, 446, 481, 491; 1995 a. 27, 77, 201, 225, 275; 1997 a. 27, 205, 237, 292.

11 SECTION 7. 48.355 (2d) (a) 1d. of the statutes is created to read:

12 48.355 (2d) (a) 1d. “Aggravated circumstances” include abandonment, chronic
13 abuse, sexual abuse and torture.

14 SECTION 8. 48.355 (2d) 4a lj. of the statutes is created to read:

15 48.355 (2d) (a) lj. “Chronic abuse” means 2 or more violations of s. 940.19 (1)
16 or (6) or 948.03 (2) (b) or (c) or (3) (b) or (c) or of a law of any other state or federal law
17 if that violation would be a violation of s. 940.19 (1) or (6) or 948.03 (2) (b) or (c) or
18 (3) (b) or (c) ifommitted in this state, that result in bodily harm, as defined in s.
19 939.22 (4), as evidenced by final judgments of conviction on 2 or more separate
20 occasions; or 2 or more actions that result in findings of abuse, as defined in s. 48.02
21 (1) (a), under s. 48.13 (3) or under a law of any other state or a federal law that is
22 comparable to s. 48.13 (3), as evidenced by final orders of a court of competent
23 jurisdiction on 2 or more separate occasions.

plain comma
plain space after comma

1 SECTION 9. 48.355 (2d) (a) 2. of the statutes is amended to read:

2 48.355 (2d) (a) 2. "Sexual abuse" means a violation of s. 940.225, 944.30,
3 948.02, 948.025, 948.05, 948.055, 948.06, 948.09 or 948.10 or a violation of the law
4 of any other state or federal law if that violation would be a violation of s. 940.225,
5 944.30, 948.02, 948.025, 948.05, 948.055, 948.06, 948.09 or 948.10 if committed in
6 this state, as evidenced by a final judgment of conviction, or an action that results
7 in a finding of abuse, as defined in s. 48.102 (1) (b), (c), (d), (e) or (f), under s. 48.13
8 (3) or under a law of any other state or a federal law that is comparable to s. 48.13
9 (3), as evidenced by a final order of a court of competent jurisdiction.

History: 1977 c. 354; 1979 c. 295, 300, 359; 1983 a. 27, 102, 399, 538; 1985 a. 29, 1987 a. 27, 339, 383; 1989 a. 31, 41, 86, 107, 121, 359; 1991 a. 39; 1993 a. 98, 334, 377, 385, 395, 446, 481, 491; 1995 a. 27, 77, 201, 225, 275; 1997a. 27, 205, 237, 292.

10 SECTION 10. 48.355 (2d) (a) 3. of the statutes is created to read:

11 48.355 (2d) (a) 3. "Torture" means a violation of s. 948.0% (1) or a violation of
12 the law of any other state or federal law if that violation would be a violation of s.
13 948.04 (1) if committed in this state, as evidenced by a final judgment of conviction,
14 or an action or inaction that results in a finding of emotional damage under s. 48.13
15 (11) or under a law of any other state or a federal law that is comparable to s. 48.13
16 (ll), as evidenced by a final order of a court of competent jurisdiction.

17 SECTION 11. 48.355 (2d) (bb) (intro.) of the statutes is amended to read:

18 48.355 (2d) (b) (intro.) Notwithstanding sub. (2) (b) 6., the court need not
19 include in a dispositional order a finding as to whether the county department, the
20 department, in a county having a population of 500,000 or more, or the agency
21 primarily responsible for providing services under a court order has made reasonable
22 efforts with respect to a parent of a child to prevent the removal of the child from the
23 home, while assuring that the child's health and safety are the paramount concerns,
24 or, if applicable, a finding as to whether the agency primarily responsible for

1 providing services under a court order has made reasonable efforts with respect to
2 a parent of a child to make it possible for the child to return safely to his or her home,
3 i f t h e c o u r t ' f i n d ' s ; any of the following:

History: 1977 c. 354; 1979 c. 295, 300, 359; 1983 a. 27, 102, 399, 538; 1985 a. 29; 1987 a. 27, 339, 383; 1989 a. 31, 41, 86, 107, 121, 359; 1991 a. 39; 1993 a. 98, 334, 377, 385, 395, 446, 481, 491; 1995 a. 27, 77, 201, 225, 275; 1997 a. 27, 205, 237, 292.

4 **SECTION 12.** 48.355 (2d) (b) 2. of the statutes is amended to read:

5 48.355 (2d) (b) 2. That the parent has committed, has aided or abetted the
6 commission of, or has solicited, conspired or attempted to commit, a violation of s.
7 940.01, 940.02, 940.03 or 940.05 or a violation of the law of any other state or federal
8 law, if that violation would be a violation of s. 940.01, 940.02, 940.03 or 940.05 if
9 committed in this state, as evidenced by a final judgment of conviction, and that the
10 victim of that violation is a child of the parent.

History: 1977 c. 354; 1979 c. 295, 300, 359; 1983 a. 27, 102, 399, 538; 1985 a. 29; 1987 a. 27, 339, 383; 1989 a. 31, 41, 86, 107, 121, 359; 1991 a. 39; 1993 a. 98, 334, 377, 385, 395, 446, 481, 491; 1995 a. 27, 77, 201, 225, 275; 1997 a. 27, 205, 237, 292.

11 **SECTION 13.** 48.355 (2d) (b) 3. of the statutes is amended to read:

12 48.355 (2d) (b) 3. That the parent has committed a violation of s. 940.19 (2), (3),
13 (4) or (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025 or 948.03 (2) (a) or (3) (a) or a
14 violation of the law of any other state or federal law, if that violation would be a
15 violation of s. 940.19 (2), (3), (4) or (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025 or
16 948.03 (2) (a) or (3) (a) if committed in this state, as evidenced by a final judgment
17 of conviction, and that the violation resulted in great bodily harm, as defined in s.
18 939.22 (14), or in substantial bodily harm, as defined in s. 939.22 (38), to the child
19 or another child of the parent.

History: 1977 c. 354; 1979 c. 295, 300, 359; 1983 a. 27, 102, 399, 538; 1985 a. 29; 1987 a. 27, 339, 383; 1989 a. 31, 41, 86, 107, 121, 359; 1991 a. 39; 1993 a. 98, 334, 377, 385, 395, 446, 481, 491; 1995 a. 27, 77, 201, 225, 275; 1997 a. 27, 205, 237, 292.

20 **SECTION 14.** 48.355 (2d) (b) 4. of the statutes is amended to read:

1 48.355 (2d) (b) 4. That the parental rights of the parent to another child have
2 been involuntarily terminated, as evidenced by a final order of a court of competent
3 jurisdiction terminating those parental rights.

History: 1977 c. 354; 1979 c. 295, 300, 359; 1983 a. 27, 102, 399, 538; 1985 a. 29; 1987 a. 27, 339, 383; 1989 a. 31, 41, 86, 107, 121, 359; 1991 a. 39; 1993 a. 98, 334, 377, 385, 395, 446, 481, 507, 524, 535, 555 a. (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (18), (19), (20), (21), (22), (23), (24), (25), (26), (27), (28), (29), (30), (31), (32), (33), (34), (35), (36), (37), (38), (39), (40), (41), (42), (43), (44), (45), (46), (47), (48), (49), (50), (51), (52), (53), (54), (55), (56), (57), (58), (59), (60), (61), (62), (63), (64), (65), (66), (67), (68), (69), (70), (71), (72), (73), (74), (75), (76), (77), (78), (79), (80), (81), (82), (83), (84), (85), (86), (87), (88), (89), (90), (91), (92), (93), (94), (95), (96), (97), (98), (99), (100), (101), (102), (103), (104), (105), (106), (107), (108), (109), (110), (111), (112), (113), (114), (115), (116), (117), (118), (119), (120), (121), (122), (123), (124), (125), (126), (127), (128), (129), (130), (131), (132), (133), (134), (135), (136), (137), (138), (139), (140), (141), (142), (143), (144), (145), (146), (147), (148), (149), (150), (151), (152), (153), (154), (155), (156), (157), (158), (159), 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4 SECTION 15. 48.355 (2d) (d) of the statutes is created to read:

5 48.355 (2d) (d) 1. If a hearing is held under par. (a), at least 10 days before the
6 date of the hearing the court shall notify the child, if 12 years of age or over, any
7 parent, guardian and legal custodian of the child and any foster parent, treatment
8 foster parent or other physical custodian described in s. 48.62 (2) of the child of the
9 time, place and purpose of the hearing.

10 2. The court shall give a foster parent, treatment foster parent or other physical
11 custodian described in s. 48.62 (2) who is notified of a hearing under subd. 1. an
12 opportunity to be heard at the hearing by permitting the foster parent, treatment
13 foster parent or other physical custodian to make a written or oral statement during
14 the hearing, or to submit a written statement prior to the hearing, relevant to the
15 issues to be determined at the hearing. Any written or oral statement made under
16 this subdivision shall be made upon oath or affirmation. A foster parent, treatment
17 foster parent or other physical custodian described in s. 48.62 (2) who receives a
18 notice of a hearing under subd. 1. and an opportunity to be heard under this
19 subdivision does not become a party to the proceeding on which the hearing is held
20 solely on the basis of receiving that notice and opportunity to be heard.

21 SECTION 16. 48.38 (5) (b) of the statutes is amended to read:

22 48.38 (5) (b) The court or the agency shall notify the parents of the child, the
23 child if he or she is 12 years of age or older and the child's foster parent, the child's
24 treatment foster parent or the operator of the facility in which the child is living of

1 the date, time and place of the review, of the issues to be determined as part of the
 2 review, of the fact that they may have an opportunity to be heard at the review by
 3 submitting written comments not less than 10 working days before the review or by
 4 participating at the review. The court or agency shall notify the person representing
 5 the interests of the public, the child's counsel and the child's guardian ad litem of the
 6 date of the review, of the issues to be determined as part of the review and of the fact
 7 that they may submit written comments not less than 10 working days before the
 8 review. Any written or oral statement made to the court under this paragraph by a
 9 foster parent, treatment foster parent or operator of a facility in which a child is
 10 living shall be made under oath or affirmation. The notices under this paragraph
 11 shall be provided in writing not less than 30 days before the review and copies of the
 12 notices shall be filed in the child's case record.

History: 1983 a. 399; 1985 a. 70 ss. 1, 10; 1985 a. 176; 1985 a. 292 s. 3; 1985 a. 332; 1987 a. 383; 1989 a. 31, 86, 107; 1993 a. 377, 385, 395, 446, 491; 1995 a. 27 ss. 2474 to 2478, 9126 (19); 1995 a. 77, 143, 275; 1997 a. 27, 35, 104, 237.

13 **SECTION 17. 48.415 (2)** (a) 2. of the statutes is amended to read:

14 48.415 (2) (a) 2. a. In this subdivision, "~~reasonable~~ diligent effort" means an
 15 earnest and conscientious effort to take good faith steps to provide the services
 16 ordered by the court which takes into consideration the characteristics of the parent
 17 or child or of the expectant mother or child, the level of cooperation of the parent or
 18 expectant mother and other relevant circumstances of the case.

19 NOTE: NOTE: Subd. par. a. is shown as affected by three acts of the 1997 legislature and as merged by the revisor under s. 13.93 (2) (c).NOTE:

20 b. That the agency responsible for the care of the child and the family or of the
 21 unborn child and expectant mother has made a ~~reasonable~~ diligent effort to provide
 22 the services ordered by the court.

22 **SECTION 18. 48.42 (2g) (am)** of the statutes is repealed.

23 NOTE: NOTE: Subd. par. b. is shown as affected by two acts of the 1997 legislature and as merged by the revisor under s. 13.93 (2) (c).NOTE:

History: 1979 c. 330; 1983 a. 189 s. 329 (5); 1983 a. 326; 1983 a. 447 ss. 8.67; 1983 a. 488,538; 1987 a. 355,383; 1989 a. 86; 1993 a. 235,395; 1995 a. 77, 108, 225, 275, 1997 a. 35, 80, 237, 292, 294; s. 13.93 (2) (c).

23 **SECTION 19. 48.42 (2g) (b)** of the statutes is amended to read:

1 48.42 (2g) (b) Failure to give notice under par. (a) to a foster parent, treatment
2 foster parent or other physical custodian described in s. 48.62 (2) does not deprive the
3 court of jurisdiction in the proceeding. If a foster parent, treatment foster parent or
4 other physical custodian described in s. 48.62 (2) is not given notice of a hearing
5 under par. (a) and if the court is required under s. 48.427 (1m) to permit that person
6 to make a written or oral statement during the hearing or to submit a written
7 statement prior to the hearing and that person does not make or submit such a
8 statement, that person may request a rehearing on the matter at any time prior to
9 the entry of an order under s. 48.427 (2) or (3). If the request is made, the court shall
10 order a rehearing.

History: 1913 c. 263; 1977 c. 354; 1979 c. 330; 1981 c. 81 s. 33; 1981 c. 391; 1983 a. 447; 1985 a. 94; Sup. Ct. Order, 136 W (2d) xxv (1987); 1987 a. 383; 1989 a. 86; 1993 a. 395,446; 1995 a. 108, 225, 275, 352; 1997 a. 35, 80, 191, 237.

11 **SECTION 20. 48.427 (1m)** of the statutes is amended to read:

12 48.427 (1m) In addition to any evidence presented under sub. (1), the court
13 shall give the foster parent, treatment foster parent or other physical custodian
14 described in s. 48.62 (2) of the child an opportunity to be heard at the dispositional
15 hearing by permitting the foster parent, treatment foster parent or other physical
16 custodian to make a written or oral statement during the dispositional hearing, or
17 to submit a written statement prior to disposition, relevant to the issue of disposition.
18 Any written or oral statement made under this subsection shall be made under oath
19 or affirmation. A foster parent, treatment foster parent or other physical custodian
20 described in s. 48.62 (2) who receives notice of a hearing under s. 48.42 (2g) (a) and
21 an opportunity to be heard under this subsection does not become a party to the
22 proceeding on which the hearing is held solely on the basis of receiving that notice
23 and opportunity to be heard.

History: 1979 c. 330; 1981 c. 81,359; 1985 a. 70,176; 1995 a. 275, 289; 1997 a. 80, 104,237.

24 **SECTION 21. 48.43 (5) (b)** of the statutes is renumbered 48.43 (5) (b) 1.

1 **SECTION 22.** 48.43 (5) (b) 2. of the statutes is created to read:

2 48.43 (5) (b) 2. The court shall give a foster parent, treatment foster parent or
3 other physical custodian described in s. 48.62 (2) who is notified of a hearing under
4 subd. 1. an opportunity to be heard at the hearing by permitting the foster parent,
5 treatment foster parent or other physical custodian to make a written or oral
6 statement during the hearing, or to submit a written statement prior to the hearing,
7 relevant to the issues to be determined at the hearing. Any written or oral statement
8 made under this subdivision shall be made upon oath or affirmation. A foster parent,
9 treatment foster parent or other physical custodian described in s. 48.62 (2) who
10 receives a notice of a hearing under subd. 1. and an opportunity to be heard under
11 this subdivision does not become a party to the proceeding on which the hearing is
12 held solely on the basis of receiving that notice and opportunity to be heard.

13 **SECTION 23.** 938.27 (3) (a) 1m. of the statutes is repealed.

14 **SECTION 24.** 938.27 (3) (a) 2. of the statutes is amended to read:

15 938.27 (3) (a) 2. Failure to give notice under subd. 1. to a foster parent,
16 treatment foster parent or other physical custodian described in s. 48.62 (2) does not
17 deprive the court of jurisdiction in the action or proceeding. If a foster parent,
18 treatment foster parent or other physical custodian described in s. 48.62 (2) is not
19 given notice of a hearing under subd. 1. and if the court is required under this chapter
20 to permit that person to make a written or oral statement during the hearing or to
21 submit a written statement prior to the hearing and that person does not make or
22 submit such a statement, that person may request a rehearing on the matter during
23 the pendency of an order resulting from the hearing. If the request is made, the court
24 shall order a rehearing.

1 SECTION 25. 938.27 4 6) of the statutes is amended to read:

2 938.27 (6) When a proceeding is initiated under s. 938.14, all interested parties
3 shall receive notice and appropriate summons shall be issued in a manner specified
4 by the court, consistent with applicable governing statutes. ~~In addition, if the~~
5 ~~juvenile who is the subject of the proceeding is in the care of a foster parent,~~
6 ~~treatment foster parent or other physical custodian described in s. 48.62(2), the court~~
7 ~~shall give the foster parent, treatment foster parent or other physical custodian~~
8 ~~notice and an opportunity to be heard as provided in sub. (3) (a).~~

History: 1995 a. 77,275; 1997 a. 80, 181,237.

9 SECTION 26. 938.355 (2b) of the statutes is amended to read:

10 938.355 (2b) CONCURRENT REASONABLE EFFORTS PERMITTED. A county
11 department that provides social services or the agency primarily responsible for
12 providing services to a juvenile under a court order may, at the same time as the
13 county department or agency is making the reasonable efforts required under sub.
14 (2) (b) 6., work with the department of health and family services, a county
15 department ~~under s. 48.57(1)(c) or (hm)~~ or a child welfare agency ~~licensed under s.~~
16 488) in making reasonable efforts to place the juvenile for adoption, with a
17 guardian or in some other alternative permanent placement.

History: 1995 il. 77,352; 1997 a. 27, 35, 205, 237, 239, 252; s. 13.93(2) (c).

18 SECTION 27. 938.355 (2d) (a) 1. of the statutes is amended to read:

add right parenthesis marks

19 938.355 (2d) (a) 1. ~~“Aggravated circumstances” include abandonment in~~
20 “Abandonment means a violation of s. 948.20 or ~~in a~~ violation of the law of any other
21 state or federal law if that violation would be a violation of s. 948.20 if committed in
22 this state, ~~torture, chronic abuse and sexual abuse~~ as evidenced by a final judgment
23 of conviction. or an action or inaction that results in a finding of abandonment under

1 s. 48.13 (2) or under a law of any other state or a federal law that is comparable to
2 s. 48.13 (2), as evidenced by a final order of a court of competent jurisdiction.

History: 1995 a. 77, 352; 1997 a. 27, 35, 205, 237, 239, 252; s. 13.93 (c).

3 **SECTION 28.** 938.355 (2d) (a) 1d. of the statutes is created to read:

4 **938.355 (2d) (a) 1d.** "Aggravated circumstances" include abandonment,
5 chronic abuse, sexual abuse and torture.

6 **SECTION 29.** 938.355 (2d) (a) lj. of the statutes is created to read:

7 938.355 (2d) (a) lj. "Chronic abuse" means 2 or more violations of s. 940.19 (1)
8 or (6) or 948.03 (2) (b) or (c) or (3) (b) or (c) or of a law of any other state or federal law
9 if that violation would be a violation of s. 940.19 (1) or (6) or 948.03 (2) (b) or (c) or
10 (3) (b) or (c) if committed in this state, that result in bodily harm, as defined in s.
11 939.22 (4), as evidenced by final judgments of conviction on 2 or more separate
12 occasions; or 2 or more actions that result in findings of abuse, as defined in s. 48.02
13 (1) (a), under s. 48.13 (3) or under a law of any other state or a federal law that is
14 comparable to s. 48.13 (3), as evidenced by final orders of a court of competent
15 jurisdiction on 2 or more separate occasions.

16 **SECTION 30.** 938.355 (2d) (a) 2. of the statutes is amended to read:

17 938.355 (2d) (a) 2. "Sexual abuse" means a violation of s. 940.225, 944.30,
18 948.02, 948.025, 948.05, 948.055, 948.06, 948.09 or 948.10 or a violation of the law
19 of any other state or federal law if that violation would be a violation of s. 940.225,
20 944.30, 948.02, 948.025, 948.05, 948.055, 948.06, 948.09 or 948.10 if committed in
21 this state, as evidenced by a final judgment of conviction, or an action that results
22 in a finding of abuse, as defined in s. 48.02 (1) (b), (c), (d), (e) or (f), under s. 48.13

1 (3) or under a law of any other state or a federal law that is comparable to s. 48.13

2 (3) as evidenced by a final order of a court of competent jurisdiction.

3 History: 1995 a. 17,352; 1997 a. 27, 35, 205, 237, 239, 252; s. 13.93(2)(c).

3 **SECTION 31.** 938.355 (2d) (a) 3. of the statutes is created to read:

4 938.355 (2d) (a) 3. "Torture" means a violation of s. 948.04 (1) or a violation of
5 the law of any other state or federal law if that violation would be a violation of s.
6 948.0471) if committed in this state, as evidenced by a final judgment of conviction,
7 or an action or inaction that results in a finding of emotional damage under s. 48.13
8 (11) or under a law of any other state or a federal law that is comparable to s. 48.13
9 (ll), as evidenced by a final order of a court of competent jurisdiction.

10 **SECTION 32.** 938.355 (2d) (b) (intro.) of the statutes is amended to read:

11 938.355 (2d) (b) (intro.) Notwithstanding sub. (2) (b) 6., the court need not
12 include in a dispositional order a finding as to whether a county department which
13 provides social services or the agency primarily responsible for providing services
14 under a court order has made reasonable efforts with respect to a parent of a juvenile
15 to prevent the removal of the juvenile from the home, while assuring that the
16 juvenile's health and safety are the paramount concerns, or, if applicable, a finding
17 as to whether the agency primarily responsible for providing services under a court
18 order has made reasonable efforts with respect to a parent of a juvenile to make it
19 possible for the juvenile to return safely to his or her home, if the court finds, as
20 evidenced by a final judgment of conviction, any of the following:

21 History: 1995 a. 11, 352; 1997 a. 21, 35, 205, 231, 239, 252; s. 13.93(2)(c).

21 **SECTION 33.** 938.355 (2d) (b) 2. of the statutes is amended to read:

22 938.355 (2d) (b) 2. That the parent has committed, has aided or abetted the
23 commission of, or has solicited, conspired or attempted to commit, a violation of s.
24 940.01, 940.02, 940.03 or 940.05 or a violation of the law of any other state or federal

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law, if that violation would be a violation of s. 940.01, 940.02, 940.03 or 940.05 if committed in this state, as evidenced by a final judgment of conviction and that the victim of that violation is a child of the parent.

History: 1995 a. 17,352; 1997 a. 27, 35, 205, 237, 239, 252; s. 13.93(2)(c).

SECTION 34. 938.355 (2d) (b) 3. of the statutes is amended to read:

938.355 (2d) (b) 3. That the parent has committed a violation of s. 940.19 (2), (3), (4) or (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025 or 948.03 (2) (a) or (3) (a) or a violation of the law of any other state or federal law, if that violation would be a violation of s. 940.19 (2), (3), (4) or (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025 or 948.03 (2) (a) or (3) (a) if committed in this state, as evidenced by a final judgment of conviction and that the violation resulted in great bodily harm, as defined in s.

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~~938.22~~ (14) ~~to~~ 939.22, or in substantial bodily harm, as defined in s. ~~938.22~~ (38) 939.22, to the juvenile or another child of the parent.

move text

NOTE: NOTE: The bracketed language indicates the correct cross-references. Corrective legislation is pending. NOTE

History: 1995 a. 77,352; 1997 a. 27, 35, 205, 237, 239, 252; s. 13.93(2)(c).

SECTION 35. 938.355 (2d) (b) 4. of the statutes is amended to read:

938.355 (2d) (b) 4. That the parental rights of the parent to another child have been involuntarily terminated, as evidenced by a final order of a court of competent jurisdiction terminating those parental rights.

History: 1995 a. 77, 352; 1997 a. 21, 35, 205, 237, 239, 252; s. 13.93(2)(c).

SECTION 36. 938.355 (2d) (d) of the statutes is created to read:

938.355 (2d) (d) 1. If a hearing is held under par. (c), at least 10 days before the date of the hearing the court shall notify the juvenile, if 12 years of age or over, any parent, guardian and legal custodian of the juvenile and any foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) of the juvenile of the time, place and purpose of the hearing.

1 2. The court shall give a foster parent, treatment foster parent or other physical
2 custodian described in s. 48.62 (2) who is notified of a hearing under subd. 1. an
3 opportunity to be heard at the hearing by permitting the foster parent, treatment
4 foster parent or other physical custodian to make a written or oral statement during
5 the hearing, or to submit a written statement prior to the hearing, relevant to the
6 issues to be determined at the hearing. Any written or oral statement made under
7 this subdivision shall be made upon oath or affirmation. A foster parent, treatment
8 foster parent or other physical custodian described in s. 48.62 (2) who receives a
9 notice of a hearing under subd. 1. and an opportunity to be heard under this
10 subdivision does not become a party to the proceeding on which the hearing is held
11 solely on the basis of receiving that notice and opportunity to be heard.

12 **SECTION 37.** 938.365 (1) of the statutes is amended to read:

13 938.365 (1) In this section, a juvenile is considered to have been placed outside
14 of his or her home on the date on which the juvenile was first placed outside of his
15 or her home pursuant to an order under ~~this section or s. 938.345, or 938.357 or~~
16 ~~938.363~~ or on the date that is 60 days after the date on which the juvenile was
17 removed from his or her home, whichever is earlier.

18 History: 1995 a 77, 275, 352; 1997 a 27, 35, 80, 237 ✓

18 **SECTION 38.** 938.38 (5) (b) of the statutes is amended to read:

19 938.38 (5) (b) The court or the agency shall notify the parents of the juvenile,
20 the juvenile if he or she is 10 years of age or older and the juvenile's foster parent,
21 the juvenile's treatment foster parent or the operator of the facility in which the
22 juvenile is living of the date, time and place of the review, of the issues to be
23 determined as part of the review, of the fact that they may have an opportunity to
24 be heard at the review by submitting written comments not less than 10 working

1 days before the review or by participating at the review. The court or agency shall
 2 notify the person representing the interests of the public, the juvenile's counsel and
 3 the juvenile's guardian ad litem of the date of the review, of the issues to be
 4 determined as part of the review and of the fact that they may submit written
 5 comments not less than 10 working days before the review. Any written or oral
 6 statement made to the court under this paragraph by a foster parent, treatment
 7 foster parent or operator of a facility in which a juvenile is living shall be made under
 8 oath or affirmation. The notices under this paragraph shall be provided in writing
 9 not less than 30 days before the review and copies of the notices shall be filed in the
 10 juvenile's case record.

History: 1995 a. 77,275, 352; 1997 a. 35,237, 296.

11 **SECTION 39. Initial applicability.**

12 (1) **JUVENILE COURT ORDERS.** The treatment of sections 48.355 (2d) (a) 1., Id., lj.,
 13 2. and 3. and (b) (intro.),%, 3. and 4. and 938.355 (2d) (a) 1., Id., lj., 2. and 3. and (b)
 14 (intro.), 2., 3. and 4. of the statutes first applies to juvenile court orders entered on
 15 the effective date of this subsection.

16 (2) **JUVENILE COURT HEARINGS AND PERMANENCY PLAN REVIEWS.** The treatment of
 17 sections 48.27 (3) (a) 1m. and 2. and (6), 48.38 (5) (b), 48.42 (2g) (am) and (b), 48.427
 18 (lm), 938.27 (3) (a) 1m. and 2. and (6) and 938.38 (5) (b) of the statutes, the
 19 renumbering of section 48.43 (5) (b) of the statutes and the creation of section 48.43
 20 (5) (b) 2. of the statutes first apply to juvenile court hearings and permanency plan
 21 reviews held on the effective date of this subsection.

1 (3) **PERMANENCY PLAN HEARINGS.** The treatment of sections 48.355 (2d) (d) and ✓
2 938.355 (2d) (d) of the statutes first applies to permanency plan hearings held 10
3 days after the effective date of this subsection. ✓

4 (END)



Assistant Majority Leader

TO: Gordon Malaise, Senior Legislative Attorney
Legislative Reference Bureau

FROM: Janine Stippich
State Representative Bonnie Ladwig's office

DATE: March 5, 1999

RE: LRB 2177- federal adoption act conformity

Attached you find LRB 2 177/1. I spoke to Joyce Kiel today at Legislative Council and she explained to me the changes that will be made to make this LRB 2177/2.

Encl.

Delete references to ~~increase~~ CHIPS adjudications
in definitions of "chronic abuse", "torture" and "sexual abuse".
Because ref. to CHIPS adj. is appropriate for abandonment in
that abandonment indicates parent has no interest in child's
reas. efforts not necessary. CHIPS ref. for other definitions - out-
must still make reas. effort.



1999 BILL

Repeal

1 **AN ACT** to repeal 48.27 (3) (a) lm., 48.42 (2g) (am) and 938.27 (3) (a) lm.; **to**
2 **renumber** 48.43 (5) (b); **to amend** 20.435 (3) (pm), 48.27 (3) (a) 2., 48.27 (6),
3 48.355 (2b), 48.355 (2d) (a) 1., 48.355 (2d) (a) 2., 48.355 (2d) (b) (intro.), 48.355
4 (2d) (b) 2., 48.355 (2d) (b) 3., 48.355 (2d) (b) 4., 48.38 (5) (b), 48.415 (2) (a) 2.,
5 48.42 (2g) (b), 48.427 (lm), 938.27 (3) (a) 2., 938.27 (6), 938.355 (2b), 938.355
6 (2d) (a) 1., 938.355 (2d) (a) 2., 938.355 (2d) (b) (intro.), 938.355 (2d) (b) 2.,
7 938.355 (2d) (b) 3., 938.355 (2d) (b) 4., 938.365 (1) and 938.38 (5) (b); and **to**
8 **create** 48.355 (2d) (a) Id., 48.355 (2d) (a) lj., 48.355 (2d) (a) 3., 48.355 (2d) (d),
9 48.43 (5) (b) 2., 938.355 (2d) (a) 1d., 938.355 (2d) (a) lj., 938.355 (2d) (a) 3. and
10 938.355 (2d) (d) of the statutes; **relating to:** the efforts that are required to
11 prevent the removal of a child from the home or to make it possible for a child
12 to return safely to his or her home when a juvenile court order places the child
13 outside of the home and notice and an opportunity to be heard at certain

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1 proceedings under the children's code and the juvenile justice code by a child's
2 foster parent, treatment foster parent or other substitute care provider.

Analysis by the Legislative Reference Bureau

Under current law, an order of the court assigned to exercise jurisdiction under the children's code and the juvenile justice code (juvenile court) that places a child outside of his or her home must include a finding as to whether the county department of human services or social services (county department), the department of health and family services (DHFS), in a county having a population of 500,000 or more, or the agency primarily responsible for providing services under a juvenile court order (collectively "agency"), has made reasonable efforts to prevent the removal of the child from the home while assuring that the health and safety of the child are the paramount concerns or, if applicable, has made reasonable efforts to make it possible for the child to return safely to his or her home, except that a juvenile court is not required to find that those reasonable efforts have been made with respect to a parent of the child if the juvenile court finds that the parent has committed certain crimes of homicide against a child of the parent; has committed battery, sexual assault or physical or sexual abuse resulting in great bodily harm or substantial bodily harm to the child or another child of the parent; has had his or her parental rights terminated with respect to another child; or has subjected the child to aggravated circumstances, which are defined under current law as including criminal abandonment, torture, chronic abuse and sexual abuse. Current law, in turn, defines sexual abuse as a violation of certain sex crimes. Current law, however, does not, in turn, define abandonment, torture or chronic abuse.

This bill defines those terms and expands the definition of sexual abuse for purposes of determining when a parent has subjected a child to aggravated circumstances. Specifically, the bill defines abandonment as a violation of the criminal law against abandonment or an action or inaction that results in a finding that the child is in need of protection or services on the grounds of abandonment. The bill defines chronic abuse as two or more violations of the criminal laws against battery or physical abuse of a child that result in bodily harm (as opposed to great bodily harm or substantial bodily harm) or two or more actions that result in findings, on two or more separate occasions, that the child is in need of protection or services on the grounds of physical abuse. The bill defines torture as a violation of the criminal law against causing mental harm to a child or an action or inaction that results in a finding that the child is in need of protection or services on the grounds of emotional damage. Finally, the bill expands the definition of sexual abuse to include an action that results in a finding that the child is in need of protection or services on the grounds of sexual abuse.

Current law permits an agency, at the same time as the agency is making reasonable efforts to prevent the removal of a child from the home or to make it possible for a child to return to his or her home, to work with DHFS, or a county department or child welfare agency that is authorized to place children for adoption,

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in making reasonable efforts to place the child for adoption, with a guardian or in some other alternative permanent placement. This bill permits an agency to do that work with **any** county department or child welfare agency, not just one that is authorized to place children for adoption.

Under current law, a foster parent, treatment foster parent or other physical custodian (substitute care provider) of a child who is the subject of a child in need of protection or services proceeding is entitled to receive an opportunity to be heard at all hearings involving the child, except hearings on motions for which notice need only be provided to the child and his or her counsel. A substitute care provider is also entitled to receive an opportunity to be heard at all hearings on a termination of parental rights (TPR) proceeding and at all hearings on certain other matters over which the juvenile court has jurisdiction, such as the appointment and removal of a guardian of a child, the adoption of a child and proceedings under the Mental Health Act concerning a child.

This bill eliminates the requirement that a substitute care provider receive an opportunity to be heard at **all** hearings involving a child in need of protection or services, such as a plea hearing, a fact-finding hearing or a dispositional hearing, but leaves intact the requirement that a substitute care provider receive an opportunity to be heard at a change in placement hearing or hearing on a revision or extension of a dispositional order. Similarly, the bill eliminates the requirement that a substitute care provider receive an opportunity to be heard at **all** TPR hearings, such as a plea hearing or a fact-finding hearing, but leaves intact the requirement that a substitute care provider receive an opportunity to be heard at a TPR dispositional hearing. In addition, the bill eliminates the requirement that a substitute care provider receive an opportunity to be heard at hearings on proceedings under the children's code other than TPR and child in need of protection or services proceedings.

The bill, however, requires a substitute care provider to receive an opportunity to be heard at a hearing to determine the permanency plan for a child when the juvenile court has determined that a parent has subjected the child to aggravated circumstances; has committed certain crimes of homicide, battery, sexual assault or sexual or physical abuse against a child of the parent; or has had his or her parental rights terminated with respect to another child of the parent. In addition, the bill requires a substitute care provider to receive an opportunity to be heard at the annual permanency plan review for a child whose parents' parental rights have been terminated, but who has not been adopted.

For further information see the state and **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.** 20.435 (3) (pm) of the statutes is amended to read:

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1 **20.435 (3) (pm) Federal aid; adoption incentive payments.** All federal moneys
2 received as adoption incentive payments under 42 USC ~~473A~~ **673b**, as authorized by
3 the governor under s. 16.54, to be expended for the purposes for which received.

4 SECTION 2. 48.27 (3) (a) lm. of the statutes is repealed.

5 SECTION 3. 48.27 (3) (a) 2. of the statutes is amended to read:

6 48.27 (3) (a) 2. Failure to give notice under subd. 1. to a foster parent, treatment
7 foster parent or other physical custodian described in s. 48.62 (2) does not deprive the
8 court of jurisdiction in the action or proceeding. If a foster parent, treatment foster
9 parent or other physical custodian described in s. 48.62 (2) is not given notice of a
10 hearing under subd. 1. and if the court is required under this chapter to permit that
11 person to make a written or oral statement during the hearing or to submit a written
12 statement prior to the hearing and that person does not make or submit such a
13 statement, that person may request a rehearing on the matter during the pendency
14 of an order resulting from the hearing. If the request is made, the court shall order
15 a rehearing.

16 SECTION 4. 48.27 (6) of the statutes is amended to read:

17 48.27 (6) When a proceeding is initiated under s. 48.14, all interested parties
18 shall receive notice and appropriate summons shall be issued in a manner specified
19 by the court, consistent with applicable governing statutes. ~~In addition, if the child~~
20 ~~who is the subject of the proceeding is in the care of a foster parent, treatment foster~~
21 ~~parent or other physical custodian described in s. 48.62 (2), the court shall give the~~
22 ~~foster parent, treatment foster parent or other physical custodian notice and an~~
23 ~~opportunity to be heard as provided in sub (3) (a).~~

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

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1 48.355 (2b) CONCURRENT REASONABLE EFFORTS PERMITTED. A county
2 department, the department, in a county having a population of 500,000 or more, or
3 the agency primarily responsible for providing services to a child under a court order
4 may, at the same time as the county department, department or agency is making
5 the reasonable efforts required under sub. (2) (b) 6., work with the department, a
6 county department ~~under s. 48.57(1)(e) or (hm)~~ or a child welfare agency ~~licensed~~
7 ~~under s. 48.61(5)~~ in making reasonable efforts to place the child for adoption, with
8 a guardian or in some other alternative permanent placement.

9 **SECTION 6.** 48.355 (2d) (a) 1. of the statutes is amended to read:

10 48.355 (2d) (a) 1. ~~“Aggravated circumstances” include abandonment in~~
11 “Abandonment” means a violation of s. 948.20 or in a violation of the law of any other
12 state or federal law if that violation would be a violation of s. 948.20 if committed in
13 this state, torture, chronic abuse and sexual abuse as evidenced by a final judgment
14 of conviction, or an action or inaction that results in a finding of abandonment under
15 s. 48.13 (2) or under a law of any other state or a federal law that is comparable to
16 s. 48.13 (2), as evidenced by a final order of a court of competent jurisdiction.

17 **SECTION 7.** 48.355 (2d) (a) 1d. of the statutes is created to read:

18 48.355 (2d) (a) 1d. “Aggravated circumstances” include abandonment, chronic
19 abuse, sexual abuse and torture.

20 **SECTION 8.** 48.355 (2d) (a) lj. of the statutes is created to read:

21 48.355 (2d) (a) lj. “Chronic abuse” means 2 or more violations of s. 940.19 (1)
22 or (6) or 948.03 (2) (b) or(c) or (3) (b) or (c) or of a law of any other state or federal law,
23 if that violation would be a violation of s. 940.19 (1) or (6) or 948.03 (2) (b) or (c) or
24 (3) (b) or (c) if committed in this state, that result in bodily harm, as defined in s.
25 939.22 (4), as evidenced by final judgments of conviction on 2 or more separate

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1 occasions ~~for 2 or more actions that result in findings of abuse, as defined in s. 48.02~~
 2 ~~(1) (a), under s. 48.13 (3) or under a law of any other state or a federal law that is~~
 3 ~~comparable to s. 48.13 (3), as evidenced by final orders of a court of competent~~
 4 ~~jurisdiction on 2 or more separate occasions.~~

5 SECTION 9. 48.355 (2d) (a) 2. of the statutes is amended to read:

6 48.355 (2d) (a) 2. "Sexual abuse" means a violation of s. 940.225, 944.30,
 7 948.02, 948.025, 948.05, 948.055, 948.06, 948.09 or 948.10 or a violation of the law
 8 of any other state or federal law if that violation would be a violation of s. 940.225,
 9 944.30, 948.02, 948.025, 948.05, 948.055, 948.06, 948.09 or 948.10 if committed in
 10 this state, as evidenced by a final judgment of conviction ~~or an action that results~~
 11 ~~in a finding of abuse, as defined in s. 48.02 (1) (b), (c), (d), (e) or (f), under s. 48.13 (3)~~
 12 ~~or under a law of any other state or a federal law that is comparable to s. 48.13 (3)~~
 13 ~~as evidenced by a final order of a court of competent jurisdiction.~~

14 SECTION 10. 48.355 (2d) (a) 3. of the statutes is created to read:

15 48.355 (2d) (a) 3. "Torture" means a violation of s. 948.04 (1) or a violation of
 16 the law of any other state or federal law if that violation would be a violation of s.
 17 948.04 (1) if committed in this state, as evidenced by a final judgment of conviction,
 18 ~~or an action or inaction that results in a finding of emotional damage under s. 48.13~~
 19 ~~(11) or under a law of any other state or a federal law that is comparable to s. 48.13~~
 20 ~~(11), as evidenced by a final order of a court of competent jurisdiction.~~

21 SECTION 11. 48.355 (2d) (b) (intro.) of the statutes is amended to read:

22 48.355 (2d) (b) (intro.) Notwithstanding sub. (2) (b) 6., the court need not
 23 include in a dispositional order a finding as to whether the county department, the
 24 department, in a county having a population of 500,000 or more, or the agency
 25 primarily responsible for providing services under a court order has made reasonable

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1 efforts with respect to a parent of a child to prevent the removal of the child from the
2 home, while assuring that the child's health and safety are the paramount concerns,
3 or, if applicable, a finding as to whether the agency primarily responsible for
4 providing services under a court order has made reasonable efforts with respect to
5 a parent of a child to make it possible for the child to return safely to his or her home,
6 if the court finds, ~~as evidenced by a final judgment of conviction,~~ any of the following:

7 SECTION 12. 48.355 (2d) (b) 2. of the statutes is amended to read:

8 48.355 **(2d)** (b) 2. That the parent has committed, has aided or abetted the
9 commission of, or has solicited, conspired or attempted to commit, a violation of s.
10 940.01, 940.02, 940.03 or 940.05 or a violation of the law of any other state or federal
11 law, if that violation would be a violation of s. 940.01, 940.02, 940.03 or 940.05 if
12 committed in this state ~~as evidenced by a final judgment of conviction,~~ and that the
13 victim of that violation is a child of the parent.

14 SECTION 13. 48.355 (2d) (b) 3. of the statutes is amended to read:

15 48.355 (2d) (b) 3. That the parent has committed a violation of s. 940.19 (2), (3),
16 (4) or (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025 or 948.03 (2) (a) or (3) (a) or a
17 violation of the law of any other state or federal law, if that violation would be a
18 violation of s. 940.19 (2), (3), (4) or (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025 or
19 948.03 (2) (a) or (3) (a) if committed in this state, as evidenced by a final judgment
20 of conviction, and that the violation resulted in great bodily harm, as defined in s.
21 939.22 (14), or in substantial bodily harm, as defined in s. 939.22 (38), to the child
22 or another child of the parent.

23 SECTION 14. 48.355 (2d) (b) 4. of the statutes is amended to read:

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1 48.355 (2d) (b) 4. That the parental rights of the parent to another child have
2 been involuntarily terminated, as evidenced by a final order of a court of competent
3 jurisdiction terminating those narental rights.

4 SECTION 15. 48.355 (2d) (d) of the statutes is created to read:

5 48.355 (2d) (d) 1. If a hearing is held under par. (c), at least 10 days before the
6 date of the hearing the court shall notify the child, if 12 years of age or over, any
7 parent, guardian and legal custodian of the child and any foster parent, treatment
8 foster parent or other physical custodian described in s. 48.62 (2) of the child of the
9 time, place and purpose of the hearing.

10 2. The court shall give a foster parent, treatment foster parent or other physical
11 custodian described in s. 48.62 (2) who is notified of a hearing under subd. 1. an
12 opportunity to be heard at the hearing by permitting the foster parent, treatment
13 foster parent or other physical custodian to make a written or oral statement during
14 the hearing, or to submit a written statement prior to the hearing, relevant to the
15 issues to be determined at the hearing. Any written or oral statement made under
16 this subdivision shall be made upon oath or affirmation. A foster parent, treatment
17 foster parent or other physical custodian described in s. 48.62 (2) who receives a
18 notice of a hearing under subd. 1. and an opportunity to be heard under this
19 subdivision does not become a party to the proceeding on which the hearing is held
20 solely on the basis of receiving that notice and opportunity to be heard.

21 SECTION 16, 48.38 (5) (b) of the statutes is amended to read:

22 48.38 (5) (b) The court or the agency shall notify the parents of the child, the
23 child if he or she is 12 years of age or older and the child's foster parent, the child's
24 treatment foster parent or the operator of the facility in which the child is living of
25 the date, time and place of the review, of the issues to be determined as part of the

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1 review, of the fact that they may have an opportunity to be heard at the review by
2 submitting written comments not less than 10 working days before the review or by
3 participating at the review. The court or agency shall notify the person representing
4 the interests of the public, the child's counsel and the child's guardian ad litem of the
5 date of the review, of the issues to be determined as part of the review and of the fact
6 that they may submit written comments not less than 10 working days before the
7 review. Any written or oral statement made to the court under this paragraph by a
8 foster parent, treatment foster parent or operator of a facility in which a child is
9 living shall be made under oath or affirmation. The notices under this paragraph
10 shall be provided in writing not less than 30 days before the review and copies of the
11 notices shall be filed in the child's case record.

12 **SECTION 17.** 48.415 (2) (a) 2. of the statutes is amended to read:

13 48.415 (2) (a) 2. a. In this subdivision, "~~reasonable~~ diligent effort" means an
14 earnest and conscientious effort to take good faith steps to provide the services
15 ordered by the court which takes into consideration the characteristics of the parent
16 or child or of the expectant mother or child, the level of cooperation of the parent or
17 expectant mother and other relevant circumstances of the case.

18 b. That the agency responsible for the care of the child and the family or of the
19 unborn child and expectant mother has made a ~~reasonable~~ diligent effort to provide
20 the services ordered by the court.

21 **SECTION 18.** 48.42 (2g) (am) of the statutes is repealed.

22 **SECTION 19.** 48.42 (2g) (b) of the statutes is amended to read:

23 48.42 (2g) (b) Failure to give notice under par. (a) to a foster parent, treatment
24 foster parent or other physical custodian described in s. 48.62 (2) does not deprive the
25 court of jurisdiction in the proceeding. If a foster parent, treatment foster parent or

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1 other physical custodian described in s. 48.62 (2) is not given notice of a hearing
2 under par. (a) ~~and if the court is required under s. 48.427 (1m) to permit that person~~
3 ~~to make a written or oral statement during the hearing or to submit a written~~
4 ~~statement prior to the hearing and that person does not make or submit such a~~
5 ~~statement~~, that person may request a rehearing on the matter at any time prior to
6 the entry of an order under s. 48.427 (2) or (3). If the request is made, the court shall
7 order a rehearing.

8 **SECTION 20.** 48.427 (1m) of the statutes is amended to read:

9 48.427 (1m) In addition to any evidence presented under sub. (l), the court
10 shall give the foster parent, treatment foster parent or other physical custodian
11 described in s. 48.62 (2) of the child an opportunity to be heard at the dispositional
12 hearing by permitting the foster parent, treatment foster parent or other physical
13 custodian to make a written or oral statement during the dispositional hearing, or
14 to submit a written statement prior to disposition, relevant to the issue of disposition.
15 ~~Any written or oral statement made under this subsection shall be made under oath~~
16 ~~or affirmation.~~ A foster parent, treatment foster parent or other physical custodian
17 described in s. 48.62 (2) who receives notice of a hearing under s. 48.42 (2g) (a) and
18 an opportunity to be heard under this subsection does not become a party to the
19 proceeding on which the hearing is held solely on the basis of receiving that notice
20 and opportunity to be heard.

21 **SECTION 21.** 48.43 (5) (b) of the statutes is renumbered 48.43 (5) (b) 1.

22 **SECTION 22.** 48.43 (5) (b) 2. of the statutes is created to read:

23 48.43 (5) (b) 2. The court shall give a foster parent, treatment foster parent or
24 other physical custodian described in s. 48.62 (2) who is notified of a hearing under
25 subd. 1. an opportunity to be heard at the hearing by permitting the foster parent,

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1 treatment foster parent or other physical custodian to make a written or oral
2 statement during the hearing, or to submit a written statement prior to the hearing,
3 relevant to the issues to be determined at the hearing. Any written or oral statement
4 made under this subdivision shall be made upon oath or affirmation. A foster parent,
5 treatment foster parent or other physical custodian described in s. 48.62 (2) who
6 receives a notice of a hearing under subd. 1. and an opportunity to be heard under
7 this subdivision does not become a party to the proceeding on which the hearing is
8 held solely on the basis of receiving that notice and opportunity to be heard.

9 **SECTION 23.** 938.27 (3) (a) lm. of the statutes is repealed.

10 **SECTION 24.** 938.27 (3) (a) 2. of the statutes is amended to read:

11 938.27 (3) (a) 2. Failure to give notice under subd. 1. to a foster parent,
12 treatment foster parent or other physical custodian described in s. 48.62 (2) does not
13 deprive the court of jurisdiction in the action or proceeding. If a foster parent,
14 treatment foster parent or other physical custodian described in s. 48.62 (2) is not
15 given notice of a hearing under subd. 1. and if the court is required under this chapter
16 to permit that nerson to make a written or oral statement during the hearing or to
17 submit a written statement prior to the hearing and that nerson does not make or
18 submit such a statement, that person may request a rehearing on the matter during
19 the pendency of an order resulting from the hearing. If the request is made, the court
20 shall order a rehearing.

21 **SECTION 25.** 938.27 (6) of the statutes is amended to read:

22 938.27 (6) When a proceeding is initiated under s. 938.14, all interested parties
23 shall receive notice and appropriate summons shall be issued in a manner specified
24 by the court, consistent with applicable governing statutes. ~~In addition, if the~~
25 ~~juvenile who is the subject of the proceeding is in the care of a foster parent,~~

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1 ~~treatment foster parent or other physical custodian described in s. 48.62(2), the court~~
2 ~~shall give the foster parent, treatment foster parent or other physical custodian~~
3 ~~notice and an opportunity to be heard as provided in sub. (3)(a).~~

4 **SECTION 26.** 938.355 (2b) of the statutes is amended to read:

5 938.355 **(2b)** CONCURRENT REASONABLE EFFORTS PERMITTED. A county
6 department that provides social services or the agency primarily responsible for
7 providing services to a juvenile under a court order may, at the same time as the
8 county department or agency is making the reasonable efforts required under sub.
9 (2) (b) 6., work with the department of health and family services, a county
10 department ~~under s. 45.57(1)(e) or (h)~~ or a child welfare agency ~~licensed under s.~~
11 ~~48.61(5)~~ in making reasonable efforts to place the juvenile for adoption, with a
12 guardian or in some other alternative permanent placement.

13 **SECTION 27.** 938.355 (2d) (a) 1. of the statutes is amended to read:

14 **938.355 (2d)** (a) 1. ~~“Aggravated circumstances” include abandonment in~~
15 “Abandonment” means a violation of s. 948.20 or in a violation of the law of any other
16 state or federal law if that violation would be a violation of s. 948.20 if committed in
17 this state, torture, chronic abuse and sexual abuse as evidenced by a final judgment
18 of conviction, or an action or inaction that results in a finding of abandonment under
19 s. 48.13(2) or under a law of any other state or a federal law that is comparable to
20 s. 48.13(2), as evidenced by a final order of a court of competent jurisdiction.

21 **SECTION 28.** 938.355 (2d) (a) 1d. of the statutes is created to read:

22 938.355 **(2d)** (a) 1d. “Aggravated circumstances” include abandonment,
23 chronic abuse, sexual abuse and torture.

24 **SECTION 29.** 938.355 (2d) (a) 1j. of the statutes is created to read:

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1 938.355 (2d) (a) lj. "Chronic abuse" means 2 or more violations of s. 940.19 (1)
 2 or (6) or 948.03 (2) (b) or (c) or (3) (b) or (c) or of a law of any other state or federal law,
 3 if that violation would be a violation of s. 940.19 (1) or (6) or 948.03 (2) (b) or (c) or
 4 (3) (b) or (c) committed in this state, that result in bodily harm, as defined in s.
 5 939.22 (4), as evidenced by final judgments of conviction on 2 or more separate
 6 occasions ~~or 2 or more actions that result in findings of abuse, as defined in s. 48.02~~
 7 ~~(1) (a), under s. 48.13 (3) or under a law of any other state or a federal law that is~~
 8 ~~comparable to s. 48.13 (3), as evidenced by final orders of a court of competent~~
 9 ~~jurisdiction on 2 or more separate occasions.~~

10 SECTION 30. 938.355 (2d) (a) 2. of the statutes is amended to read:

11 938.355 (2d) (a) 2. "Sexual abuse" means a violation of s. 940.225, 944.30,
 12 948.02, 948.025, 948.05, 948.055, 948.06, 948.09 or 948.10 or a violation of the law
 13 of any other state or federal law if that violation would be a violation of s. 940.225,
 14 944.30, 948.02, 948.025, 948.05, 948.055, 948.06, 948.09 or 948.10 if committed in
 15 this state, ~~as evidenced by a final judgment of conviction ~~for an action that results~~~~
 16 ~~in a finding of abuse, as defined in s. 48.02 (1) (b), (c), (d), (e) or (f), under s. 48.13 (3)~~
 3 ~~or under a law of any other state or a federal law that is comparable to s. 48.13 (3),~~
 18 ~~as evidenced by a final order of a court of competent jurisdiction.~~

19 SECTION 31. 938.355 (2d) (a) 3. of the statutes is created to read:

20 938.355 (2d) (a) 3. "Torture" means a violation of s. 948.04 (1) or a violation of
 21 the law of any other state or federal law if that violation would be a violation of s.
 22 948.04 (1) if committed in this state, as evidenced by a final judgment of conviction,
 23 ~~or an action or inaction that results in a finding of emotional damage under s. 48.13~~
 24 ~~(11) or under a law of any other state or a federal law that is comparable to s. 48.13~~
 25 ~~(11), as evidenced by a final order of a court of competent jurisdiction.~~

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1 SECTION 32. 938.355 (2d) (b) (intro.) of the statutes is amended to read:

2 938.355 **(2d)** (b) (intro.) Notwithstanding sub. (2) (b) 6., the court need not
3 include in a dispositional order a finding as to whether a county department which
4 provides social services or the agency primarily responsible for providing services
5 under a court order has made reasonable efforts with respect to a parent of a juvenile
6 to prevent the removal of the juvenile from the home, while assuring that the
7 juvenile's health and safety are the paramount concerns, or, if applicable, a finding
8 as to whether the agency primarily responsible for providing services under a court
9 order has made reasonable efforts with respect to a parent of a juvenile to make it
10 possible for the juvenile to return safely to his or her home, if the court finds, ~~as~~
11 ~~evidenced~~ ^h ~~a final judgment of conviction~~, any of the following:

12 SECTION 33. 938.355 (2d) (b) 2. of the statutes is amended to read:

13 938.355 **(2d)** (b) 2. That the parent has committed, has aided or abetted the
14 commission of, or has solicited, conspired or attempted to commit, a violation of s.
15 940.01, 940.02, 940.03 or 940.05 or a violation of the law of any other state or federal
16 law, if that violation would be a violation of s. 940.01, 940.02, 940.03 or 940.05 if
17 committed in this state, as evidenced by a final judgment of conviction, and that the
18 victim of that violation is a child of the parent.

19 SECTION 34. 938.355 (2d) (b) 3. of the statutes is amended to read:

20 938.355 **(2d)** (b) 3. That the parent has committed a violation of s. 940.19 (2),
21 (3), (4) or (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025 or 948.03 (2) (a) or (3) (a)
22 or a violation of the law of any other state or federal law, if that violation would be
23 a violation of s. 940.19 (2), (3), (4) or (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025
24 or 948.03 (2) (a) or (3) (a) if committed in this state, as evidenced by a final judgment
25 of conviction, and that the violation resulted in great bodily harm, as defined in s.

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1 ~~938.22~~ 939.22 (14), or in substantial bodily harm, as defined in s. ~~938.22~~ 939.22 (38),
2 to the juvenile or another child of the parent.

3 **SECTION 35.** 938.355 (2d) (b) 4. of the statutes is amended to read:

4 938.355 (2d) (b) 4. That the parental rights of the parent to another child have
5 been involuntarily terminated, as evidenced by a final order of a court of competent
6 jurisdiction terminating those parental rights.

7 **SECTION 36.** 938.355 (2d) (d) of the statutes is created to read:

8 938.355 (**2d**) (d) 1. If a hearing is held under par. (c), at least 10 days before the
9 date of the hearing the court shall notify the juvenile, if 12 years of age or over, any
10 parent, guardian and legal custodian of the juvenile and any foster parent, treatment
11 foster parent or other physical custodian described in s. 48.62 (2) of the juvenile of
12 the time, place and purpose of the hearing.

13 2. The court shall give a foster parent, treatment foster parent or other physical
14 custodian described in s. 48.62 (2) who is notified of a hearing under subd. 1. an
15 opportunity to be heard at the hearing by permitting the foster parent, treatment
16 foster parent or other physical custodian to make a written or oral statement during
17 the hearing, or to submit a written statement prior to the hearing, relevant to the
18 issues to be determined at the hearing. Any written or oral statement made under
19 this subdivision shall be made upon oath or affirmation. A foster parent, treatment
20 foster parent or other physical custodian described in s. 48.62 (2) who receives a
21 notice of a hearing under subd. 1. and an opportunity to be heard under this
22 subdivision does not become a party to the proceeding on which the hearing is held
23 solely on the basis of receiving that notice and opportunity to be heard.

24 **SECTION 37.** 938.365 (1) of the statutes is amended to read:

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1 938.365 (1) In this section, a juvenile is considered to have been placed outside
2 of his or her home on the date on which the juvenile was first placed outside of his
3 or her home pursuant to an order under ~~this section or s. 938.345, or 938.357 or~~
4 ~~938.363~~ or on the date that is 60 days after the date on which the juvenile was
5 removed from his or her home, whichever is earlier.

6 **SECTION 38.** 938.38 (5) (b) of the statutes is amended to read:

7 938.38 (5) (b) The court or the agency shall notify the parents of the juvenile,
8 the juvenile if he or she is 10 years of age or older and the juvenile's foster parent,
9 the juvenile's treatment foster parent or the operator of the facility in which the
10 juvenile is living of the date, time and place of the review, of the issues to be
11 determined as part of the review, of the fact that they may have an opportunity to
12 be heard at the review by submitting written comments not less than 10 working
13 days before the review or by participating at the review. The court or agency shall
14 notify the person representing the interests of the public, the juvenile's counsel and
15 the juvenile's guardian ad litem of the date of the review, of the issues to be
16 determined as part of the review and of the fact that they may submit written
17 comments not less than 10 working days before the review. Any written or oral
18 statement made to the court under this paragraph by a foster parent, treatment
19 foster parent or operator of a facility in which the juvenile is living shall be made under
20 oath or affirmation. The notices under this paragraph shall be provided in writing
21 not less than 30 days before the review and copies of the notices shall be filed in the
22 juvenile's case record.

23 **SECTION 39. Initial applicability.**

24 (1) JUVENILE COURT ORDERS. The treatment of sections 48.355 (2d) (a) 1., 1d., lj.,
25 2. and 3. and (b) (intro.), 2., 3. and 4. and 938.355 (2d) (a) 1., Id., lj., 2. and 3. and (b)

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1 (intro.), 2., 3. and 4. of the statutes first applies to juvenile court orders entered on
2 the effective date of this subsection.

3 (2) **JUVENILE COURT HEARINGS AND PERMANENCY PLAN REVIEWS.** The treatment of
4 sections 48.27 (3) (a) 1m. and 2. and (6), 48.38 (5) (b), 48.42 (2g) (am) and (b), 48.427
5 (1m), 938.27 (3) (a) 1m. and 2. and (6) and 938.38 (5) (b) of the statutes, the
6 renumbering of section 48.43 (5) (b) of the statutes and the creation of section 48.43
7 (5) (b) 2. of the statutes first apply to juvenile court hearings and permanency plan
8 reviews held on the effective date of this subsection.

9 (3) **PERMANENCY PLAN HEARINGS.** The treatment of sections 48.355 (2d) (d) and
10 938.355 (2d) (d) of the statutes first applies to permanency plan hearings held 10
11 days after the effective date of this subsection.

12

(END)



1999 BILL

1 **AN ACT to repeal** 48.27 (3) (a) lm., 48.42 (2g) (am) and 938.27 (3) (a) lm.; **to**
2 **renumber 48.43 (5) (b); to amend 20.435 (3) (pm), 48.27 (3) (a) 2., 48.27 (6),**
3 **48.355 (2b), 48.355 (2d) (a) 1., 48.355 (2d) (a) 2., 48.355 (2d) (b) (intro.), 48.355**
4 **(2d) (b) 2., 48.355 (2d) (b) 3., 48.355 (2d) (b) 4., 48.38 (5) (b), 48.415 (2) (a) 2.,**
5 **48.42 (2g) (b), 48.427 (lm), 938.27 (3) (a) 2., 938.27 (6), 938.355 (2b), 938.355**
6 **(2d) (a) 1., 938.355 (2d) (a) 2., 938.355 (2d) (b) (intro.), 938.355 (2d) (b) 2.,**
7 **938.355 (2d) (b) 3., 938.355 (2d) (b) 4., 938.365 (1) and 938.38 (5) (b); and to**
8 **create 48.355 (2d) (a) Id., 48.355 (2d) (a) lj., 48.355 (2d) (a) 3., 48.355 (2d) (d),**
9 **48.43 (5) (b) 2., 938.355 (2d) (a) 1d., 938.355 (2d) (a) lj., 938.355 (2d) (a) 3. and**
10 **938.355 (2d) (d) of the statutes; relating to:** the efforts that are required to
11 prevent the removal of a child^{or juvenile} from the home or to make it possible for a child^{or juvenile}
12 to return safely to his or her home when a juvenile court order places the child^{or juvenile}
13 outside of the home and notice and an opportunity to be heard at certain

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of a child or juvenile

1
2

proceedings under the children's code and the juvenile justice code: by a ~~parent~~
foster parent, treatment foster parent or other substitute care provider

Analysis by the Legislative Reference Bureau

Under current law, an order of the court assigned to exercise jurisdiction under the children's code and the juvenile justice code (juvenile court) that places a child outside of his or her home must include a finding as to whether the county department of human services or social services (county department), the department of health and family services (DHFS), in a county having a population of 500,000 or more, or the agency primarily responsible for providing services under a juvenile court order (collectively "agency"), has made reasonable efforts to prevent the removal of the child from the home while assuring that the health and safety of the child are the paramount concerns or, if applicable, has made reasonable efforts to make it possible for the child to return safely to his or her home, except that a juvenile court is not required to find that those reasonable efforts have been made with respect to a parent of the child if the juvenile court finds that the parent has committed certain crimes of homicide against a child of the parent; has committed battery, sexual assault or physical or sexual abuse resulting in great bodily harm or substantial bodily harm to the child or another child of the parent; has had his or her parental rights terminated with respect to another child; or has subjected the child to aggravated circumstances, which are defined under current law as including criminal abandonment, torture, chronic abuse and sexual abuse. Current law, in turn, defines sexual abuse as a violation of certain sex crimes. Current law, however, does not, in turn, define abandonment, torture or chronic abuse. (a)

This bill defines those terms for purposes of determining when a parent has subjected a child to aggravated circumstances. Specifically, the bill defines abandonment as a violation of the criminal law against abandonment or an action or inaction that results in a finding that the child is in need of protection or services on the grounds of abandonment. The bill defines chronic abuse as two or more violations of the criminal laws against battery or physical abuse of a child that result in bodily harm (as opposed to great bodily harm or substantial bodily harm). The bill defines torture as a violation of the criminal law against causing mental harm to a child.

Current law permits an agency, at the same time as the agency is making reasonable efforts to prevent the removal of a child from the home or to make it possible for a child to return to his or her home, to work with DHFS, or a county department or child welfare agency that is authorized to place children for adoption, in making reasonable efforts to place the child for adoption, with a guardian or in some other alternative permanent placement. This bill permits an agency to do that work with any county department or child welfare agency, not just one that is authorized to place children for adoption.

Under current law, a foster parent, treatment foster parent or other physical custodian (substitute care provider) of a child who is the subject of a child in need of

or juvenile
or juvenile or to

or juvenile in need of protection or services
or a juvenile who has been adjudged delinquent
or juvenile

or juvenile

or juvenile

or juvenile

or juvenile

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or of a juvenile who is the subject of a delinquency proceeding or juvenile

protection or services proceeding is entitled to receive an opportunity to be heard at all hearings involving the child, except hearings on motions for which notice need only be provided to the child and his or her counsel. A substitute care provider is also entitled to receive an opportunity to be heard at all hearings on a termination of parental rights (TPR) proceeding and at all hearings on certain other matters over which the juvenile court has jurisdiction, such as the appointment and removal of a guardian of a child, the adoption of a child and proceedings under the Mental Health Act concerning a child.

involving or a juvenile who is the subject of a delinquency proceeding

This bill eliminates the requirement that a substitute care provider receive an opportunity to be heard at all hearings involving a child in need of protection or services, such as a plea hearing, a fact-finding hearing or a dispositional hearing, but leaves intact the requirement that a substitute care provider receive an opportunity to be heard at a change in placement hearing or hearing on a revision or extension of a dispositional order. Similarly, the bill eliminates the requirement that a substitute care provider receive an opportunity to be heard at all TPR hearings, such as a plea hearing or a fact-finding hearing, but leaves intact the requirement that a substitute care provider receive an opportunity to be heard at a TPR dispositional hearing. In addition, the bill eliminates the requirement that a substitute care provider receive an opportunity to be heard at hearings on proceedings under the children's code other than TPR and child in need of protection or services proceedings.

or the juvenile justice code

child or juvenile

The bill, however, requires a substitute care provider to receive an opportunity to be heard at a hearing to determine the permanency plan for a child when the juvenile court has determined that a parent has subjected the child to aggravated circumstances; has committed certain crimes of homicide, battery, sexual assault or sexual or physical abuse against a child of the parent; or has had his or her parental rights terminated with respect to another child of the parent. In addition, the bill requires a substitute care provider to receive an opportunity to be heard at the annual permanency plan review for a child whose parents' parental rights have been terminated, but who has not been adopted.

or juvenile

For further information see the state **and 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.** 20.435 (3) (pm) of the statutes is amended to read:
- 2 20.435 (3) (pm) *Federal aid; adoption incentive payments.* All federal moneys
- 3 received as adoption incentive payments under 42 USC 473A 673b, as authorized by
- 4 the governor under s. 16.54, to be expended for the purposes for which received.
- 5 **SECTION 2.** 48.27 (3) (a) lm. of the statutes is repealed.

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1 **SECTION 3.** 48.27 (3) (a) 2. of the statutes is amended to read:

2 48.27 (3) (a) 2. Failure to give notice under subd. 1. to a foster parent, treatment
3 foster parent or other physical custodian described in s. 48.62 (2) does not deprive the
4 court of jurisdiction in the action or proceeding. If a foster parent, treatment foster
5 parent or other physical custodian described in s. 48.62 (2) is not given notice of a
6 hearing under subd. 1. and if the court is required under this chapter to permit that
7 person to make a written or oral statement during the hearing or to submit a written
8 statement prior to the hearing and that person does not make or submit such a
9 statement, that person may request a rehearing on the matter during the pendency
10 of an order resulting from the hearing. If the request is made, the court shall order
11 a rehearing.

12 **SECTION 4.** 48.27 (6) of the statutes is amended to read:

13 48.27 (6) When a proceeding is initiated under s. 48.14, all interested parties
14 shall receive notice and appropriate summons shall be issued in a manner specified
15 by the court, consistent with applicable governing statutes. ~~In addition, if the child~~
16 ~~who is the subject of the proceeding is in the care of a foster parent, treatment foster~~
17 ~~parent or other physical custodian described in s. 48.62 (2), the court shall give the~~
18 ~~foster parent, treatment foster parent or other physical custodian notice and an~~
19 ~~opportunity to be heard as provided in sub. (3) (a).~~

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

21 48.355 (2b) CONCURRENT REASONABLE EFFORTS PERMITTED. A county
22 department, the department, in a county having a population of 500,000 or more, or
23 the agency primarily responsible for providing services to a child under a court order
24 may, at the same time as the county department, department or agency is making
25 the reasonable efforts required under sub. (2) (b) 6., work with the department, a

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1 county department ~~under s. 48.57 (1) (e) or (hm)~~ or a child welfare agency licensed
2 ~~under s. 48.61 (5)~~ in making reasonable efforts to place the child for adoption, with
3 a guardian or in some other alternative permanent placement.

4 **SECTION 6.** 48.355 (2d) (a) 1. of the statutes is amended to read:

5 48.355 **(2d)** (a) 1. ~~“Aggravated circumstances” include abandonment in~~
6 “Abandonment” means a violation of s. 948.20 or in a violation of the law of any other
7 state or federal law if that violation would be a violation of s. 948.20 if committed in
8 this state, torture, ~~domestic abuse and sexual abuse~~ as evidenced by a final judgment
9 of conviction, or an action or inaction that results in a finding of abandonment under
10 s. 48.13 (2) or under a law of any other state or a federal law that is comparable to
11 s. 48.13 (2), as evidenced by a final order of a court of competent jurisdiction.

12 **SECTION 7.** 48.355 (2d) (a) 1d. of the statutes is created to read:

13 48.355 **(2d)** (a) 1d. “Aggravated circumstances” include abandonment, chronic
14 abuse, sexual abuse and torture.

15 **SECTION 8.** 48.355 (2d) (a) lj. of the statutes is created to read:

16 48.355 (2d) (a) lj. “Chronic abuse” means 2 or more violations of s. 940.19 (1)
17 or (6) or 948.03 (2) (b) or(c) or (3) (b) or(c) or of a law of any other state or federal law,
18 if that violation would be a violation of s. 940.19 (1) or (6) or 948.03 (2) (b) or (c) or
19 (3) (b) or (c) if committed in this state, that result in bodily harm, as defined in s.
20 939.22 (4), as evidenced by final judgments of conviction on 2 or more separate
21 occasions.

22 **SECTION 9.** 48.355 (2d) (a) 2. of the statutes is amended to read:

23 48.355 **(2d)** (a) 2. “Sexual abuse” means a violation of s. 940.225, 944.30,
24 948.02, 948.025, 948.05, 948.055, 948.06, 948.09 or 948.10 or a violation of the law
25 of any other state or federal law if that violation would be a violation of s. 940.225,

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SECTION 9

1 944.30, 948.02, 948.025, 948.05, 948.055, 948.06, 948.09 or 948.10 if committed in
2 this state, as evidenced by a final judgment of conviction.

3 **SECTION 10.** 48.355 (2d) (a) 3. of the statutes is created to read:

4 48.355 (2d) (a) 3. "Torture" means a violation of s. 948.04 (1) or a violation of
5 the law of any other state or federal law if that violation would be a violation of s.
6 948.04 (1) if committed in this state, as evidenced by a final judgment of conviction.

7 **SECTION 11.** 48.355 (2d) (b) (intro.) of the statutes is amended to read:

8 48.355 (2d) (b) (intro.) Notwithstanding sub. (2) (b) 6., the court need not
9 include in a dispositional order a finding as to whether the county department, the
10 department, in a county having a population of 500,000 or more, or the agency
11 primarily responsible for providing services under a court order has made reasonable
12 efforts with respect to a parent of a child to prevent the removal of the child from the
13 home, while assuring that the child's health and safety are the paramount concerns,
14 or, if applicable, a finding as to whether the agency primarily responsible for
15 providing services under a court order has made reasonable efforts with respect to
16 a parent of a child to make it possible for the child to return safely to his or her home,
17 if the court finds, ~~as evidenced by a final judgment of conviction,~~ any of the following:

18 **SECTION 12.** 48.355 (2d) (b) 2. of the statutes is amended to read:

19 48.355 (2d) (b) 2. That the parent has committed, has aided or abetted the
20 commission of, or has solicited, conspired or attempted to commit, a violation of s.
21 940.01, 940.02, 940.03 or 940.05 or a violation of the law of any other state or federal
22 law, if that violation would be a violation of s. 940.01, 940.02, 940.03 or 940.05 if
23 committed in this state, as evidenced by a final judgment of conviction, and that the
24 victim of that violation is a child of the parent.

25 **SECTION 13.** 48.355 (2d) (b) 3. of the statutes is amended to read:

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1 48.355 (2d) (b) 3. That the parent has committed a violation of s. 940.19 (2), (3),
2 **(4)** or (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025 or 948.03 (2) (a) or (3) (a) or a
3 violation of the law of any other state or federal law, if that violation would be a
4 violation of s. 940.19 (2), (3), (4) or (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025 or
5 948.03 (2) (a) or (3) (a) if committed in this state, as evidenced by a final judgment
6 of conviction, and that the violation resulted in great bodily harm, as defined in s.
7 939.22 (14), or in substantial bodily harm, as defined in s. 939.22 (38), to the child
8 or another child of the parent.

9 **SECTION 14.** 48.355 (2d) (b) 4. of the statutes is amended to read:

10 48.355 (2d) (b) 4. That the parental rights of the parent to another child have
11 been involuntarily terminated, as evidenced by a final order of a court of competent
12 jurisdiction terminating those parental rights.

13 **SECTION 15.** 48.355 (2d) (d) of the statutes is created to read:

14 48.355 (2d) (d) 1. If a hearing is held under par. (c), at least 10 days before the
15 date of the hearing the court shall notify the child, if 12 years of age or over, any
16 parent, guardian and legal custodian of the child and any foster parent, treatment
17 foster parent or other physical custodian described in s. 48.62 (2) of the child of the
18 time, place and purpose of the hearing.

19 2. The court shall give a foster parent, treatment foster parent or other physical
20 custodian described in s. 48.62 (2) who is notified of a hearing under subd. 1. an
21 opportunity to be heard at the hearing by permitting the foster parent, treatment
22 foster parent or other physical custodian to make a written or oral statement during
23 the hearing, or to submit a written statement prior to the hearing, relevant to the
24 issues to be determined at the hearing. Any written or oral statement made under
25 this subdivision shall be made upon oath or affirmation. A foster parent, treatment

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1 foster parent or other physical custodian described in s. 48.62 (2) who receives a
2 notice of a hearing under subd. 1. and an opportunity to be heard under this
3 subdivision does not become a party to the proceeding on which the hearing is held
4 solely on the basis of receiving that notice and opportunity to be heard.

5 **SECTION 16.** 48.38 (5) (b) of the statutes is amended to read:

6 48.38 (5) (b) The court or the agency shall notify the parents of the child, the
7 child if he or she is 12 years of age or older and the child's foster parent, the child's
8 treatment foster parent or the operator of the facility in which the child is living of
9 the date, time and place of the review, of the issues to be determined as part of the
10 review, of the fact that they may have an opportunity to be heard at the review by
11 submitting written comments not less than 10 working days before the review or by
12 participating at the review. The court or agency shall notify the person representing
13 the interests of the public, the child's counsel and the child's guardian ad litem of the
14 date of the review, of the issues to be determined as part of the review and of the fact
15 that they may submit written comments not less than 10 working days before the
16 review. ~~Any written or oral statement made to the court under this paragraph by a~~
17 foster parent, treatment foster parent or operator of a facility in which a child is
18 living shall be made under oath or affirmation. The notices under this paragraph
19 shall be provided in writing not less than 30 days before the review and copies of the
20 notices shall be filed in the child's case record.

21 **SECTION 17.** 48.415 (2) (a) 2. of the statutes is amended to read:

22 48.415 (2) (a) 2. a. In this subdivision, "~~reasonable~~ diligent effort" means an
23 earnest and conscientious effort to take good faith steps to provide the services
24 ordered by the court which takes into consideration the characteristics of the parent

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1 or child or of the expectant mother or child, the level of cooperation of the parent or
2 expectant mother and other relevant circumstances of the case.

3 b. That the agency responsible for the care of the child and the family or of the
4 unborn child and expectant mother has made a ~~reasonable~~ diligent effort to provide
5 the services ordered by the court.

6 **SECTION 18.** 48.42 (2g) (am) of the statutes is repealed.

7 **SECTION 19.** 48.42 (2g) (b) of the statutes is amended to read:

8 48.42 **(2g)** (b) Failure to give notice under par. (a) to a foster parent, treatment
9 foster parent or other physical custodian described in s. 48.62 (2) does not deprive the
10 court of jurisdiction in the proceeding. If a foster parent, treatment foster parent or
11 other physical custodian described in s. 48.62 (2) is not given notice of a hearing
12 under par. (a) and if the court is required under s. 48.427 (1m) to permit that person
13 to make a written or oral statement during the hearing or to submit a written
14 statement prior to the hearing and that person does not make or submit such a
15 statement, that person may request a rehearing on the matter at any time prior to
16 the entry of an order under s. 48.427 (2) or (3). If the request is made, the court shall
17 order a rehearing.

18 **SECTION 20.** 48.427 (1m) of the statutes is amended to read:

19 48.427 **(1m)** In addition to any evidence presented under sub. (1), the court
20 shall give the foster parent, treatment foster parent or other physical custodian
21 described in s. 48.62 (2) of the child an opportunity to be heard at the dispositional
22 hearing by permitting the foster parent, treatment foster parent or other physical
23 custodian to make a written or oral statement during the dispositional hearing, or
24 to submit a written statement prior to disposition, relevant to the issue of disposition.
25 Any written or oral statement made under this subsection shall be made under oath

BILL**SECTION 20**

1 or affirmation. A foster parent, treatment foster parent or other physical custodian
2 described in s. 48.62 (2) who receives notice of a hearing under s. 48.42 (2g) (a) and
3 an opportunity to be heard under this subsection does not become a party to the
4 proceeding on which the hearing is held solely on the basis of receiving that notice
5 and opportunity to be heard.

6 **SECTION 21.** 48.43 (5) (b) of the statutes is renumbered 48.43 (5) (b) 1.

7 **SECTION 22.** 48.43 (5) (b) 2. of the statutes is created to read:

8 48.43 (5) (b) 2. The court shall give a foster parent, treatment foster parent or
9 other physical custodian described in s. 48.62 (2) who is notified of a hearing under
10 subd. 1. an opportunity to be heard at the hearing by permitting the foster parent,
11 treatment foster parent or other physical custodian to make a written or oral
12 statement during the hearing, or to submit a written statement prior to the hearing,
13 relevant to the issues to be determined at the hearing. Any written or oral statement
14 made under this subdivision shall be made upon oath or affirmation. A foster parent,
15 treatment foster parent or other physical custodian described in s. 48.62 (2) who
16 receives a notice of a hearing under subd. 1. and an opportunity to be heard under
17 this subdivision does not become a party to the proceeding on which the hearing is
18 held solely on the basis of receiving that notice and opportunity to be heard.

19 **SECTION 23.** 938.27 (3) (a) 1m. of the statutes is repealed.

20 **SECTION 24.** 938.27 (3) (a) 2. of the statutes is amended to read:

21 938.27 (3) (a) 2. Failure to give notice under subd. 1. to a foster parent,
22 treatment foster parent or other physical custodian described in s. 48.62 (2) does not
23 deprive the court of jurisdiction in the action or proceeding. If a foster parent,
24 treatment foster parent or other physical custodian described in s. 48.62 (2) is not
25 given notice of a hearing under subd. 1. and if the court is required under this chapter

BILL

1 ~~to permit that person to make a written or oral statement during the hearing or to~~
2 ~~submit a written statement prior to the hearing and that person does not make or~~
3 ~~submit such a statement.~~ that person may request a rehearing on the matter during
4 the pendency of an order resulting from the hearing. If the request is made, the court
5 shall order a rehearing.

6 **SECTION 25.** 938.27 (6) of the statutes is amended to read:

7 938.27 (6) When a proceeding is initiated under s. 938.14, all interested parties
8 shall receive notice and appropriate summons shall be issued in a manner specified
9 by the court, consistent with applicable governing statutes. ~~In addition, if the~~
10 ~~juvenile who is the subject of the proceeding is in the care of a foster parent,~~
11 ~~treatment foster parent or other physical custodian described in s. 48.62 (2), the court~~
12 ~~shall give the foster parent, treatment foster parent or other physical custodian~~
13 ~~notice and an opportunity to be heard as provided in sub. (3) (a).~~

14 **SECTION 26.** 938.355 (2b) of the statutes is amended to read:

15 938.355 **(2b)** CONCURRENT REASONABLE EFFORTS PERMITTED. A county
16 department that provides social services or the agency primarily responsible for
17 providing services to a juvenile under a court order may, at the same time as the
18 county department or agency is making the reasonable efforts required under sub.
19 (2) (b) 6., work with the department of health and family services, a county
20 department ~~under s. 48.57 (1) (e) or (h)~~ or a child welfare agency ~~licensed under s.~~
21 ~~48.61 (5)~~ in making reasonable efforts to place the juvenile for adoption, with a
22 guardian or in some other alternative permanent placement.

23 **SECTION 27.** 938.355 (2d) (a) 1. of the statutes is amended to read:

24 938.355 **(2d)** (a) 1. ~~“Aggravated circumstances” include abandonment in~~
25 “Abandonment” means a violation of s. 948.20 or in a violation of the law of any other

BILL

1 state or federal law if that violation would be a violation of s. 948.20 if committed in
2 this state, ~~torture, chronic abuse and sexual abuse~~ as evidenced by a final judgment
3 of conviction, or an action or inaction that results in a finding of abandonment under
4 s. 48.13 (2) or under a law of any other state or a federal law that is comparable to
5 s. 48.13 (2). as evidenced by a final order of a court of competent jurisdiction.

6 **SECTION 28.** 938.355 (2d) (a) 1d. of the statutes is created to read:

7 **938.355 (2d)** (a) 1d. "Aggravated circumstances" include abandonment,
8 chronic abuse, sexual abuse and torture.

9 **SECTION 29.** 938.355 (2d) (a) 1j. of the statutes is created to read:

10 938.355 **(2d)** (a) 1j. "Chronic abuse" means 2 or more violations of s. 940.19 (1)
11 or (6) or 948.03 (2) (b) or(c) or (3) (b) or (c) or of a law of any other state or federal law,
12 if that violation would be a violation of s. 940.19 (1) or (6) or 948.03 (2) (b) or (c) or
13 (3) (b) or (c) if committed in this state, that result in bodily harm, as defined in s.
14 939.22 (4), as evidenced by final judgments of conviction on 2 or more separate
15 occasions.

16 **SECTION 30.** 938.355 (2d) (a) 2. of the statutes is amended to read:

17 938.355 **(2d)** (a) 2. "Sexual abuse" means a violation of s. 940.225, 944.30,
18 948.02, 948.025, 948.05, 948.055, 948.06, 948.09 or 948.10 or a violation of the law
19 of any other state or federal law if that violation would be a violation of s. 940.225,
20 944.30, 948.02, 948.025, 948.05, 948.055, 948.06, 948.09 or 948.10 if committed in
21 this state, as evidenced by a final judgment of conviction.

22 **SECTION 31.** 938.355 (2d) (a) 3. of the statutes is created to read:

23 938.355 (2d) (a) 3. "Torture" means a violation of s. 948.04 (1) or a violation of
24 the law of any other state or federal law if that violation would be a violation of s.
25 948.04 (1) if committed in this state, as evidenced by a final judgment of conviction.

BILL

1 **SECTION 32.** 938.355 (2d) (b) (intro.) of the statutes is amended to read:

2 938.355 **(2d)** (b) (intro.) Notwithstanding sub. (2) (b) 6., the court need not
3 include in a dispositional order a finding as to whether a county department which
4 provides social services or the agency primarily responsible for providing services
5 under a court order has made reasonable efforts with respect to a parent of a juvenile
6 to prevent the removal of the juvenile from the home, while assuring that the
7 juvenile's health and safety are the paramount concerns, or, if applicable, a finding
8 as to whether the agency primarily responsible for providing services under a court
9 order has made reasonable efforts with respect to a parent of a juvenile to make it
10 possible for the juvenile to return safely to his or her home, if the court finds-
11 ~~evidenced by a final judgment of conviction,~~ any of the following:

12 **SECTION 33.** 938.355 (2d) (b) 2. of the statutes is amended to read:

13 938.355 **(2d)** (b) 2. That the parent has committed, has aided or abetted the
14 commission of, or has solicited, conspired or attempted to commit, a violation of s.
15 940.01, 940.02, 940.03 or 940.05 or a violation of the law of any other state or federal
16 law, if that violation would be a violation of s. 940.01, 940.02, 940.03 or 940.05 if
17 committed in this state, as evidenced by a final iudament of conviction, and that the
18 victim of that violation is a child of the parent.

19 **SECTION 34.** 938.355 (2d) (b) 3. of the statutes is amended to read:

20 938.355 **(2d)** (b) 3. That the parent has committed a violation of s. 940.19 (2),
21 (3), (4) or (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025 or 948.03 (2) (a) or (3) (a)
22 or a violation of the law of any other state or federal law, if that violation would be
23 a violation of s. 940.19 (2), (3), (4) or (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025
24 or 948.03 (2) (a) or (3) (a) if committed in this state, as evidenced by a final iudament
25 of conviction, and that the violation resulted in great bodily harm, as defined in s.

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1 ~~938.22~~ 939.22 (14), or in substantial bodily harm, as defined in s. ~~938.22~~ 939.22 (38),
2 to the juvenile or another child of the parent.

3 **SECTION 35.** 938.355 (2d) (b) 4. of the statutes is amended to read:

4 938.355 (**2d**) (b) 4. That the parental rights of the parent to another child have
5 been involuntarily terminated, as evidenced by a final order of a court of competent
6 jurisdiction terminating those parental rights.

7 **SECTION 36.** 938.355 (2d) (d) of the statutes is created to read:

8 938.355 (2d) (d) 1. If a hearing is held under par. (c), at least 10 days before the
9 date of the hearing the court shall notify the juvenile, if 12 years of age or over, any
10 parent, guardian and legal custodian of the juvenile and any foster parent, treatment
11 foster parent or other physical custodian described in s. 48.62 (2) of the juvenile of
12 the time, place and purpose of the hearing.

13 2. The court shall give a foster parent, treatment foster parent or other physical
14 custodian described in s. 48.62 (2) who is notified of a hearing under subd. 1. an
15 opportunity to be heard at the hearing by permitting the foster parent, treatment
16 foster parent or other physical custodian to make a written or oral statement during
17 the hearing, or to submit a written statement prior to the hearing, relevant to the
18 issues to be determined at the hearing. Any written or oral statement made under
19 this subdivision shall be made upon oath or affirmation. A foster parent, treatment
20 foster parent or other physical custodian described in s. 48.62 (2) who receives a
21 notice of a hearing under subd. 1. and an opportunity to be heard under this
22 subdivision does not become a party to the proceeding on which the hearing is held
23 solely on the basis of receiving that notice and opportunity to be heard.

24 **SECTION 37.** 938.365 (1) of the statutes is amended to read:

BILL

1 938.365 (1) In this section, a juvenile is considered to have been placed outside
2 of his or her home on the date on which the juvenile was first placed outside of his
3 or her home pursuant to an order under ~~this section or s. 938.345, or 938.357 or~~
4 ~~938.363~~ or on the date that is 60 days after the date on which the juvenile was
5 removed from his or her home, whichever is earlier.

6 **SECTION 38.** 938.38 (5) (b) of the statutes is amended to read:

7 938.38 (5) (b) The court or the agency shall notify the parents of the juvenile,
8 the juvenile if he or she is 10 years of age or older and the juvenile's foster parent,
9 the juvenile's treatment foster parent or the operator of the facility in which the
10 juvenile is living of the date, time and place of the review, of the issues to be
11 determined as part of the review, of the fact that they may have an opportunity to
12 be heard at the review by submitting written comments not less than 10 working
13 days before the review or by participating at the review. The court or agency shall
14 notify the person representing the interests of the public, the juvenile's counsel and
15 the juvenile's guardian ad litem of the date of the review, of the issues to be
16 determined as part of the review and of the fact that they may submit written
17 comments not less than 10 working days before the review. Any written or oral
18 statement made to the court under this paragraph by a foster parent, treatment
19 foster parent or operator of a facility in which a juvenile is living shall be made under
20 oath or affirmation. The notices under this paragraph shall be provided in writing
21 not less than 30 days before the review and copies of the notices shall be filed in the
22 juvenile's case record.

23 **SECTION 39. Initial applicability.**

24 (1) JUVENILE COURTORDERS. The treatment of sections **48.355** (2d) (a) 1., Id., lj.,
25 2. and 3. and (b) (intro.), 2., 3. and 4. and 938.355 (2d) (a) 1., Id., lj., 2. and 3. and (b)

BILL

1 (intro.), 2., 3. and 4. of the statutes first applies to juvenile court orders entered on
2 the effective date of this subsection.

3 (2) JUVENILE COURT HEARINGS AND PERMANENCY PLAN REVIEWS. The treatment of
4 sections 48.27 (3) (a) lm. and 2. and (6), 48.38 (5) (b), 48.42 (2g) (am) and (b), 48.427
5 (lm), 938.27 (3) (a) lm. and 2. and (6) and 938.38 (5) (b) of the statutes, the
6 renumbering of section 48.43 (5) (b) of the statutes and the creation of section 48.43
7 (5) (b) 2. of the statutes first apply to juvenile court hearings and permanency plan
8 reviews held on the effective date of this subsection.

9 (3) PERMANENCY PLAN HEARINGS. The treatment of sections 48.355 (2d) (d) and
10 938.355 (2d) (d) of the statutes first applies to permanency plan hearings held 10
11 days after the effective date of this subsection.

12 (END)



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536

Telephone: (608) 266-1304

Fax: (608) 266-3830

Email: leg.council@legis.state.wi.us

RECEIVED
SEP 27 P.M.

DATE: September 27, 1999

TO: REPRESENTATIVE BONNIE LADWIG

FROM: Joyce L. Kiel, Senior Staff Attorney

SUBJECT: Comments Regarding **LRB-2177/3**, Relating to Provisions to Comply With the Federal Adoption and Safe Families Act

LRB-2177/3 was drafted to 'bring the statutes more closely into compliance with the Federal Adoption and Safe Families Act (ASFA). As I notified your office earlier, it is my opinion that this draft accurately incorporated the provisions we discussed earlier.

You also submitted a copy of **LRB-2177/3** to various people at the Department of Health and Family Services (**DHFS**) for review. Linda Hisgen, Director, Bureau of Programs and Policies, Division of Children and Family Services, DHFS, wrote to you on April 27, 1999 raising various concerns about the draft. However, most of Ms. Hisgen's concerns have been reconsidered as explained in the letter from Attorney Therese Durkin, Office of Legal Counsel, DHFS, dated August 24, 1999. (A copy of Ms. Durkin's letter was sent to your office earlier, but it is also included as Attachment 1 to this memorandum for your convenience.) According to my subsequent discussions with Ms. Durkin, the following issues in the draft remain to be modified:

* Regarding the definition of 'torture' on page 6, lines 9 'to 12, and page 13, lines 4 to 7: Ms. Hisgen suggested that the definition be expanded from a violation of s. 948.04 (1), Stats. (causing mental harm to a child), to also include a violation of: s. 940.19 (4), Stats. (causing great bodily harm by an act intended to cause bodily harm); s. 940.19 (5), Stats. (causing great bodily harm by an act intended to cause substantial bodily harm); s. 940.21, Stats. (mayhem); and s. 948.01 (4), Stats. (defining sadomasochistic abuse for purposes of ch. 948).

* However, it is inappropriate to add s. 940.19 (4) and (5), Stats., because those crimes are already included under ss. 48.355 (2d) (b) 3. and 938.255 (2d) (b) 3., Stats., as a reason not to require reasonable efforts to make it possible for a child or juvenile to return home. It is also inappropriate to add the reference to a violation of s. 948.01 (4), Stats., because that is a definition, not a crime.

That leaves a violation of s. 940.21, Stats., from the list suggested by Ms. Hisgen. Thus, a violation of s. 940.21, Stats., could be added to the definition of "torture" as indicated by the suggested changes marked on page 6, lines 10 and 11, and page 13, lines 5 and 7, of the attached copy of **LRB-2177/3**. (The marked version of **LRB-2177/3** is included as Attachment 2 to this memorandum.)

2. Regarding changing the term defined in s. 48.415 (2) (a) 2. a., Stats., from "reasonable effort" under the child in need of protection or services (CHIPS) ground for involuntary termination of parental rights (TPR), back to the term that was previously used, that is, "diligent effort": While any change would not affect substantive law, DHFS is concerned that the change may add to confusion at this point. Therefore, the attached copy of **LRB-2177/3** shows **SECTION 17** as being deleted. (See page 9, lines 3 to 11, of **LRB-2177/3**.)

You may wish to have the Legislative Reference Bureau prepare a /4 version of the draft to incorporate the changes as shown on the attached draft.

In addition to the changes that are shown on the attached copy of **LRB-2177/3**, DHFS staff is recommending that other statutory changes be made to enhance the ability of the state to collect federal IV-E foster care and adoption assistance funds under ASFA and to improve compliance with ASFA. Those recommended changes are explained in Ms. Durkin's August 24 letter, and I have had subsequent conversations with her about them. You may wish to have the following changes incorporated in **LRB-2177/4**, or in separate legislation:

1. Amend ss. 48.38 and 938.38, Stats., relating to permanency planning, to encourage social workers to consider whether concurrent efforts under s. 48.355 (2b) or 938.255 (2b), Stats., to place the child for adoption, with a guardian or in some other alternative permanent placement are appropriate while making reasonable efforts to prevent the removal of a child from the home or to make it possible for the child to return home as required under ss. 48.355 (2) (b) 6. and 938.355 (2) (b), Stats.

For example, s. 48.38 (4) (am) could be created to read: "Any efforts made under s. 48.355 (2b) or the basis for a decision, if any, that concurrent efforts under s. 48.355 (2b) are not appropriate." A comparable provision could be created in s. 938.38, Stats. This would mean that a permanency plan must describe: (a) concurrent efforts to place the child for adoption, with a guardian or in some other alternative placement, if any such efforts have been made; and (b) if a decision has been made not to make concurrent efforts, the basis for that decision. As the decision is optional, the intent of the suggested change is not to require that a decision be made; however, if a decision has been made, DHFS staff thought it would be useful to provide the information with the hope that it would promote a quicker and smoother transition for the child.

2. Amend the statutes to provide for a finding that reasonable efforts were made or were not required in cases in which there is a TPR (either voluntary or involuntary) without an underlying CHIPS finding. This recommendation is discussed in the last two paragraphs of page two of Ms. Durkin's August 24 letter and in the letter which Ms. Durkin wrote to Milwaukee County Judge Michael Dwyer, a copy of which is attached to her letter. If a child is placed in foster care following a TPR or if adoption assistance benefits are to be paid following a TPR, DHFS staff indicate that federal IV-E funds are not available for the foster care or adoption

= Add 940.21 (mayhem) to definition of "torture"

= Don't change back to "diligent effort"

assistance unless there is a finding that reasonable efforts were made or were not required. Such a finding would have been made in cases where there was a CHIPS action underlying the TPR, but not in other cases. **DHFS** staff suggest adding a requirement for the court to make such a finding in the TPR process for those types of cases. If you are interested in having such a provision added to this draft, Ms. Durkin indicated that she would be willing to discuss proposed language with Legislative Reference Bureau Staff.

If you would like any further information on this subject, please feel free to contact me at the Legislative Council Staff offices. I will be out of the **office** until October 19. If you have questions before then, you may wish to contact Anne Sappenfield at 267-9485. I am sending a copy of this memorandum **to** Therese Durkin at **DHFS** for review.

JLK:ksm;jal

Attachments

cc: Therese Durkin, Office of Legal Counsel, **DHFS**
Anne Sappenfield, Staff Attorney, Legislative Council Staff



Tommy G. Thompson
Governor

Joe Leean
Secretary

State of Wisconsin

Department of Health and Family Services

OFFICE OF LEGAL COUNSEL

1 WEST WILSON STREET
P.O. BOX 7850
MADISON WI 53707-7850

TELEPHONE: (608) 266-8428

August 24, 1999

MEMORANDUM

To : Joyce Kiel
Legislative Counsel .

FROM: Therese Durkin *TD*
DHFS / OLC

Re: Proposed Amendments for ASFA Compliance

This responds to your **correspondence** regarding the above-referenced **statutory proposals as provided in LRB--2177/3**. **In particular, you asked whether upon legal review, DHFS agrees with amendments for compliance with the Adoption and Safe Families Act (ASFA). Those amendments would limit foster parent rights to be heard in ch. 48 and 938 proceedings to those proceedings falling under 42 USC Title IV-E. In correspondence to Representative Ladwig, DHFS Bureau of Programs and Policies Director Linda Hisgen had questioned these amendments, as they seem contrary to the plain meaning of ASFA. Subsequent federal interpretations have clarified that this provision applies only to Title IV-E hearings, and therefore DHFS concurs with these amendments.**

Following is further comment on other issues under ASFA, some of which were noted in Linda's correspondence.

In that correspondence, Linda also raised a concern that the draft's proposal for a separate requirement that written or oral foster parent statements in a hearing be made under oath seems unnecessary, and questioned why the requirement was specific only to foster parents. My understanding is that this was added to clarify that the foster parent's written statements allowed by this provision must be under oath, and it was specific to foster parents because the provision allowing these statements was specific to foster parents. DHFS does not have a concern if that is the intent of this language. It may be helpful to clarify this statement in the proposed amendment.

I agree with Linda's further comments regarding the proposed definition in section 10 (p.6, lines 10-12) of torture by reference to s. 948.04(1), Wis. Stats. This definition would appear to limit torture to causing mental harm. As Linda noted, this definition does not seem broad enough.

Also, I concur with Linda's concerns regarding the use of the term "diligent" rather than "reasonable" in section 17 (p. 9, lines 4-11). I agree that it would be best to maintain the word "reasonable" in describing efforts to provide services required prior to termination of parental rights proceedings (TPRs). A new term is likely to require case law development to define the term as it applies to services provided, and thus cause some delays in some parental rights terminations. Also, if "reasonable" efforts are required to be made to reunify the family, should we require a higher burden of services (a diligent standard) in the CHIPS phase in order to ultimately satisfy the "diligent" standard for parental rights termination? This could create a limbo status for a child where an involuntary TPR was not possible and yet no more reunification services were required. I am not clear on why 'it is proposed that "reasonable" efforts be changed back to "diligent" efforts, and am concerned about the implications of such a change.

In addition, as I mention& previously, an issue has arisen in the courts regarding procedures required by the ASFA when "reasonable efforts" are not made yet a provision for involuntary TPRs has occurred. As you know, federal and state law allow parental rights termination under certain circumstances without reasonable efforts being made to unify the family. However, where a termination occurs outside CHIPS proceedings which require "reasonable effort" determinations, federal law still requires that there be certain judicial determinations about reasonable efforts and permanency planning in order to receive federal funding for foster care and adoption assistance for the children involved. See 42 USC 671(a)(15)(B), (D), and (E). Under these provisions federal funding for foster care and adoption assistance reimburses about 58% of those benefits, usually until the child reaches age 18 or completes high school. The enclosed correspondence to Judge Michael Dwyer of the Milwaukee County Circuit Court explains this issue in more detail. It is my understanding that based on this correspondence the Milwaukee County Juvenile Court and District Attorney's Office have adopted protocols to meet these federal requirements. However, it would be best if these requirements were also included in state statutes, possibly in s. 48.417 which references circumstances for filing an immediate TPR petition and in s. 48.415 for other TPR grounds where 'reasonable efforts' are not an element of the TPR grounds.

Another federal funding issue arises in voluntary TPRs where there may also be no judicial finding regarding reasonable efforts. In such cases, federal funding is lost for the adoption assistance benefits that the state may provide. Therefore, it would be helpful if the state statutes also require a judicial finding in voluntary parental rights termination proceedings that reasonable efforts have been made if the parent voluntarily terminates parental rights. Reasonable efforts could be defined in such cases as the current procedure to notify alleged fathers and by informing birth parents of the service available to help them parent the child.

require agency to
consider concurrent
efforts in
permanency planning

Consideration should also be given to adding a requirement in the permanency planning requirements in ch. 48 to consider whether concurrent planning is appropriate. While state law allows concurrent efforts for permanency to be made along with reasonable efforts to unify the family, it does not require at any point that this must be considered. Since this is a new concept in the law, it seems many social workers are not accustomed to considering such possibilities in their permanency planning and placements. Also, a recent discussion with Milwaukee County Circuit Court Judges has indicated such a provision may be useful to achieve timely concurrent planning. It is important for social workers to consider whether concurrent efforts are appropriate as early as possible in order to achieve the benefits of concurrent planning. Timely concurrent planning can allow a quicker and smoother transition (fewer temporary placements) for children into their permanent placements.

Finally, consideration should be given to adding provisions to allow involuntary TPRs in any circumstances where "reasonable efforts" are not required. It seems logical that if it is believed that reasonable efforts to unify the family are not required then there should be legal grounds to move forward with a TPR. This may also lessen the likelihood that a child would be left in a legal limbo where no efforts are made to reunify the family but no TPR and thus no adoption is possible.

Thank you for your consideration of these issues, and for all your efforts in this area.

Enclosure

C: Linda Hisgen, w/o enc.
Karen Oghalai, w/o enc.



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-2177/3 (4) RMR
GMM:cmh:hmh
i WLj

Soon

1999 BILL

WPO: Inserts are
out of order.

Regen

Regen no rate

1 **AN ACT to repeal** 48.27 (3) (a) lm., 48.42 (2g) (am) and 938.27 (3) (a) lm.; **to**

2 **renumber** 48.43 (5) (b); **to amend** **20.435 (3)** (pm), 48.27 (3) (a) 2., 48.27 (6),

3 48.355 (2b), 48.355 (2d) (a) 1., 48.355 (2d) (a) 2., 48.355 (2d) (b) (intro.), 48.355

4 (2d) (b) 2., 48.355 (2d) (b) 3., 48.355 (2d) (b) 4., 48.38 (5) (b), 48.415 (2) (a) 2.,

5 48.42 (2g) (b), 48.427 (lm), 938.27 (3) (a) 2., 938.27 (6), 938.355 (2b), 938.355

6 (2d) (a) 1., 938.355 (2d) (a) 2., 938.355 (2d) (b) (intro.), 938.355 (2d) (b) 2.,

7 938.355 (2d) (b) 3., 938.355 (2d) (b) 4., 938.365 (1) and 938.38 (5) (b); and **to**

8 **create** **48.355** (2d) (a) Id., 48.355 (2d) (a) lj., 48.355 (2d) (a) 3., 48.355 (2d) (d),

9 48.43 (5) (b) 2., 938.355 (2d) (a) Id., 938.355 (2d) (a) lj., 938.355 (2d) (a) 3. and

10 938.355 (2d) (d) of the statutes; **relating to:** the efforts that are required to

11 prevent the removal of a child or juvenile from the home or to make it possible

12 for a child or juvenile to return safely to his or her home when a juvenile court

13 order places the child or juvenile outside of the home and notice and an

14 opportunity to be heard at certain proceedings under the children's code and the

BILL

1 juvenile justice code by a foster parent, treatment foster parent or other
 2 substitute care provider of a child or juvenile.

Analysis by the Legislative Reference Bureau

Under current law, an order of the court assigned to exercise jurisdiction under the children's code and the juvenile justice code (juvenile court) that places a child or juvenile in need of protection or services or a juvenile who has been adjudged delinquent outside of his or her home must include a finding as to whether the county department of human services or social services (county department), the department of health and family services (DHFS), in a county having a population of 500,000 or more, or the agency primarily responsible for providing services under a juvenile court order (collectively "agency"), has made reasonable efforts to prevent the removal of the child or juvenile from the home while assuring that the health and safety of the child or juvenile are the paramount concerns or, if applicable, has made reasonable efforts to make it possible for the child or juvenile to return safely to his or her home, except that a juvenile court is not required to find that those reasonable efforts have been made with respect to a parent if the juvenile court finds that the parent has committed certain crimes of homicide against a child of the parent; has committed battery, sexual assault or physical or sexual abuse resulting in great bodily harm or substantial bodily harm to the child or juvenile or to another child of the parent; has had his or her parental rights terminated with respect to another child; or has subjected the child or juvenile to aggravated circumstances, which are defined under current law as including criminal abandonment, torture, chronic abuse and sexual abuse. Current law, in turn, defines sexual abuse as a violation of certain sex crimes. Current law, however, does not, in turn, define abandonment, torture or chronic abuse.

This bill defines those terms for purposes of determining when a parent has subjected a child to aggravated circumstances. Specifically, the bill defines abandonment as a violation of the criminal law against abandonment or an action or inaction that results in a finding that a child is in need of protection or services on the grounds of abandonment. The bill defines chronic abuse as two or more violations of the criminal laws against battery or physical abuse of a child that result in bodily harm (as opposed to great bodily harm or substantial bodily harm). The bill defines torture as a violation of the criminal law against causing mental harm to a child.

Current law permits an agency, at the same time as the agency is making reasonable efforts to prevent the removal of a child or juvenile from the home or to make it possible for a child or juvenile to return to his or her home, to work with DHFS, or a county department or child welfare agency that is authorized to place children for adoption, in making reasonable efforts to place the child or juvenile for adoption, with a guardian or in some other alternative permanent placement. This bill permits an agency to ~~do that~~ work with any county department or child welfare agency, not just one that is authorized to place children for adoption.

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Under current law, a foster parent, treatment foster parent or other physical custodian (substitute care provider) of a child or juvenile who is the subject of a child or juvenile in need of protection or services proceeding or of a juvenile who is the subject of a delinquency proceeding is entitled to receive an opportunity to be heard at all hearings involving the child or juvenile, except hearings on motions for which notice need only be provided to the child or juvenile and his or her counsel. A substitute care provider is also entitled to receive an opportunity to be heard at all hearings on a termination of parental rights (TPR) proceeding and at all hearings on certain other matters over which the juvenile court has jurisdiction, such as the appointment and removal of a guardian of a child, the adoption of a child and proceedings under the Mental Health Act concerning a child or juvenile.

This bill eliminates the requirement that a substitute care provider receive an opportunity to be heard at *all* hearings involving a child or juvenile in need of protection or services or involving a juvenile who is the subject of a delinquency proceeding, such as a plea hearing, a fact-finding hearing or a dispositional hearing, but leaves intact the requirement that a substitute care provider receive an opportunity to be heard at a change in placement hearing or hearing on a revision or extension of a dispositional order. Similarly, the bill eliminates the requirement that a substitute care provider receive an opportunity to be heard at *all* TPR hearings, such as a plea hearing or a fact-finding hearing, but leaves intact the requirement that a substitute care provider receive an opportunity to be heard at a TPR dispositional hearing. In addition, the bill eliminates the requirement that a substitute care provider receive an opportunity to be heard at hearings on proceedings under the children's code or the juvenile justice code other than TPR, child or juvenile in need of protection or services proceedings and delinquency proceedings.

The bill, however, requires a substitute care provider to receive an opportunity to be heard at a hearing to determine the permanency plan for a child or juvenile when the juvenile court has determined that a parent has subjected the child or juvenile to aggravated circumstances; has committed certain crimes of homicide, battery, sexual assault or sexual or physical abuse against a child of the parent; or has had his or her parental rights terminated with respect to another child of the parent. In addition, the bill requires a substitute care provider to receive an opportunity to be heard at the annual permanency plan review for a child whose parents' parental rights have been terminated, but who has not been adopted.

For further information see the state *and 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.** 20.435 (3) (pm) of the statutes is amended to read:

SECTION 1

1 20.435 (3) (pm) *Federal aid; adoption incentive payments.* All federal moneys
2 received as adoption incentive payments under 42 USC ~~473A~~ 673b, as authorized by
3 the governor under s. 16.54, to be expended for the purposes for which received.

4 **SECTION 2.** 48.27 (3) (a) lm. of the statutes is repealed.

5 **SECTION 3.** 48.27 (3) (a) 2. of the statutes is amended to read:

6 48.27 (3) (a) 2. Failure to give notice under subd. 1. to a foster parent, treatment
7 foster parent or other physical custodian described in s. 48.62 (2) does not deprive the
8 court of jurisdiction in the action or proceeding. If a foster parent, treatment foster
9 parent or other physical custodian described in s. 48.62 (2) is not given notice of a
10 hearing under subd. 1. and if the court is required under this chapter to permit that
11 person to make a written or oral statement during the hearing or to submit a written
12 statement prior to the hearing and that person does not make or submit such a
13 statement, that person may request a rehearing on the matter during the pendency
14 of an order resulting from the hearing. If the request is made, the court shall order
15 a rehearing.

16 **SECTION 4.** 48.27 (6) of the statutes is amended to read:

17 48.27 (6) When a proceeding is initiated under s. 48.14, all interested parties
18 shall receive notice and appropriate summons shall be issued in a manner specified
19 by the court, consistent with applicable governing statutes. ~~In addition, if the child~~
20 ~~who is the subject of the proceeding is in the care of a foster parent, treatment foster~~
21 ~~parent or other physical custodian described in s. 48.62 (2), the court shall give the~~
22 ~~foster parent, treatment foster parent or other physical custodian notice and an~~
23 ~~opportunity to be heard as provided in sub. (3) (a).~~

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

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1 48.355 (2b) CONCURRENT REASONABLE EFFORTS PERMITTED. A county
2 department, the department, in a county having a population of 500,000 or more, or
3 the agency primarily responsible for providing services to a child under a court order
4 may, at the same time as the county department, department or agency is making
5 the reasonable efforts required under sub. (2) (b) 6., work with the department, a
6 county department ~~under c. 48.57 (1) (e) or (h)~~ or a child welfare agency ~~licensed~~
7 ~~under s. 48.61 (5)~~ in making reasonable efforts to place the child for adoption, with
8 a guardian or in some other alternative permanent placement.

9 **SECTION 6.** 48.355 (2d) (a) 1. of the statutes is amended to read:

10 48.355 (2d) (a) 1. ~~“Aggravated circumstances” include abandonment in~~
11 “Abandonment” means a violation of s. 948.20 or in a violation of the law of any other
12 state or federal law if that violation would be a violation of s. 948.20 if committed in
13 this state, ~~torture, chronic abuse and sexual abuse~~ as evidenced by a final judgment
14 of conviction, or an action or inaction that results in a finding of abandonment under
15 s. 48.13 (2) or under a law of any other state or a federal law that is comparable to
16 s. 48.13 (2). as evidenced by a final order of a court of competent jurisdiction.

17 **SECTION 7.** 48.355 (2d) (a) ~~ld.~~ of the statutes is created to read:

18 48.355 (2d) (a) ~~ld.~~ “Aggravated circumstances” include abandonment, chronic
19 abuse, sexual abuse and torture.

20 **SECTION 8.** 48.355 (2d) (a) ~~lj.~~ of the statutes is created to read:

21 48.355 (2d) (a) ~~lj.~~ “Chronic abuse” means 2 or more violations of s. 940.19 (1)
22 or (6) or 948.03 (2) (b) or (c) or (3) (b) or (c) or of a law of any other state or federal law,
23 if that violation would be a violation of s. 940.19 (1) or (6) or 948.03 (2) (b) or (c) or
24 (3) (b) or (c) committed in this state, that result in bodily harm, as defined in s.

BILL**SECTION 8**

1 939.22 (4), as evidenced by final judgments of conviction on 2 or more separate
2 occasions.

3 SECTION 9. 48.355 (2d) (a) 2. of the statutes is amended to read:

4 48.355 (2d) (a) 2. "Sexual abuse" means a violation of s. 940.225, 944.30,
5 948.02, 948.025, 948.05, 948.055, 948.06, 948.09 or 948.10 or a violation of the law
6 of any other state or federal law if that violation would be a violation of s. 940.225,
7 944.30, 948.02, 948.025, 948.05, 948.055, 948.06, 948.09 or 948.10 if committed in
8 this state, as evidenced by a final judgment of conviction.

9 SECTION 10. 48.355 (2d) (a) 3. of the statutes is created to read:

10 48.355 (2d) (a) 3. "Torture" means a violation of s. 948.04 (1) or a violation of
11 the law of any other state or federal law if that violation would be a violation of s.
12 948.04 (1) if committed in this state, as evidenced by a final judgment of conviction.

13 SECTION 11. 48.355 (2d) (b) (intro.) of the statutes is amended to read:

14 48.355 (2d) (b) (intro.) Notwithstanding sub. (2) (b) 6., the court need not
15 include in a dispositional order a finding as to whether the county department, the
16 department, in a county having a population of 500,000 or more, or the agency
17 primarily responsible for providing services under a court order has made reasonable
18 efforts with respect to a parent of a child to prevent the removal of the child from the
19 home, while assuring that the child's health and safety are the paramount concerns,
20 or, if applicable, a finding as to whether the agency primarily responsible for
21 providing services under a court order has made reasonable efforts with respect to
22 a parent of a child to make it possible for the child to return safely to his or her home,
23 if the court finds, ~~as evidenced by a final judgment of conviction,~~ any of the following:

24 SECTION 12. 48.355 (2d) (b) 2. of the statutes is amended to read:

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1 48.355 **(2d)** (b) 2. That the parent has committed, has aided or abetted the
2 commission of, or has solicited, conspired or attempted to commit, a violation of s.
3 940.01, 940.02, 940.03 or 940.05 or a violation of the law of any other state or federal
4 law, if that violation would be a violation of s. 940.01, 940.02, 940.03 or 940.05 if
5 committed in this state, as evidenced by a final judgment of conviction, and that the
6 victim of that violation is a child of the parent.

7 **SECTION 13.** 48.355 (2d) (b) 3. of the statutes is amended to read:

8 48.355 **(2d)** (b) 3. That the parent has committed a violation of s. 940.19 (2), (3),
9 **(4)** or (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025 or 948.03 (2) (a) or (3) (a) or a
10 violation of the law of any other state or federal law, if that violation would be a
11 violation of s. 940.19 (2), (3), (4) or (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025 or
12 948.03 (2) (a) or (3) (a) if committed in this state, as evidenced by a final judgment
13 of conviction, and that the violation resulted in great bodily harm, as defined in s.
14 939.22 (14), or in substantial bodily harm, as defined in s. 939.22 (38), to the child
15 or another child of the parent.

16 **SECTION 14.** 48.355 (2d) (b) 4. of the statutes is amended to read:

17 48.355 **(2d)** (b) 4. That the parental rights of the parent to another child have
18 been involuntarily terminated, as evidenced by a final order of a court of competent
19 jurisdiction terminating those parental rights.

20 **SECTION 15.** 48.355 (2d) (d) of the statutes is created to read:

21 48.355 (2d) (d) 1. If a hearing is held under par. (c), at least 10 days before the
22 date of the hearing the court shall notify the child, if 12 years of age or over, any
23 parent, guardian and legal custodian of the child and any foster parent, treatment
24 foster parent or other physical custodian described in s. 48.62 (2) of the child of the
25 time, place and purpose of the hearing.

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1 2. The court shall give a foster parent, treatment foster parent or other physical
2 custodian described in s. 48.62 (2) who is notified of a hearing under subd. 1. an
3 opportunity to be heard at the hearing by permitting the foster parent, treatment
4 foster parent or other physical custodian to make a written or oral statement during
5 the hearing, or to submit a written statement prior to the hearing, relevant to the
6 issues to be determined at the hearing. Any written or oral statement made under
7 this subdivision shall be made upon oath or affirmation. A foster parent, treatment
8 foster parent or other physical custodian described in s. 48.62 (2) who receives a
9 notice of a hearing under subd. 1. and an opportunity to be heard under this
10 subdivision does not become a party to the proceeding on which the hearing is held
11 solely on the basis of receiving that notice and opportunity to be heard.

12 **SECTION 16.** 48.38 (5) (b) of the statutes is amended to read:

13 48.38 (5) (b) The court or the agency shall notify the parents of the child, the
14 child if he or she is 12 years of age or older and the child's foster parent, the child's
15 treatment foster parent or the operator of the facility in which the child is living of
16 the date, time and place of the review, of the issues to be determined as part of the
17 review, of the fact that they may have an opportunity to be heard at the review by
18 submitting written comments not less than 10 working days before the review or by
19 participating at the review. The court or agency shall notify the person representing
20 the interests of the public, the child's counsel and the child's guardian ad litem of the
21 date of the review, of the issues to be determined as part of the review and of the fact
22 that they may submit written comments not less than 10 working days before the
23 review. Any written or oral statement made to the court under this paragraph by a
24 foster parent, treatment foster parent or operator of a facility in which a child is
25 living shall be made under oath or affirmation. The notices under this paragraph

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1 shall be provided in writing not less than 30 days before the review and copies of the
2 notices shall be filed in the child's case record.

3 **SECTION 17.** 48.415 (2) (a) 2. of the statutes is amended to read:

4 48.415 (2) (a) 2. a. In this subdivision, "reasonable diligent effort" means an
5 earnest and conscientious effort to take good faith steps to provide the services
6 ordered by the court which takes into consideration the characteristics of the parent
7 or child or of the expectant mother or child, the level of cooperation of the parent or
8 expectant mother and other relevant circumstances of the case.

9 b. That the agency responsible for the care of the child and the family or of the
10 unborn child and expectant mother has made a reasonable diligent effort to provide
11 the services ordered by the court.

12 **SECTION 18.** 48.42 (2g) (am) of the statutes is repealed.

13 **SECTION 19.** 48.42 (2g) (b) of the statutes is amended to read:

14 48.42 (2g) (b) Failure to give notice under par. (a) to a foster parent, treatment
15 foster parent or other physical custodian described in s. 48.62 (2) does not deprive the
16 court of jurisdiction in the proceeding. If a foster parent, treatment foster parent or
17 other physical custodian described in s. 48.62 (2) is not given notice of a hearing
18 under par. (a) and if the court is required under s. 48.427 (1m) to permit that person
19 to make a written or oral statement during the hearing or to submit a written
20 statement prior to the hearing and that person does not make or submit such a
21 statement, that person may request a rehearing on the matter at any time prior to
22 the entry of an order under s. 48.427 (2) or (3). If the request is made, the court shall
23 order a rehearing.

24 **SECTION 20.** 48.427 (1m) of the statutes is amended to read:

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1 48.427 **(1m)** In addition to any evidence presented under sub. (1), the court
2 shall give the foster parent, treatment foster parent or other physical custodian
3 described in s. 48.62 (2) of the child an opportunity to be heard at the dispositional
4 hearing by permitting the foster parent, treatment foster parent or other physical
5 custodian to make a written or oral statement during the dispositional hearing, or
6 to submit a written statement prior to disposition, relevant to the issue of disposition.
7 Any written or oral statement made under this subsection shall be made under oath
8 or affirmation. A foster parent, treatment foster parent or other physical custodian
9 described in s. 48.62 (2) who receives notice of a hearing under s. 48.42 (2g) (a) and
10 an opportunity to be heard under this subsection does not become a party to the
proceeding on which the hearing is held solely on the basis of receiving that notice
and opportunity to be heard.

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13 **SECTION 21.** 48.43 (5) (b) of the statutes is renumbered 48.43 (5) (b) 1.

14 **SECTION 22.** 48.43 (5) (b) 2. of the statutes is created to read:

15 48.43 (5) (b) 2. The court shall give a foster parent, treatment foster parent or
16 other physical custodian described in s. 48.62 (2) who is notified of a hearing under
17 subd. 1. an opportunity to be heard at the hearing by permitting the foster parent,
18 treatment foster parent or other physical custodian to make a written or oral
19 statement during the hearing, or to submit a written statement prior to the hearing,
20 relevant to the issues to be determined at the hearing. Any written or oral statement
21 made under this subdivision shall be made upon oath or affirmation. A foster parent,
22 treatment foster parent or other physical custodian described in s. 48.62 (2) who
23 receives a notice of a hearing under subd. 1. and an opportunity to be heard under
24 this subdivision does not become a party to the proceeding on which the hearing is
25 held solely on the basis of receiving that notice and opportunity to be heard.

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1 **SECTION 23.** 938.27 (3) (a) lm. of the statutes is repealed.

2 **SECTION 24.** 938.27 (3) (a) 2. of the statutes is amended to read:

3 938.27 (3) (a) 2. Failure to give notice under subd. 1. to a foster parent,
4 treatment foster parent or other physical custodian described in s. 48.62 (2) does not
5 deprive the court of jurisdiction in the action or proceeding. If a foster parent,
6 treatment foster parent or other physical custodian described in s. 48.62 (2) is not
7 given notice of a hearing under subd. 1. and if the court is required under this chapter
8 to permit that person to make a written or oral statement during the hearing or to

9 submit a written statement prior to the hearing and that person does not make or
10 submit such a statement, that person may request a rehearing on the matter during
11 the pendency of an order resulting from the hearing. If the request is made, the court
12 shall order a rehearing.

13 **SECTION 25.** 938.27 (6) of the statutes is amended to read:

14 938.27 (6) When a proceeding is initiated under s. 938.14, all interested parties
15 shall receive notice and appropriate summons shall be issued in a manner specified
16 by the court, consistent with applicable governing statutes. ~~In addition, if the~~
17 ~~juvenile who is the subject of the proceeding is in the care of a foster parent,~~
18 ~~treatment foster parent or other physical custodian described in s. 48.62 (2), the court~~
19 ~~shall give the foster parent, treatment foster parent or other physical custodian~~
20 ~~notice and an opportunity to be heard as provided in sub. (3) (a).~~

21 **SECTION 26.** 938.355 (2b) of the statutes is amended to read:

22 938.355 (2b) CONCURRENT REASONABLE EFFORTS PERMITTED. A county
23 department that provides social services or the agency primarily responsible for
24 providing services to a juvenile under a court order may, at the same time as the
25 county department or agency is making the reasonable efforts required under sub.

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1 (2) (b) 6., work with the department, of health and family services, a county
2 department ~~under E. 48.57 (1) (e) or (h) or a child welfare agency licensed under s.~~
3 ~~48.61 (5)~~ in making reasonable efforts to place the juvenile for adoption, with a
4 guardian or in some other alternative permanent placement.

5 **SECTION 27.** 938.355 (2d) (a) 1. of the statutes is amended to read:

6 938.355 (2d) (a) 1. ~~“Aggravated circumstances” include abandonment in~~
7 “Abandonment” means a violation of s. 948.20 or in a violation of the law of any other
8 state or federal law if that violation would be a violation of s. 948.20 if committed in
9 this state, torture, chronic abuse and sexual abuse as evidenced by a final judgment
10 of conviction, or an action or inaction that results in a finding of abandonment under
11 s. 48.13 (2) or under a law of any other state or a federal law that is comparable to
12 s. 48.13 (2), as evidenced by a final order of a court of competent jurisdiction.

13 **SECTION 28.** 938.355 (2d) (a) 1d. of the statutes is created to read:

14 **938.355 (2d) (a) 1d.** “Aggravated circumstances” include abandonment,
15 chronic abuse, sexual abuse and torture.

16 **SECTION 29.** 938.355 (2d) (a) lj. of the statutes is created to read:

17 938.355 (2d) (a) lj. “Chronic abuse” means 2 or more violations of s. 940.19 (1)
18 or (6) or 948.03 (2) (b) or (c) or (3) (b) or (c) or of a law of any other state or federal law,
19 if that violation would be a violation of s. 940.19 (1) or (6) or 948.03 (2) (b) or (c) or
20 (3) (b) or (c) if committed in this state, that result in bodily harm, as defined in s.
21 939.22 (4), as evidenced by final judgments of conviction on 2 or more separate
22 occasions.

23 **SECTION 30.** 938.355 (2d) (a) 2. of the statutes is amended to read:

24 938.355 (2d) (a) 2. “Sexual abuse” means a violation of s. 940.225, 944.30,
25 948.02, 948.025, 948.05, 948.055, 948.06, 948.09 or 948.10 or a violation of the law

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1 of any other state or federal law if that violation would be a violation of s. 940.225,
2 944.30, 948.02, 948.025, 948.05, 948.055, 948.06, 948.09 or 948.10 if committed in
3 this state, as evidenced by a final judgment of conviction. 940.21 or

4 **SECTION 31.** 938.355 (2d) (a) 3. of the statutes is created to read:

5 938.355 (2d) (a) 3. "Torture" means a violation of s. 948.04 (1) or a violation of

6 the law of any other state or federal law if that violation would be a violation of s.

7 948.04 (1) if committed in this state, as evidenced by a final judgment of conviction.

8 **SECTION 32.** 938.355 (2d) (b) (intro.) of the statutes is amended to read:

9 938.355 (2d) (b) (intro.) Notwithstanding sub. (2) (b) 6., the court need not

10 include in a dispositional order a finding as to whether a county department which

11 provides social services or the agency primarily responsible for providing services

12 under a court order has made reasonable efforts with respect to a parent of a juvenile

13 to prevent the removal of the juvenile from the home, while assuring that the

14 juvenile's health and safety are the paramount concerns, or, if applicable, a finding

15 as to whether the agency primarily responsible for providing services under a court

16 order has made reasonable efforts with respect to a parent of a juvenile to make it

17 possible for the juvenile to return safely to his or her home, if the court finds, ~~as~~

18 ~~evidenced by a final judgment of conviction~~, any of the following:

19 **SECTION 33.** 938.355 (2d) (b) 2. of the statutes is amended to read:

20 938.355 (2d) (b) 2. That the parent has committed, has aided or abetted the

21 commission of, or has solicited, conspired or attempted to commit, a violation of s.

22 940.01, 940.02, 940.03 or 940.05 or a violation of the law of any other state or federal

23 law, if that violation would be a violation of s. 940.01, 940.02, 940.03 or 940.05 if

24 committed in this state, as evidenced by a final judgment of conviction. and that the

25 victim of that violation is a child of the parent.

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1 **SECTION 34.** 938.355 (2d) (b) 3. of the statutes is amended to read:

2 938.355 **(2d)** (b) 3. That the parent has committed a violation of s. 940.19 (2),
3 (3), (4) or (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025 or 948.03 (2) (a) or (3) (a)
4 or a violation of the law of any other state or federal law, if that violation would be
5 a violation of s. 940.19 (2), (3), (4) or (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025
6 or 948.03 (2) (a) or (3) (a) if committed in this state, as evidenced by a final judgment
7 of conviction, and that the violation resulted in great bodily harm, as defined in s.
8 ~~938.22~~ 939.22 (14), or in substantial bodily harm, as defined in s. ~~938.22~~ 939.22 (38),
9 to the juvenile or another child of the parent.

10 **SECTION 35.** 938.355 (2d) (b) 4. of the statutes is amended to read:

11 938.355 **(2d)** (b) 4. That the parental rights of the parent to another child have
12 been involuntarily terminated, as evidenced by a final order of a court of competent
13 jurisdiction terminating those narental rights.

14 **SECTION 36.** 938.355 (2d) (d) of the statutes is created to read:

15 938.355 **(2d)** (d) 1. If a hearing is held under par. (c), at least 10 days before the
16 date of the hearing the court shall notify the juvenile, if 12 years of age or over, any
17 parent, guardian and legal custodian of the juvenile and any foster parent, treatment
18 foster parent or other physical custodian described in s. 48.62 (2) of the juvenile of
19 the time, place and purpose of the hearing.

20 2. The court shall give a foster parent, treatment foster parent or other physical
21 custodian described in s. 48.62 (2) who is notified of a hearing under subd. 1. an
22 opportunity to be heard at the hearing by permitting the foster parent, treatment
23 foster parent or other physical custodian to make a written or oral statement during
24 the hearing, or to submit a written statement prior to the hearing, relevant to the
25 issues to be determined at the hearing. Any written or oral statement made under

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1 this subdivision shall be made upon oath or affirmation. A foster parent, treatment
2 foster parent or other physical custodian described in s. 48.62 (2) who receives a
3 notice of a hearing under subd. 1. and an opportunity to be heard under this
4 subdivision does not become a party to the proceeding on which the hearing is held
5 solely on the basis of receiving that notice and opportunity to be heard.

6 **SECTION 37.** 938.365 (1) of the statutes is amended to read:

7 938.365 (1) In this section, a juvenile is considered to have been placed outside
8 of his or her home on the date on which the juvenile was first placed outside of his
9 or her home pursuant to an order under ~~this section or~~ s. 938.345, or 938.357 ~~or~~
10 ~~938.363~~ or on the date that is 60 days after the date on which the juvenile was
11 removed from his or her home, whichever is earlier.

12 **SECTION 38.** 938.38 (5) (b) of the statutes is amended to read:

13 938.38 (5) (b) The court or the agency shall notify the parents of the juvenile,
14 the juvenile if he or she is 10 years of age or older and the juvenile's foster parent,
15 the juvenile's treatment foster parent or the operator of the facility in which the
16 juvenile is living of the date, time and place of the review, of the issues to be
17 determined as part of the review, of the fact that they may have an opportunity to
18 be heard at the review by submitting written comments not less than 10 working
19 days before the review or by participating at the review. The court or agency shall
20 notify the person representing the interests of the public, the juvenile's counsel and
21 the juvenile's guardian ad litem of the date of the review, of the issues to be
22 determined as part of the review and of the fact that they may submit written
23 comments not less than 10 working days before the review. Any written or oral
24 statement made to the court under this paragraph by a foster parent, treatment
25 foster parent or operator of a facility in which a juvenile is living shall be made under

Insert
15-11

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1 oath or affirmation. The notices under this paragraph shall be provided in writing
2 not less than 30 days before the review and copies of the notices shall be filed in the
3 juvenile's case record.

4 **SECTION 39. Initial applicability.**

5 (1) JUVENILE COURT ORDERS. The treatment of sections 48.355 (2d) (a) 1., Id., lj.,
6 2. and 3. and (b) (intro.), 2., 3. and 4. and 938.355 (2d) (a) 1., 1d., lj., 2. and 3. and (b)
(intro.), 2., 3. and 4. of the statutes first applies to juvenile court orders entered on
the effective date of this subsection.

48.43 (1)(cm)

Insert
16-8

9 (2) JUVENILECOURTHEAFUNGSANDPERMANENCYPLANREVIEWS. Thetreatmentof
10 sections 48.27 (3) (a) 1m. and 2. and (6), 48.38 (5) (b), 48.42 (2g) (am) and (b), 48.427
11 (1m), 938.27 (3) (a) 1m. and 2. and (6) and 938.38 (5) (b) of the statutes, the
12 renumbering of section 48.43 (5) (b) of the statutes and the creation of section 48.43
13 (5) (b) 2. of the statutes first apply to juvenile court hearings and permanency plan
14 reviews held on the effective date of this subsection.

15 (3) PERMANENCY PLAN HEARINGS. The treatment of sections 48.355 (2d) (d) and
16 938.355 (2d) (d) of the statutes first applies to permanency plan hearings held 10
17 days after the effective date of this subsection.

18 (END)

INSERT 8-11

SECTION ~~§~~ 48.38 (4) (am) of the statutes is created to read:

48.38 (4) (am) Any efforts to place the child for adoption, with a guardian or in some other alternative permanent placement that were made under s. 48.355 (2b) at the same time as the services described in par. (a) were offered or provided or, if those efforts were not made, the basis for the decision not to make those efforts.

(END OF INSERT)

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2177/4
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INSERT 10-12

~~SECTION 48.43~~ SECTION 48.43 (1) (cm) of the statutes is created to read:

48.43 (1) (cm) A finding that reasonable efforts have been made to prevent the removal of the child from his or her home, while assuring that the child's health and safety are the paramount concerns, or, if applicable, a finding as to whether reasonable efforts have been made to make it possible for the child to return safely to his or her home, unless the court finds that any of the circumstances described in s. 48.355 (2d) (b) 1., 2., 3. or 4. apply

applies

(END OF INSERT)

INSERT 15-11

~~SECTION~~ ~~938.38~~ 938.38 (4) (am) of the statutes is created to read:

938.38 (4) (am) Any efforts to place the juvenile for adoption, with a guardian
or in some other alternative permanent placement that were made under s. 938.355
(2b) at the same time as the services described in par. (a) were offered or provided
or, if those efforts were not made, the basis for the decision not to make those efforts.

(END OF INSERT)

**1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

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INSERT 16-8

(lm) PERMANENCY PLAN FILINGS. The treatment of sections 48.38 (4) (am) and 938.38 (4) (am) of the statutes first applies to permanency plans that are filed with the court assigned to exercise jurisdiction under chapters 48 and 938 of the statutes on the effective date of this subsection.

(END OF INSERT)

**1999-2000 DRAFTING INSERT
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9

The bill also requires a juvenile court that enters a judgment terminating parental rights (TPR) to include in the TPR order a finding that reasonable efforts have been made to prevent the removal of the child from his or her home, while assuring that the child's health and safety are the paramount concerns, or, if applicable, a finding as to whether reasonable efforts have been made to make it possible for the child to return safely to his or her home, unless the court finds that those reasonable efforts are not required.

(END OF INSERT)

1999-2000 **DRAFTING INSERT**
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in making those concurrent reasonable efforts. The bill also requires an agency to describe any concurrent reasonable efforts that were made in the permanency plan of the child or juvenile or, if no concurrent reasonable efforts were made, the basis for the decision not to make any concurrent reasonable efforts

(END OF INSERT)



1999 BILL

1 **AN ACT to repeal 48.27 (3) (a) 1m., 48.42 (2g) (am) and 933.27 (3) (a) 1m.; to**
2 **renumber 48.43 (5) (b); to amend 20.435 (3) (pm), 43.27 (3) (a) 2., 48.27 (6),**
3 **48.355 (2b), 48.355 (2d) (a) 1., 48.355 (2d) (a) 2., 48.355 (2d) (b) (intro.), 48.355**
4 **(2d) (b) 2., 48.355 (2d) (b) 3., 48.355 (2d) (b) 4., 48.38 (5) (b), 48.42 (2g) (b), 43.427**
5 **(1m), 938.27 (3) (a) 2., 938.27 (6), 938.355 (2b), 938.355 (2d) (a) 1., 938.355 (2d)**
6 **(a) 2., 938.355 (2d) (b) (intro.), 938.355 (2d) (b) 2., 938.355 (2d) (b) 3., 938.355**
7 **(2d) (b) 4., 938.365 (1) and 938.38 (5) (b); and to create 48.355 (2d) (a) 1d.,**
8 **48.355 (2d) (a) 1j., 48.355 (2d) (a) 3., 43.355 (2d) (d), 48.38 (4) (am), 48.43 (1)**
9 **(cm), 48.43 (5) (b) 2., 938.355 (2d) (a) 1d., 938.355 (2d) (a) 1j., 938.355 (2d) (a)**
10 **3., 938.355 (2d) (d) and 938.38 (4) (am) of the statutes; relating to:** the efforts
11 that are required to prevent the removal of a child or juvenile from the home
12 or to make it possible for a child or juvenile to return safely to his or her home
13 when a juvenile court order places the child or juvenile outside of the home and
14 notice and an opportunity to be heard at certain proceedings under the

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1 children's code and the juvenile justice code by a foster parent, treatment foster
2 parent or other substitute care provider of a child or juvenile,

Analysis by the Legislative Reference Bureau

Under current law, an order of the court assigned to exercise jurisdiction under the children's code and the juvenile justice code (juvenile court) that 'places a child or juvenile in **need** of protection or services or a juvenile who has been adjudged delinquent outside of his or her home must include a finding as to whether the county department of human services or social services (county department), the department of health and family services (DHFS), in a county having a population of 600,009 or more, or the agency primarily responsible for providing services under **a juvenile** court order (collectively "**agency**"), has made reasonable efforts to prevent the removal of the child or juvenile from the home while assuring that the health and safety of the child or juvenile are the paramount concerns or, if applicable, has made reasonable efforts to make it possible for the child or juvenile to return safely to his or her home, except that a juvenile court is not required to find that those reasonable efforts have been made with respect to a parent if the juvenile court finds that the parent has committed certain crimes of homicide against a child of the parent; has committed battery, sexual assault or physical or sexual abuse resulting in great bodily harm or substantial bodily harm to the child or juvenile or to another child of the parent; has had his **or** her parental rights terminated with respect to another child; or has subjected the child or juvenile to aggravated circumstances, which are defined under current law as including criminal abandonment, torture, chronic abuse and sexual abuse. Current law, in turn, defines sexual abuse as a violation of certain sex crimes, Current law, however, does not, in turn, define abandonment, torture or **chronic** abuse.

This bill defines those terms for purposes of determining when a parent has subjected a child to aggravated circumstances. Specifically, the bill defines abandonment as a violation of the criminal law against abandonment or an action or inaction that results in a finding that a child is in need of protection or services on the grounds of abandonment. The bill defines chronic abuse as two or more violations of the criminal laws against battery or physical abuse of a child **that result** in bodily harm (as opposed to great bodily harm or substantial bodily harm). The bill defines torture as a violation of the criminal laws against mayhem or causing mental harm to a child.

The bill also requires a juvenile court that enters a judgment terminating parental rights (TPR) to include in the TPR **order** a finding that reasonable efforts have been made to prevent the removal of the child from his or her home, while assuring that the child's health and safety are the paramount concerns, or, **if** applicable, a finding as to whether reasonable efforts have been made to make it **possible** for the child to return safely to his or her home, unless the court finds that those reasonable efforts are not required.

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Current law permits an agency, at the same time **as** the agency is making reasonable efforts to prevent the removal of a child **or** juvenile from the home or to make it possible for a child or juvenile to return to his or her home, to work with **DHFS**, or a county department or child welfare agency that is authorized to place children for adoption, in making reasonable efforts to place the child or juvenile for adoption, **with a guardian or in some other alternative permanent placement** (concurrent reasonable efforts). This bill permits an agency to work with any county department or child welfare agency, not just one that is authorized to place children for adoption, in making those concurrent reasonable efforts. The bill also requires an agency to describe any concurrent reasonable efforts that were made in the permanency plan of the child or juvenile or, if no concurrent reasonable efforts were made, the basis for the decision not to make any **concurrent** reasonable efforts.

Under current **law**, a foster parent, treatment foster parent or other physical custodian (substitute care provider) of a child or juvenile who is the subject of a child or juvenile in need of protection or service⁶ proceeding or of a juvenile who is the subject of a **delinquency** proceeding is entitled to receive an opportunity to be heard at all hearings involving the child or juvenile, except hearings on motions for which notice need only **be** provided to the child or juvenile **and his or her counsel**. A substitute care provider is also entitled to receive an opportunity to be heard at all hearings on a **TPR** proceeding and at **all** hearings on certain other matter⁶ over which the juvenile court has jurisdiction, such as the appointment and removal of a guardian of a child, the adoption of a child and proceedings under the Mental Health Act concerning a child or juvenile.

This bill eliminates the requirement that a substitute care provider receive an opportunity to be heard at **all** hearings involving a child or juvenile in need of protection or services or involving a juvenile who is the subject of a delinquency proceeding, such as a plea hearing, a fact-finding hearing or a dispositional hearing, but leaves intact the requirement that a substitute care provider receive an opportunity to be heard at a change in placement hearing or hearing on a revision or extension of a dispositional order. Similarly, the bill eliminates the requirement that a substitute care provider receive an opportunity to be heard at **all** TPR hearings, such as a plea hearing or a fact-finding hearing, but leaves intact the requirement that a substitute care provider receive an opportunity to be heard at a TPR dispositional hearing. In addition, the bill eliminates the requirement that a substitute care provider receive an opportunity to be heard at hearings on proceedings under the children's code or the juvenile justice code other than TPR, child or juvenile in need of protection or services proceeding⁶ and delinquency proceedings.

The bill, however, requires a substitute care provider to receive an **opportunity to be heard** at a hearing to determine the permanency plan for a child or juvenile when the juvenile court has determined that a parent has subjected the child or juvenile to aggravated circumstances; has committed certain crimes of homicide, battery, sexual assault or sexual or physical abuse against a child of the parent; or has had his or her parental rights terminated with respect to another child of the parent. In addition, the bill requires a substitute care provider to receive an

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opportunity to be heard at the annual permanency plan review for a **child** whose parents' parental rights have been terminated, but **who** has not been **adopted**.

For further information see the **state and 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.** 20.435 (3) (pm) of the statutes is amended to read:

2 20.435 (3) (pm) **Federal aid; adoption incentive payments.** All federal moneys
3 received as adoption' **incentive** payments under 42 USC **473A.673b**, as authorized by
4 the governor under s. 16.54, to be expended for **the purposes** for which received.

5 **SECTION 2.** 48.27 (3) (a) lm. of the statutes is repealed.

6 **SECTION 3.** 48.27 (3) (a) 2. of the statutes is **amended** to read:

7 **48.27(3)** (a) 2. **Failure to give notice under subd. 1.** to a foster parent, treatment
8 foster **parent** or other physical custodian described in s. 48.62 (2) does not deprive **the**
9 court of **jurisdiction** in the action or proceeding. If a **foster** parent, treatment foster
10 parent or other physical custodian described in s. 48.62 (2) is not given notice of a
11 hearing under **subd. 1.** and if the court is required under this chapter to permit that
12 person to make a written or oral statement during the hearing or to submit a written
13 statement prior to the hearing and that person does not make or submit such a
14 statement, that person may request a rehearing on the matter during the **pendency**
15 of an order resulting from the hearing. If the request is made, the court shall order
16 a rehearing.

17 **SECTION 4.** 48.27 (6) of the statutes is amended to read:

18 48.27 (6) When a proceeding is initiated under s. 48.14, **all** interested parties
19 **shall** receive notice and appropriate summons shall be issued in a manner specified
20 by the court, consistent with applicable governing statutes. **In addition, if the child**

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1 ~~who is the subject of the proceeding is in the care of a foster parent, treatment foster~~
2 ~~parent or other physical custodian described in s. 48.62 (2), the court shall give the~~
3 ~~foster parent, treatment foster parent or other physical custodian notice and an~~
4 ~~opportunity to be heard as provided in sub. (3) (a).~~

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

6 48.355 **(2b) CONCURRENT REASONABLE EFFORTS PERMITTED.** A county
7 department, the department, in a county having a population of 500,000 or more, or
8 the agency primarily responsible for providing services to a child under a court order
9 may, at the same time as the county department, department or agency is making
10 the reasonable efforts required under sub. (2) (b) 6. ^{(do one or both of the following, (a))} Work with the department, a
11 county department ^{plain print / no overstrike} ~~under s. 48.57 (1) (e) or (h)~~ or a child welfare agency ^{pp / no overstrike} ~~licensed~~
12 ^{plain print - no overstrike} ~~under s. 48.61 (5)~~ in making reasonable efforts to place the child for adoption, with
13 a guardian or in some other alternative permanent placement.

14 **SECTION 6.** 48.355 (2d) (a) 1. of the statutes is amended to read:

15 48.355 **(2d)** (a) 1. ~~“Aggravated circumstances” include abandonment in~~
16 ~~“Abandonment” means a violation of s. 948.20 or in violation of the law of any other~~
17 state or federal law if that violation would be a violation of s. 948.20 if committed in
18 this state, ~~torture, chronic abuse and sexual abuse~~ as evidenced by a final judgment
19 of conviction, or an action or inaction that results in a finding of abandonment under
20 s. 48.13 (2) or under a law of any other state or a federal law that is comparable to
21 p. 48.13 (2) as evidenced by a final order of a court of competent jurisdiction.

22 **SECTION 7.** 48.355 (2d) (a) 1d. of the statutes is created to read:

23 48.355 (2d) (a) 1d. “Aggravated circumstances” include abandonment, chronic
24 abuse, sexual abuse and torture.

25 **SECTION 8.** 48.355 (2d) (a) 1j. of the statutes is created to read:

(b) Work with the department, a county department or a child welfare agency in making reasonable efforts to place the child

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1 48.355 **(2d)** (a) lj. "Chronic abuse" means 2 or more violations of s. 940.19 (1)
2 or (6) or 948.03 (2) **(b)** or **(c)** or (3) (b) or (c) or of a law of any other state or federal law,
3 if that violation would be a violation of s. 940.19 (1) or (6) or 948.03 (2) (b) or (c) or
4 (3) (b) or (c) if committed in this state, that result in bodily harm, as defined in s.
5 939.22 **(4)**, a's evidenced by final judgments of conviction on 2 or more separate
6 occasions.

7 **SECTION 9.** 48.355 **(2d)** (a) 2. of the statutes is amended to read:

8 48.355 **(2d)** (a) 2. "**Sexual** abuse" means- a violation of s. 940.225, 944.30,
9 948.02, 948.025, 948.05, **948.055, 948.06, 948.09** or 948.10 or a violation of the law
10 of any other state or federal law if that violation would be a violation of s. 940.225,
11 **944.30, 948.02, 948.025, 948.05, 948.055, 948.06, 948.09** or 948.10 if committed in
12 this state, as evidenced by a final judgment of conviction.

13 **SECTION. 10.** 48.355 (2d) (a) 3. of the statutes is created to read:

14 48.355 **(2d)** (a) 3. "**Torture**" means a violation of s. **940.21** or 948.04 (1) or a
15 violation of the law of any other state or federal law if that violation would be a
16 violation of s. 940.21 or 948.04 **(1)** if committed in this state, as evidenced by a final
17 judgment of conviction.

18 **SECTION 11.** 48.355 (2d) (b) (intro.) of the statutes is amended to read:

1 9 48.355 **(2d)** **(b)** (intro.) Notwithstanding sub. (2) **(b) 6.**, the court need not
20 include in a dispositional order a finding as to whether the county department, the
21 department, in a county having a population of 500,000 or more, or the agency
22 primarily responsible for providing services under a court order has made reasonable
23 efforts with respect to a parent of a child to prevent the removal of the child from the
24 home, while assuring that the child's health and safety are the paramount concerns,
25 or, if applicable, a finding as to whether the agency primarily responsible for

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1 providing services under a court order has made reasonable efforts with respect to
2 a parent of a child to make it possible for the child to return safely to his or her home,
3 ~~if the court finds, as evidenced by a final judgment of conviction,~~ any of the following:

4 **SECTION 12.** 48.355 (2d) (b) 2. of the statutes is amended to read:

5 48.355 **(2d) (b) 2.** That the parent has committed, has aided or abetted the
6 commission of, or has solicited, conspired or attempted to commit, a violation of s.
7 **940.01, 940.02, 940.03** or 940.05 or a violation of the law of any other state or federal
8 law, if that violation would be a violation of s. 940.01, 940.02, 940.03 or 940.05 if
9 committed in this state, as evidenced by a final judgment of conviction, and that the
10 victim of that violation is a child of the parent.

11 **SECTION 13.** 48.355 (2d) (b) 3. of the statutes is amended to read:

12 **48.355 (2d) (b) 3.** That the parent has committed a violation of s. 940.19 **(2), (3),**
13 **(4) or (5),** 940.225 (1) or **(2),** 948.02 (1) or **(2),** 948.025 or 948.03 (2) (a) or (3) (a) or a
14 violation of the law of any other state or federal law, if that violation would be a
15 violation of s. 940.19 **(2), (3),** (4) or **(5),** 940.225 (1) or **(2),** 948.02 (1) or **(2),** 948.025 or
16 948.03 (2) (a) or (3) (a) if committed in this state, as evidenced by a final judgment
17 of conviction, and that the violation resulted in great bodily harm, as defined in s.
18 939.22 **(14),** or in substantial bodily harm, as defined in s. 939.22 **(38),** to the child
19 or another child of the parent.

20 **SECTION 14.** 48.355 (2d) (b) 4. of the statutes is amended to read:

21 48.355 (2d) (b) 4. That the parental rights of the parent to another child have
22 been involuntarily terminated, as evidenced by a final order of a court of competent
23 jurisdiction terminating those parental rights.

24 **SECTION 16.** 48.355 (2d) (d) of the statutes is created to read:

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1 48.355 (2d) (d) 1. If a hearing is held under par. (c), at least 10 days before the
2 date of the hearing the court shall notify the child, if 12 years of age or over, any
3 parent, guardian and legal custodian of the child and any foster parent, treatment
4 foster parent or other physical custodian described in s. 48.62 (2) of the child of the
5 time, place and purpose of the hearing.

6 2. The court shall give a foster parent, treatment foster parent or other physical
7 custodian described in s. 48.62 (2) who is notified of a hearing under subd. 1. an
8 opportunity to be heard at the hearing by permitting the foster parent, treatment
9 foster parent or other physical custodian **to make** a written or oral statement during
10 the hearing, or to submit a written statement prior to the hearing, relevant to the
11 issues to be determined at the hearing. Any written or oral statement made under
12 this subdivision shall be made upon oath **or affirmation**. A foster parent, treatment
13 foster parent or other physical custodian described in s. 48.62 (2) who receives a
14 notice of a hearing under subd. 1. and an opportunity to be heard under this
15 subdivision does not become a party to the proceeding on which the hearing is held
16 solely on the basis of receiving that notice and opportunity to be heard.

17 **SECTION 16.** 48.38 (4) (am) of the statutes is created to read:

18 48.38 (4) (am) Any efforts to place the child for adoption, with a guardian or
19 in some other alternative permanent placement that were made under s. 48.355 (**2b**)
20 at the same time as the services described in par. (a) were offered or provided or, if
21 those efforts were not made, the basis for the decision not to make those efforts.

22 **SECTION 17.** 48.38 (5) (b) of the statutes is amended to read:

23 48.38 (5) (b) The court or the agency shall notify the parents of the child, the
24 child if he or she is **12** years of age or older and the child's foster parent, the child's
25 treatment foster parent or the operator of the facility in which the child is living of

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1 the date, time and place of the review, of the issues to be determined as part of the
2 review, of ~~the~~ fact that they may have an opportunity to be heard at the review by
3 submitting written comments not less than 10 working days before the review or by
4 participating at the review. The court or agency shall notify the person representing
5 the interests of the public, the child's counsel and the child's guardian ad ~~litem~~ of the
6 date of the review, of the issues to be determined as part of the review and of the fact
7 that they may submit written comments not less than 10 working days before the
8 review. Any written or oral statement made to the court under this paragraph by a
9 foster parent, treatment foster parent or operator of a facility in which a child is
10 living shall be made under oath or affirmation. The notices ~~under this~~ paragraph
11 shall be provided in writing not less than 30 days before the review ~~and copies~~ of the
12 notices shall be filed in the child's case record.

13 SECTION 16. 48.42 (2g) (am) of the statutes is repealed.

14 SECTION 19. 48.42 (2g) (b) of the statutes is amended to read:

15 48.42 (2g) (b) Failure to give notice under par. (a) to a foster parent, treatment
16 foster parent or other physical custodian described in s. 48.62 (2) does not deprive the
17 court of jurisdiction in the proceeding. If a foster parent, treatment foster parent or
18 other physical custodian described in s. 43.62 (2) is not given notice of a hearing
19 under par. (a) and if the court is required under s. 48.427 (1m) to permit that person
20 to make a written or oral statement during the hearing or to submit a written
21 statement prior to the hearing; and that person does not make or submit such a
22 statement, that person may request a rehearing on the matter at any time prior to
23 the entry of an order under s. 48.427 (2) or (3). If the request is made, the court shall
24 order a rehearing.

25 SECTION 20. 48.427 (1m) of the statutes is amended to read:

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1 48.427 **(1m)** In addition to any evidence presented under sub. (1), the court
 2 shall give the foster parent, treatment foster parent or other physical custodian
 3 described in s. 48.62 (2) of the child an opportunity to be heard at the dispositional
 4 hearing by permitting the foster parent, treatment foster parent or other physical
 5 custodian to make a written or oral statement during the dispositional hearing, or
 6 to submit a written statement prior to disposition, relevant to the issue of disposition,
 7 ~~Any written or oral statement made under this subsection shall be made un~~ h
 8 ~~or affirmation.~~ A foster parent, treatment foster parent or other physical custodian
 9 described in s. 48.62 (2) who receives notice of a hearing under s. 48.42 **(2g)** (a) and
 10 an opportunity to be heard under this subsection **does not** become a party to the
 11 proceeding on **which** the hearing is held solely on the **basis of** receiving that notice
 12 **and** opportunity to be heard.

13 ~~**SECTION 21.** 48.43 (1) (cm) of the statute is created to read:~~

14 ~~48.43 (1) (cm) A finding that reasonable efforts have been made to prevent the~~
 15 ~~removal of the child from his or her home, while assuring that the child's health and~~
 16 ~~safety are the paramount concerns, or, if applicable, a finding as to whether~~
 17 ~~reasonable effort have been made to make it possible for the child to return safely to~~
 18 ~~his or her home, unless the court finds that any of the circumstances described in s.~~
 19 ~~48.355 (2d) (b) 1., 2., 3. or 4. applies.~~

20 **SECTION 22.** 48.43 (5) (b) of the statutes is renumbered 48.43 (5) **(b) 1.**

21 **SECTION 23.** 48.43 (5) (b) 2. of the statutes is created to read:

22 48.43 (5) (b) 2. The court shall give a foster parent, treatment foster parent or
 23 other physical custodian described in s. 48.62 (2) who is notified of a hearing under
 24 subd. 1. an opportunity to be heard at the hearing by permitting the foster parent,
 25 treatment foster parent or other physical custodian to make a written or oral

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1 statement during the hearing, or to submit a written statement prior to the hearing,
2 relevant to the issues to be determined at the hearing. Any written or oral statement
3 made under this subdivision shall be made upon oath or **affirmation**. A foster parent,
4 treatment foster parent or other physical custodian described in s. 48.62 (2) who
5 receives a notice of a hearing under subd. 1. and an opportunity to be heard under
6 this subdivision does not become a party to the proceeding on which the hearing is
7 held solely on the basis of receiving that notice and opportunity to be heard.

8 **SECTION 24.** 938.27 (3) (a) Im. of the statutes is repealed.

9 **SECTION 25.** 938.27 (3) (a) 2. of the statutes is amended to read:

10 838.27 (3) (a) 2. Failure to give notice under subd. 1, to a foster parent,
11 treatment foster parent or other physical **custodian described** in s. 48.62 (2) **does not**
12 **deprive the court of jurisdiction in the action or *proceeding.** If a foster **parent,**
13 **treatment foster parent or other physical custodian** described in s. 48.62 **(2) is not**
14 **given notice of a hearing under subd. 1. and if the court is required under this chapter**
15 **to permit that person to make a written or oral statement during the hearing or to**
16 **submit a written statement prior to the hearing and that person does not make or**
17 **submit such a statement.** that person may request a rehearing on the matter during
18 the **pendency** of an order resulting from the hearing. If the request is made, the court
19 shall order a rehearing.

20 **SECTION 26.** 938.27 (6) of the statutes is amended to read:

21 938.27 (6) When a proceeding is initiated under s. 938.14, all interested parties
22 shall receive notice and appropriate summons shall be issued in a manner specified
23 by the court, consistent with applicable governing statutes. ~~In addition, if the~~
24 ~~juvenile who is the subject of the proceeding is in the care of a foster parent,~~
25 ~~treatment foster parent or other physical custodian described in s. 48.62(2), the court~~

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1 ~~shall give the foster parent, treatment foster parent or other physical custodian~~
2 ~~notice and an opportunity to be heard as provided in sub. (3) (a).~~

3 SECTION 27. 938.355 (2b) of the statutes is amended to read:

4 938.355 (2b) CONCURRENT REASONABLE EFFORTS PERMITTED. A county
5 department that provides social services or the agency primarily responsible for
6 providing services to a juvenile under a court order may, at the same time as the
7 county department or agency is making the reasonable efforts required under sub.

8 (2) (b) 6. ^{do one or both of the following, 4 (a)} work with the department of health and family services, a county
9 department ^{plain print - NO overstrike} ~~under s. 48.57 (1) (e) or (h)~~ or a child welfare agency ^{plain print - NO overstrike} ~~licensed under s.~~
10 ^{NO overstrike} ~~48.61 (5)~~ in making reasonable efforts to place the juvenile for adoption with a
11 guardian or in some other alternative permanent placement.

12 SECTION 28. 938.355 (2d) (a) 1. of the statutes is amended to read:

13 938.355 (2d) (a) 1. ~~"Aggravated circumstances" include abandonment in~~
14 ~~"Abandonment" means a~~ violation of s. 948.20 or ~~in a~~ violation of the law of any other
15 state or federal law if that violation would be a violation of s. 948.20 if committed in
16 this state, ~~torture, chronic abuse and sexual abuse as evidenced by a final judgment~~
17 ~~of conviction, or an action or inaction that results in a finding of abandonment under~~
18 ~~s. 48.13 (2) or under a law of any other state or a federal law that is comparable to~~
19 ~~s. 48.13 (2), as evidenced by a final order of a court of competent jurisdiction.~~

20 SECTION 29. 938.355 (2d) (a) 1d. of the statutes is created to read:

21 938.365 (2d) (a) 1d. "Aggravated circumstances" include abandonment,
22 chronic abuse, sexual abuse and torture.

23 SECTION 30. 938.355 (2d) (a) 1j. of the statutes is created to read:

24 938.355 (2d) (a) 1j. "Chronic abuse" means 2 or more violations of s. 940.19 (1)
25 or (6) or 948.03 (2) (b) or (c) or (3) (b) or (c) or of a law of any other state or federal law,

A (b) work with the department, a county department or a child welfare agency in making reasonable efforts to place the child

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1 if that violation would be a violation of s. 940.19 (1) or (6) or 948.03 (2) (b) or (c) or
2 (3) (b) or (c) if **committed** in this state, that result in bodily harm, **as defined in s.**
3 **939.22 (4)**, as evidenced by final judgments of conviction on 2 or **more separate**
4 occasions.

6 SECTION 31. 938.355 (2d) (a) 2. of the statutes is amended to read:

6 936.355 (2d) (a) 2. *Sexual abuse" means a violation of s. 940.225, 944.30,
7 **948.02, 948.025, 948.05, 948.055, 948.06, 948.09** or 948.10 or a violation of the law
8 of any other state or federal law if that violation would be a violation of s. 940.225,
9 944.30, 948.02, **948.025, 948.05, 948.055, 948.06, 948.09** or 948.10 if committed in
10 **this state, as evidenced by a final judgment of conviction.**

11 SECTION 32. 938.355 (2d) (a) 3. of the statutes is created to read:

12 938.355 (2d) (a) 3. **"Torture"** means a violation of s. 940.21 or 948.04 (1) or a
13 **violation** of the **law** of any other state or federal law if that violation would be a
14 violation of s. 940.21 or 948.94 (1) if committed in this state, as evidenced by a final
15 judgment of conviction.

16 SECTION 33. 938,355 (2d) (b) (intro.) of the statutes is amended to read:

17 938.355 (2d) (b) (intro.) Notwithstanding sub, (2) (b) **6.**, the court need not
18 include in a dispositional order a finding as **to** whether a **county** department which
19 provides social services or the agency primarily responsible for providing services
20 under a court order has made reasonable efforts with respect to a parent of a juvenile
21 to prevent the removal of the juvenile from the home, while assuring that the
22 juvenile's health and safety are the paramount concerns, or, if applicable, a finding
23 as to whether the agency primarily **responsible** for providing services under a **court**
24 order has made reasonable efforts **with** respect to a parent of a juvenile to make it

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1 possible for the juvenile to return safely to his or her home, if the court **finds, as**
2 **evidenced by a final judgment of conviction,** any of the following:

3 **SECTION 34.** 938.355 (2d) (b) 2. of the statutes is amended to read:

4 938.355 (2d) (b) 2. That the parent has committed, has aided or abetted the
5 commission of, or has solicited, conspired or attempted to commit, a violation of s.
6 **940.01, 940.02, 940.03** or 940.05 or a violation of the law of any other state or federal
7 **law,** if that violation would be a violation of s. 940.01, 946.02, 940.03 or 940.05 if
8 committed in this state, **as evidenced by a final judgment of conviction,** and that the
9 victim of that violation is a child of the parent.

10 **SECTION 35.** 938.355 (2d) (b) 3. of the statutes **is amended** to read:

11 93B.355 (2d) (b) 3. That the **parent** has **committed a violation** of s. **940.19 (2),**
12 **(3), (4) or (5),** 940.225 (1) or (2), 948.02 (1) or (2), **948.025** or 948.03 (2) (a) or (3) **(a)**
13 **or** a violation of the law of any other state **or federal** law, if that violation **would be**
14 a violation of s. **940.19 (2), (3), (4) or (5),** 940.225 (1) or (2), 948.02 (1) or (2), 948.025
15 or 948.03 (2) (a) or (3) (a) if committed in this state, **as evidenced by a final judgment**
16 **of conviction,** and that the violation resulted in great bodily harm, as defined in s.
17 **~~938.22~~ 939.22 (14),** or in substantial bodily harm, as defined in s. **~~938.22~~ 939.22 (38),**
18 to the juvenile or another child of the parent.

19 **SECTION 36.** 938.355 (2d) (b) 4. of the statutes is amended to read:

20 938.355 (2d) (b) 4. That the parental rights of the parent to another child have
21 been involuntarily terminated, **as evidenced by a final order of a court of competent**
22 **jurisdiction terminating those parental rights.**

23 **SECTION 37.** -938.355 (2d) (d) of the statutes is created to read:

24 938.355 (2d) (d) 1. If a hearing is held under par. (c), at least 10 days before the
25 date of the hearing the court shall notify the juvenile, if 12 years of age or over, any

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1 parent, guardian and legal custodian of the juvenile and any foster parent, treatment
2 foster parent or other physical custodian described in s. 48.62 (2) of the juvenile of
3 the time, place and purpose of the hearing.

4 2. The court shall give a foster parent, treatment foster parent or other physical
5 custodian described in s. 48.62 (2) who is notified of a hearing under subd. 1. an
6 opportunity to be heard at the hearing by permitting the foster parent, treatment
7 foster parent or other physical custodian to make a written or oral statement during
8 the hearing, or to submit a written statement prior to the hearing, relevant to the
9 issues to be determined at the hearing. Any written or oral statement made under
10 this subdivision shall be made upon oath or affirmation. A foster parent, treatment
11 foster parent or other physical custodian described in s. 48.62 (2) who receives a
12 notice of a hearing under subd. 1. ~~and~~ an opportunity to be heard under this
13 subdivision does not become a party to the proceeding on which the hearing is held
14 solely on the basis of receiving that notice and opportunity to be heard.

15 **SECTION 38.** 938.365 (1) of the statutes is amended to read:

16 938.365 (1) In this section, a juvenile is considered to have been placed outside
17 of his or her home on the date on which the juvenile was first placed outside of his
18 or her home pursuant to an order under ~~this section or~~ s. 938.345, or 938.357 ~~or~~
19 ~~938.363~~ or on the date that is 60 days after the date on which the juvenile was
20 removed from his or her home, whichever is earlier.

21 **SECTION 39.** 938.38 (4) (am) of the statutes is created to read:

22 938.38 (4) (am) Any efforts to place the juvenile for adoption, with a guardian
23 or in some other alternative permanent placement that were made under s. 938.355
24 (2b) at the same time as the services described in par. (a) were offered or provided
25 or, if those efforts were not made, the basis for the decision not to make those efforts.

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1 SECTION 40. 938.38 (5) (b) of the statutes is amended to read:

2 938.38 **(5) (b)** The court or the agency shall notify the parents of the juvenile,
3 the juvenile if he or she is 10 years of age or older and the juvenile's foster parent,
4 the juvenile's treatment foster parent or the operator of the facility in which the
5 juvenile is living of the date, time and place of the review, of the issues to be
6 determined as part of the review, of the fact that they may have an opportunity to
7 be heard at the review by submitting written comments not less than 10 working
8 days before the review or by participating at the review. The court or agency shall
9 notify the person representing the interests of the public, the juvenile's counsel and
10 the juvenile's guardian ad **litem** of the date of the review, of the issues to be
11 determined as part of the review and of the fact that they may submit written
12 comments not less than 10 working days before the review.' Any written or oral
13 statement made to the court under this paragraph by a foster parent, treatment
14 foster parent or operator of a facility in which the juvenile is living; shall be made under
15 oath or affirmation. The notices under this paragraph shall be provided in writing
16 not less than 30 days before the review and copies of the notices shall be filed in the
17 juvenile's case record.

18 **SECTION 41. Initial applicability.**

19 (1) JUVENILE COURT ORDERS. The treatment of sections 48.355 (2d) (a) 1., 1d., lj.,
20 2. and 3. and (b) (intro.), 2., 3. and 4., 48.43 (1) (cm) and 938.355 (2d) (a) 1., Id., lj.,
21 2. and 3. and (b) (intro.), 2., 3. and 4. of the statutes first applies to juvenile court
22 orders entered on the effective date of this subsection.

23 (1m) PERMANENCY PLAN FILINGS. The treatment of sections 48.38 (4) (am) and
24 938.38 (4) (am) of the statutes first applies to permanency plans that are filed with

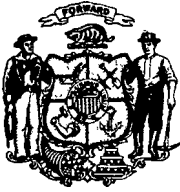
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1 the court assigned to exercise jurisdiction under chapters 48 and 938 of the statutes
2 on the effective date of this subsection.

3 (2) ~~JUVENILE COURT HEARINGS~~ AND **PERMANENCY PLAN REVIEWS**. The treatment of
4 sections 48.27 (3) (a) ~~lm.~~ and 2. and **(6)**, 48.38 (5) (b), 48.42 (2g) (am) and (b), 48.427
5 (lm), 938.27 (3) (a) ~~lm.~~ and 2. and (6) and 938.38 (5) (b) of the statutes, the
6 renumbering of section 48.43 (5) **(b)** of the statutes and the creation of section 48.43
7 (5) **(b)** 2. of the statutes first apply to juvenile court hearings and permanency plan
8 reviews held on the effective date of this subsection.

9 (3) **PERMANENCY PLAN HEARINGS** The treatment of sections 48.355 (2d) (d) and
10 938.355 (2d) **(d)** of the statutes first applies to permanency plan hearings held 10
11 days after the effective date of this subsection.

12 **(END)**



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-2177/5
GMM:cmh&wlj:jf RMR

1999 BILL

Repeal

1 **AN ACT** to *repeal 48.27 (3) (a) lm., 48.42 (2g) (am) and 938.27 (3) (a) lm.; to*
2 *renumber 48.43 (5) (b); to amend 20.435 (3) (pm), 48.27 (3) (a) 2., 48.27 (6),*
3 *48.355 (2b), 48.355 (2d) (a) 1., 48.355 (2d) (a) 2., 48.355 (2d) (b) (intro.), 48.355*
4 *(2d) (b) 2., 48.355 (2d) (b) 3., 48.355 (2d) (b) 4., 48.38 (5) (b), 48.42 (2g) (b), 48.427*
5 *(lm), 938.27 (3) (a) 2., 938.27 (6), 938.355 (2b), 938.355 (2d) (a) 1., 938.355 (2d)*
6 *(a) 2., 938.355 (2d) (b) (intro.), 938.355 (2d) (b) 2., 938.355 (2d) (b) 3., 938.355*
7 *(2d) (b) 4., 938.365 (1) and 938.38 (5) (b); and to create 48.355 (2d) (a) 1d.,*
8 *48.355 (2d) (a) 1j., 48.355 (2d) (a) 3., 48.355 (2d) (d), 48.38 (4) (am), 48.43 (1)*
9 *(cm), 48.43 (5) (b) 2., 938.355 (2d) (a) 1d., 938.355 (2d) (a) 1j., 938.355 (2d) (a)*
10 *3., 938.355 (2d) (d) and 938.38 (4) (am) of the statutes; relating to:* the efforts
11 that are required to prevent the removal of a child or juvenile from the home
12 or to make it possible for a child or juvenile to return safely to his or her home
13 when a juvenile court order places the child or juvenile outside of the home and
14 notice and an opportunity to, be heard at certain proceedings under the

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1 children's code and the juvenile justice code by a foster parent, treatment foster
2 parent or other substitute care provider of a child or juvenile.

Analysis by the Legislative Reference Bureau

Under current law, an order of the court assigned to exercise jurisdiction under the children's code and the juvenile justice code (juvenile court) that places a child or juvenile in need of protection or services or a juvenile who has been adjudged delinquent outside of his or her home must include a finding as to whether the county department of human services or social services (county department), the department of health and family services (DHFS), in a county having a population of 500,000 or more, or the agency primarily responsible for providing services under a juvenile court order (collectively "agency"), has made reasonable efforts to prevent the removal of the child or juvenile from the home while assuring that the health and safety of the child or juvenile are the paramount concerns or, if applicable, has made reasonable efforts to make it possible for the child or juvenile to return safely to his or her home, except that a juvenile court is not required to find that those reasonable efforts have been made with respect to a parent if the juvenile court finds that the parent has committed certain crimes of homicide against a child of the parent; has committed battery, sexual assault or physical or sexual abuse resulting in great bodily harm or substantial bodily harm to the child or juvenile or to another child of the parent; has had his or her parental rights terminated with respect to another child; or has subjected the child or juvenile to aggravated circumstances, which are defined under current law as including criminal abandonment, torture, chronic abuse and sexual abuse. Current law, in turn, defines sexual abuse as a violation of certain sex crimes. Current law, however, does not, in turn, define abandonment, torture or chronic abuse.

This bill defines those terms for purposes of determining when a parent has subjected a child to aggravated circumstances. Specifically, the bill defines abandonment as a violation of the criminal law against abandonment or an action or inaction that results in a finding that a child is in need of protection or services on the grounds of abandonment. The bill defines chronic abuse as two or more violations of the criminal laws against battery or physical abuse of a child that result in bodily harm (as opposed to great bodily harm or substantial bodily harm). The bill defines torture as a violation of the criminal laws against mayhem or causing mental harm to a child.

~~The bill also requires a juvenile court that enters a judgment terminating parental rights (TPR) to include in the TPR order a finding that reasonable efforts have been made to prevent the removal of the child from his or her home, while assuring that the child's health and safety are the paramount concerns, or, if applicable, a finding as to whether reasonable efforts have been made to make it possible for the child to return safely to his or her home, unless the court finds that those reasonable efforts are not required.~~

BILL to place the child with a guardian or in some alternative permanent placement

Current law permits an agency, at the same time as the agency is making reasonable efforts to prevent the removal of a child or juvenile from the home or to make it possible for a child or juvenile to return to his or her home, to work with DHFS, or a county department or child welfare agency that is authorized to place children for adoption, in making reasonable efforts to place the child or juvenile for adoption, with a guardian or in some other alternative permanent placement (concurrent reasonable efforts). This bill permits an agency to work with **any** county department or child welfare agency, not just one that is authorized to place children for adoption, in making ~~those concurrent~~ reasonable efforts. The bill also requires an agency to describe any concurrent reasonable efforts that were made in the permanency plan of the child or juvenile or, if no concurrent reasonable efforts were made, the basis for the decision not to make any concurrent reasonable efforts.

Under current law, a foster parent, treatment foster parent or other physical custodian (substitute care provider) of a child or juvenile who is the subject of a child or juvenile in need of protection or services proceeding or of a juvenile who is the subject of a delinquency proceeding is entitled to receive an opportunity to be heard at all hearings involving the child or juvenile, except hearings on motions for which notice need only be provided to the child or juvenile and his or her counsel. A substitute care provider is also entitled to receive an opportunity to be heard at all hearings on a (TPR) proceeding and at all hearings on certain other matters over which the juvenile court has jurisdiction, such as the appointment and removal of a guardian of a child, the adoption of a child and proceedings under the Mental Health Act concerning a child or juvenile.

This bill eliminates the requirement that a substitute care provider receive an opportunity to be heard at **all** hearings involving a child or juvenile in need of protection or services or involving a juvenile who is the subject of a delinquency proceeding, such as a plea hearing, a fact-finding hearing or a dispositional hearing, but leaves intact the requirement that a substitute care provider receive an opportunity to be heard at a change in placement hearing or hearing on a revision or extension of a dispositional order. Similarly, the bill eliminates the requirement that a substitute care provider receive an opportunity to be heard at **all** TPR hearings, such as a plea hearing or a fact-finding hearing, but leaves intact the requirement that a substitute care provider receive an opportunity to be heard at a TPR dispositional hearing. In addition, the bill eliminates the requirement that a substitute care provider receive an opportunity to be heard at hearings on proceedings under the children's code or the juvenile justice code other than TPR, child or juvenile in need of protection or services proceedings and delinquency proceedings.

The bill, however, requires a substitute care provider to receive an opportunity to be heard at a hearing to determine the permanency plan for a child or juvenile when the juvenile court has determined that a parent has subjected the child or juvenile to aggravated circumstances; has committed certain crimes of homicide, battery, sexual assault or sexual or physical abuse against a child of the parent; or has had his or her parental rights terminated with respect to another child of the parent. In addition, the bill requires a substitute care provider to receive an

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opportunity to be heard at the annual permanency plan review for a child whose parents' parental rights have been terminated, but who has not been adopted.

For further information see the state and *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.** 20.435 (3) (pm) of the statutes is amended to read:

2 20.435 (3) (pm) *Federal aid; adoption incentive payments.* All federal moneys
3 received as adoption incentive payments under 42 USC ~~473A~~ 673b, as authorized by
4 the governor under s. 16.54, to be expended for the purposes for which received.

5 **SECTION 2.** 48.27 (3) (a) lm. of the statutes is repealed.

6 **SECTION 3.** 48.27 (3) (a) 2. of the statutes is amended to read:

7 48.27 (3) (a) 2. Failure to give notice under subd. 1. to a foster parent, treatment
8 foster parent or other physical custodian described in s. 48.62 (2) does not deprive the
9 court of jurisdiction in the action or proceeding. If a foster parent, treatment foster
10 parent or other physical custodian described in s. 48.62 (2) is not given notice of a
11 hearing under subd. 1. and if the court is required under this chapter to permit that
12 person to make a written or oral statement during the hearing or to submit a written
13 statement prior to the hearing and that person does not make or submit such a
14 statement, that person may request a rehearing on the matter during the pendency
15 of an order resulting from the hearing. If the request is made, the court shall order
16 a rehearing.

17 **SECTION 4.** 48.27 (6) of the statutes is amended to read:

18 48.27 (6) When a proceeding is initiated under s. 48.14, all interested parties
19 shall receive notice and appropriate summons shall be issued in a manner specified
20 by the court, consistent with applicable governing statutes. ~~In addition, if the child~~

BILL renumbered 48.355 (2b) (intro.) and

1 who is the subject of the proceeding is in the care of a foster parent, treatment foster
2 parent or other physical custodian described in s. 48.62 (2), the court shall give the
3 foster parent, treatment foster parent or other physical custodian notice and an
4 opportunity to be heard as provided in sub. (3) (a). do one or both of the following:
TP (a) Work

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

6 48.355 (2b) CONCURRENT REASONABLE EFFORTS PERMITTED. A county
7 department, the department, in a county having a population of 500,000 or more, or
8 the agency primarily responsible for providing services to a child under a court order
9 may, at the same time as the county department, department or agency is making
10 the reasonable efforts required under sub. (2) (b) 6., ^{strike} ~~work~~ with the department, a
11 county department under s. 48.57 (1) (e) or (hm) ^{no strike} or a child welfare agency licensed
12 ^{no strike} under s. 48.61 (5) in making reasonable efforts to place the child for adoption, with
13 a guardian or in some other alternative permanent placement.

14 SECTION 6. 48.355 (2d) (a) 1. of the statutes is amended to read:

15 48.355 (2d) (a) 1. ~~"Aggravated circumstances" include abandonment in~~
16 "Abandonment" means a violation of s. 948.20 or in a violation of the law of any other
17 state or federal law if that violation would be a violation of s. 948.20 if committed in
18 this state, ~~torture, chronic abuse and sexual abuse~~ as evidenced by a final judgment
19 of conviction, or an action or inaction that results in a finding of abandonment under
20 s. 48.13 (2) or under a law of any other state or a federal law that is comparable to
21 s. 48.13 (2), as evidenced by a final order of a court of competent jurisdiction.

22 SECTION 7. 48.355 (2d) (a) 1d. of the statutes is created to read:

23 48.355 (2d) (a) 1d. "Aggravated circumstances" include abandonment, chronic
24 abuse, sexual abuse and torture.

25 SECTION 8. 48.355 (2d) (a) lj. of the statutes is created to read::

• (b) Work with the department, a county
department or a child welfare agency in making reasonable efforts
to place the child

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1 48.355 **(2d)** (a) lj. “Chronic abuse” means 2 or more violations of s. 940.19 (1)
2 or (6) or 948.03 (2) (b) or (c) or (3) (b) or (c) or of a law of any other state or federal law,
3 if that violation would be a violation of s. 940.19 (1) or (6) or 948.03 (2) (b) or (c) or
4 (3) (b) or (c) if committed in this state, that result in bodily harm, as defined in s.
5 939.22 (4), as evidenced by final judgments of conviction on 2 or more separate
6 occasions.

7 **SECTION 9.** 48.355 (2d) (a) 2. of the statutes is amended to read:

8 48.355 (2d) (a) 2. “Sexual abuse” means a violation of s. 940.225, 944.30,
9 948.02, 948.025, 948.05, 948.055, 948.06, 948.09 or 948.10 or a violation of the law
10 of any other state or federal law if that violation would be a violation of s. 940.225,
11 944.30, 948.02, 948.025, 948.05, 948.055, 948.06, 948.09 or 948.10 if committed in
12 this state, as evidenced by a final judgment of conviction.

13 **SECTION 10.** 48.355 (2d) (a) 3. of the statutes is created to read:

14 48.355 **(2d)** (a) 3. “Torture” means a violation of s. 940.21 or 948.04 (1) or a
15 violation of the law of any other state or federal law if that violation would be a
16 violation of s. 940.21 or 948.04 (1) if committed in this state, as evidenced by a final
17 judgment of conviction.

18 **SECTION 11.** 48.355 (2d) (b) (intro.) of the statutes is amended to read:

19 48.355 **(2d)** (b) (intro.) Notwithstanding sub. (2) (b) 6., the court need not
20 include in a dispositional order a finding as to whether the county department, the
21 department, in a county having a population of 500,000 or more, or the agency
22 primarily responsible for providing services under a court order has made reasonable
23 efforts with respect to a parent of a child to prevent the removal of the child from the
24 home, while assuring that the child’s health and safety are the paramount concerns,
25 or, if applicable, a finding as to whether the agency primarily responsible for

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1 providing services under a court order has made reasonable efforts with respect to
2 a parent of a child to make it possible for the child to return safely to his or her home,
3 if the court finds, ~~as evidenced by a final judgment of conviction,~~ any of the following:

4 **SECTION 12.** 48.355 (2d) (b) 2. of the statutes is amended to read:

5 48.355 **(2d)** (b) 2. That the parent has committed, has aided or abetted the
6 commission of, or has solicited, conspired or attempted to commit, a violation of s.
7 940.01, 940.02, 940.03 or 940.05 or a violation of the law of any other state or federal
8 law, if that violation would be a violation of s. 940.01, 940.02, 940.03 or 940.05 if
9 committed in this state, as evidenced by a final judgment of conviction, and that the
10 victim of that violation is a child of the parent.

11 **SECTION 13.** 48.355 (2d) (b) 3. of the statutes is amended to read:

12 48.355 **(2d)** (b) 3. That the parent has committed a violation of s. 940.19 (2), (3),
13 (4) or (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025 or 948.03 (2) (a) or (3) (a) or a
14 violation of the law of any other state or federal law, if that violation would be a
15 violation of s. 940.19 (2), (3), (4) or (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025 or
16 948.03 (2) (a) or (3) (a) if committed in this state, as evidenced by a final judgment
17 of conviction, and that the violation resulted in great bodily harm, as defined in s.
18 939.22 (14), or in substantial bodily harm, as defined in s. 939.22 (38), to the child
19 or another child of the parent.

20 **SECTION 14.** 48.355 (2d) (b) 4. of the statutes is amended to read:

21 48.355 **(2d)** (b) 4. That the parental rights of the parent to another child have
22 been involuntarily terminated, as evidenced by a final order of a court of competent
23 jurisdiction terminating those parental rights.

24 **SECTION 15.** 48.355 (2d) (d) of the statutes is created to read:

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1 48.355 (2d) (d) 1. If a hearing is held under par. (c), at least 10 days before the
2 date of the hearing the court shall notify the child, if 12 years of age or over, any
3 parent, guardian and legal custodian of the child and any foster parent, treatment
4 foster parent or other physical custodian described in s. 48.62 (2) of the child of the
5 time, place and purpose of the hearing.

6 2. The court shall give a foster parent, treatment foster parent or other physical
7 custodian described in s. 48.62 (2) who is notified of a hearing under subd. 1. an
8 opportunity to be heard at the hearing by permitting the foster parent, treatment
9 foster parent or other physical custodian to make a written or oral statement during
10 the hearing, or to submit a written statement prior to the hearing, relevant to the
11 issues to be determined at the hearing. Any written or oral statement made under
12 this subdivision shall be made upon oath or affirmation. A foster parent, treatment
13 foster parent or other physical custodian described in s. 48.62 (2) who receives a
14 notice of a hearing under subd. 1. and an opportunity to be heard under this
15 subdivision does not become a party to the proceeding on which the hearing is held
16 solely on the basis of receiving that notice and opportunity to be heard.

17 **SECTION 16.** 48.38 (4) (am) of the statutes is created to read:

18 48.38 (4) (am) Any efforts to place the child for adoption, with a guardian or
19 in some other alternative permanent placement that were made under s. 48.355 (2b)
20 at the same time as the services described in par. (a) were offered or provided or, if
21 those efforts were not made, the basis for the decision not to make those efforts.

22 **SECTION 17.** 48.38 (5) (b) of the statutes is amended to read:

23 48.38 (5) (b) The court or the agency shall notify the parents of the child, the
24 child if he or she is 12 years of age or older and the child's foster parent, the child's
25 treatment foster parent or the operator of the facility in which the child is living of

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1 the date, time and place of the review, of the issues to be determined as part of the
2 review, of the fact that they may have an opportunity to be heard at the review by
3 submitting written comments not less than 10 working days before the review or by
4 participating at the review. The court or agency shall notify the person representing
5 the interests of the public, the child's counsel and the child's guardian ad litem of the
6 date of the review, of the issues to be determined as part of the review and of the fact
7 that they may submit written comments not less than 10 working days before the
8 review. Any written or oral statement made to the court under this paragraph by a
9 foster parent, treatment foster parent or operator of a facility in which a child is
10 living shall be made under oath or affirmation. The notices under this paragraph
11 shall be provided in writing not less than 30 days before the review and copies of the
12 notices shall be filed in the child's case record.

13 **SECTION 18.** 48.42 (2g) (am) of the statutes is repealed.

14 **SECTION 19.** 48.42 (2g) (b) of the statutes is amended to read:

15 48.42 (2g) (b) Failure to give notice under par. (a) to a foster parent, treatment
16 foster parent or other physical custodian described in s. 48.62 (2) does not deprive the
17 court of jurisdiction in the proceeding. If a foster parent, treatment foster parent or
18 other physical custodian described in s. 48.62 (2) is not given notice of a hearing
19 under par. (a) and if the court is required under s. 48.427 (1m) to permit that person
20 to make a written or oral statement during the hearing or to submit a written
21 statement prior to the hearing and that person does not make or submit such a
22 statement, that person may request a rehearing on the matter at any time prior to
23 the entry of an order under s. 48.427 (2) or (3). If the request is made, the court shall
24 order a rehearing.

25 **SECTION 20.** 48.427 (1m) of the statutes is amended to read:

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1 48.427 **(1m)** In addition to any evidence presented under sub. (1), the court
2 shall give the foster parent, treatment foster parent or other physical custodian
3 described in s. 48.62 (2) of the child an opportunity to be heard at the dispositional
4 hearing by permitting the foster parent, treatment foster parent or other physical
5 custodian to make a written or oral statement during the dispositional hearing, or
6 to submit a written statement prior to disposition, relevant to the issue of disposition.
7 Any written or oral statement made under this subsection shall be made under oath
8 or affirmation. A foster parent, treatment foster parent or other physical custodian
9 described in s. 48.62 (2) who receives notice of a hearing under s. 48.42 (2g) (a) and
10 an opportunity to be heard under this subsection does not become a party to the
11 proceeding on which the hearing is held solely on the basis of receiving that notice
12 and opportunity to be heard.

13 ~~SECTION 21. 48.43 (1) (cm) of the statutes is created to read:~~

14 ~~48.43 (1) (cm) A finding that reasonable efforts have been made to prevent the~~
15 ~~removal of the child from his or her home, while assuring that the child's health and~~
16 ~~safety are the paramount concerns, or, if applicable, a finding as to whether~~
17 ~~reasonable effort have been made to make it possible for the child to return safely to~~
18 ~~his or her home, unless the court finds that any of the circumstances described in s.~~
19 ~~48.355 (2d) (b) 1., 2., 3. or 4. applies.~~

20 **SECTION 22.** 48.43 (5) (b) of the statutes is renumbered 48.43 (5) (b) 1.

21 **SECTION 23.** 48.43 (5) (b) 2. of the statutes is created to read:

22 48.43 (5) (b) 2. The court shall give a foster parent, treatment foster parent or
23 other physical custodian described in s. 48.62 (2) who is notified of a hearing under
24 subd. 1. an opportunity to be heard at the hearing by permitting the foster parent,
25 treatment foster parent or other physical custodian to make a written or oral

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1 statement during the hearing, or to submit a written statement prior to the hearing,
2 relevant to the issues to be determined at the hearing. Any written or oral statement
3 made under this subdivision shall be made upon oath or affirmation. A foster parent,
4 treatment foster parent or other physical custodian described in s. 48.62 (2) who
5 receives a notice of a hearing under subd. 1. and an opportunity to be heard under
6 this subdivision does not become a party to the proceeding on which the hearing is
7 held solely on the basis of receiving that notice and opportunity to be heard.

8 **SECTION 24.** 938.27 (3) (a) lm. of the statutes is repealed.

9 **SECTION 25.** 938.27 (3) (a) 2. of the statutes is amended to read:

10 938.27 (3) (a) 2. Failure to give notice under subd. 1. to a foster parent,
11 treatment foster parent or other physical custodian described in s. 48.62 (2) does not
12 deprive the court of jurisdiction in the action or proceeding. If a foster parent,
13 treatment foster parent or other physical custodian described in s. 48.62 (2) is not
14 given notice of a hearing under subd. 1. and if the court is required under this chapter
15 to permit a person to make a statement during the hearing or to
16 submit a written statement prior to the hearing and that person does not make or
17 submit such a statement, that person may request a rehearing on the matter during
18 the pendency of an order resulting from the hearing. If the request is made, the court
19 shall order a rehearing.

20 **SECTION 26.** 938.27 (6) of the statutes is amended to read:

21 938.27 (6) When a proceeding is initiated under s. 938.14, all interested parties
22 shall receive notice and appropriate summons shall be issued in a manner specified
23 by the court, consistent with applicable governing statutes. ~~In addition, if the~~
24 ~~juvenile who is the subject of the proceeding is in the care of a foster parent,~~
25 ~~treatment foster parent or other physical custodian described in s. 48.62 (2), the court~~

BILL renumbered 938.355 (2b) (Intro.) and

1 shall give the foster parent, ~~treatment foster parent or other physical custodian~~
2 ~~notice and an opportunity to be heard as provided in sub. (3) (a).~~

SECTION 27. 938.355 (2b) of the statutes is amended to read: (Intro.)

3 938.355 (2b) CONCURRENT REASONABLE EFFORTS PERMITTED. A county
4 department that provides social services or the agency primarily responsible for
5 providing services to a juvenile under a court order may, at the same time as the
6 county department or agency is making the reasonable efforts required under sub.
7

8 do one or both of the following: (a) Work
(2) (b) ~~work~~ with the department of health and family services, a county
(no strike)

9 department under s. 48.57(1)(e) or (hm) or a child welfare agency licensed under s.
10 48.61 (5) in making reasonable efforts to place the juvenile for adoption, (with a

11 guardian or in some other alternative permanent placement.

SECTION 28. 938.355 (2d) (a) 1. of the statutes is amended to read:

12 938.355 (2d) (a) 1. ~~"Aggravated circumstances" include abandonment in~~
13 "Abandonment" means a violation of s. 948.20 or in a violation of the law of any other
14 state or federal law if that violation would be a violation of s. 948.20 if committed in
15 this state, torture, chronic abuse and sexual abuse as evidenced by a final judgment
16 of conviction, or an action or inaction that results in a finding of abandonment under
17 s. 48.13 (2) or under a law of any other state or a federal law that is comparable to
18 s. 48.13 (2), as evidenced by a final order of a court of competent jurisdiction.

SECTION 29. 938.355 (2d) (a) 1d. of the statutes is created to read:

19 938.355 (2d) (a) 1d. "Aggravated circumstances" include abandonment,
20 chronic abuse, sexual abuse and torture.

SECTION 30. 938.355 (2d) (a) 1j. of the statutes is created to read:

21 938.355 (2d) (a) 1j. "Chronic abuse" means 2 or more violations of s. 940.19 (1)
22 or (6) or 948.03 (2) (b) or (c) or (3) (b) or (c) or of a law of any other state or federal law,

23 • (b) Work with the department of health and family services,
24 a county department or a child welfare agency in making
25

*WFO please
for component*

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1 if that violation would be a violation of s. 940.19 (1) or (6) or 948.03 (2) (b) or (c) or
2 (3) (b) or (c) if committed in this state, that result in bodily harm, as defined in s.
3 939.22 (4), as evidenced by final judgments of conviction on 2 or more separate
4 occasions.

5 **SECTION 31.** 938.355 (2d) (a) 2. of the statutes is amended to read:

6 938.355 (2d) (a) 2. "Sexual abuse" means a violation of s. 940.225, 944.30,
7 948.02, 948.025, 948.05, 948.055, 948.06, 948.09 or 948.10 or a violation of the law
8 of any other state or federal law if that violation would be a violation of s. 940.225,
9 944.30, 948.02, 948.025, 948.05, 948.055, 948.06, 948.09 or 948.10 if committed in
10 this state, as evidenced by a final judgment of conviction.

11 **SECTION 32.** 938.355 (2d) (a) 3. of the statutes is created to read:

12 938.355 (2d) (a) 3. "Torture" means a violation of s. 940.21 or 948.04 (1) or a
13 violation of the law of any other state or federal law if that violation would be a
14 violation of s. 940.21 or 948.04 (1) if committed in this state, as evidenced by a final
15 judgment of conviction.

16 **SECTION 33.** 938.355 (2d) (b) (intro.) of the statutes is amended to read:

17 938.355 (2d) (b) (intro.) Notwithstanding sub. (2) (b) 6., the court need not
18 'include in a dispositional order a finding as to whether a county department which
19 provides social services or the agency primarily responsible for providing services
20 under a court order has made reasonable efforts with respect to a parent of a juvenile
21 to prevent the removal of the juvenile from the home, while assuring that the
22 juvenile's health and safety are the paramount concerns, or, if applicable, a finding
23 as to whether the agency primarily responsible for providing services under a court
24 order has made reasonable efforts with respect to a parent of a juvenile to make it

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1 possible for the juvenile to return safely to his or her home, if the court finds-
2 evidenced by a ~~final judgment of conviction~~ conviction, any of the following:

3 **SECTION 34.** 938.355 (2d) (b) 2. of the statutes is amended to read:

4 938.355 **(2d)** (b) 2. That the parent has committed, has aided or abetted the
5 commission of, or has solicited, conspired or attempted to commit, a violation of s.
6 940.01, 940.02, 940.03 or 940.05 or a violation of the law of any other state or federal
7 law, if that violation would be a violation of s. 940.01, 940.02, 940.03 or 940.05 if
8 committed in this state, as evidenced by a final judgment of conviction, and that the
9 victim of that violation is a child of the parent.

10 **SECTION 35.** 938.355 (2d) (b) 3. of the statutes is amended to read:

11 938.355 **(2d)** (b) 3. That the parent has committed a violation of s. 940.19 **(2)**,
12 **(3)**, **(4)** or **(5)**, 940.225 (1) or **(2)**, 948.02 (1) or **(2)**, 948.025 or 948.03 (2) (a) or **(3)** (a)
13 or a violation of the law of any other state or federal law, if that violation would be
14 a violation of s. 940.19 **(2)**, **(3)**, **(4)** or **(5)**, 940.225 (1) or **(2)**, 948.02 (1) or **(2)**, 948.025
15 or 948.03 (2) (a) or **(3)** (a) if committed in this state, as evidenced by a final judgment
16 of conviction, and that the violation resulted in great bodily harm, as defined in s.
17 ~~938.22~~ 939.22 (14), or in substantial bodily harm, as defined in s. ~~938.22~~ 939.22 (38),
18 to the juvenile or another child of the parent.

19 **SECTION 36.** 938.355 (2d) (b) 4. of the statutes is amended to read:

20 938.355 **(2d)** (b) 4. That the parental rights of the parent to another child have
21 been involuntarily terminated, as evidenced by a final order of a court of competent
22 jurisdiction terminating those parental rights.

23 **SECTION 37.** '938.355 (2d) (d) of the statutes is created to read:

24 938.355 **(2d)** (d) 1. If a hearing is held under par. (c), at least 10 days before the
25 date of the hearing the court shall notify the juvenile, if 12 years of age or over, any

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1 parent, guardian and legal custodian of the juvenile and any foster parent, treatment
2 foster parent or other physical custodian described in s. 48.62 (2) of the juvenile of
3 the time, place and purpose of the hearing.

4 2. The court shall give a foster parent, treatment foster parent or other physical
5 custodian described in s. 48.62 (2) who is notified of a hearing under subd. 1. an
6 opportunity to be heard at the hearing by permitting the foster parent, treatment
7 foster parent or other physical custodian to make a written or oral statement during
8 the hearing, or to submit a written statement prior to the hearing, relevant to the
9 issues to be determined at the hearing. Any written or oral statement made under
10 this subdivision shall be made upon oath or affirmation. A foster parent, treatment
11 foster parent or other physical custodian described in s. 48.62 (2) who receives a
12 notice of a hearing under subd. 1. and an opportunity to be heard under this
13 subdivision does not become a party to the proceeding on which the hearing is held
14 solely on the basis of receiving that notice and opportunity to be heard.

15 **SECTION 38.** 938.365 (1) of the statutes is amended to read:

16 938.365 (1) In this section, a juvenile is considered to have been placed outside
17 of his or her home on the date on which the juvenile was first placed outside of his
18 or her home pursuant to an order under ~~this section~~ or s. 938.345, or 938.357 ~~or~~
19 ~~938.363~~ or on the date that is 60 days after the date on which the juvenile was
20 removed from his or her home, whichever is earlier.

21 **SECTION 39.** 938.38 (4) (am) of the statutes is created to read:

22 938.38 (4) (am) Any efforts to place the juvenile for adoption, with a guardian
23 or in some other alternative permanent placement that were made under s. 938.355
24 (2b) at the same time as the services described in par. (a) were offered or provided
25 or, if those efforts were not made, the basis for the decision not to make those efforts.

BILL**SECTION 40**

1 **SECTION 40.** 938.38 (5) (b) of the statutes is amended to read:

2 938.38 (5) (b) The court or the agency shall notify the parents of the juvenile,
3 the juvenile if he or she is 10 years of age or older and the juvenile's foster parent,
4 the juvenile's treatment foster parent or the operator of the facility in which the
5 juvenile is living of the date, time and place of the review, of the issues to be
6 determined as part of the review, of the fact that they may have an opportunity to
7 be heard at the review by submitting written comments not less than 10 working
8 days before the review or by participating at the review. The court or agency shall
9 notify the person representing the interests of the public, the juvenile's counsel and
10 the juvenile's guardian ad litem of the date of the review, of the issues to be
11 determined as part of the review and of the fact that they may submit written
12 comments not less than 10 working days before the review.' Any written or oral
13 statement made to the court under this paragraph by a foster parent, treatment
14 foster parent or operator of a facility in which a juvenile is living shall be made under
15 oath or affirmation. The notices under this paragraph shall be provided in writing
16 not less than 30 days before the review and copies of the notices shall be filed in the
17 juvenile's case record.

18 **SECTION 41. Initial applicability.**

19 (1) **JUVENILE COURT ORDERS.** The treatment of sections 48.355 (2d) (a) l., Id., lj.,
20 2. and 3. and (b) (intro.), 2., 3. and 4. ~~48.355 (1) (c) and~~ and 938.355 (2d) (a) l., Id., lj.,
21 2. and 3. and (b) (intro.), 2., 3. and 4. of the statutes first applies to juvenile court
22 orders entered on the effective date of this subsection.

23 ³
~~(1)~~ **PERMANENCY PLAN FILINGS.** The treatment of sections 48.38 (4) (am) and
24 938.38 (4) (am) of the statutes first applies to permanency plans that are filed with

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1 the court assigned to exercise jurisdiction under chapters 48 and 938 of the statutes
2 on the effective date of this subsection.

3 ~~(2)~~ JUVENILE COURT HEARINGS AND PERMANENCY PLAN REVIEWS. The treatment of
4 sections 48.27 (3) (a) 1m. and 2. and (6), 48.38 (5) (b), 48.42 (2g) (am) and (b), 48.427
5 (1m), 938.27 (3) (a) 1m. and 2. and (6) and 938.38 (5) (b) of the statutes, the
6 renumbering of section 48.43 (5) (b) of the statutes and the creation of section 48.43
7 (5) (b) 2. of the statutes first apply to juvenile court hearings and permanency plan
8 reviews held on the effective date of this subsection.

9 ~~(3)~~ PERMANENCY PLAN HEARINGS. The treatment of sections 48.355 (2d) (d) and
10 938.355 (2d) (d) of the statutes first applies to permanency plan hearings held 10
11 days after the effective date of this subsection.

12

(END)

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and **sign** on the appropriate line(s) below.

Date: 12/20/1999

To: Representative Ladwig

Relating to LRB drafting number: LRB-2177

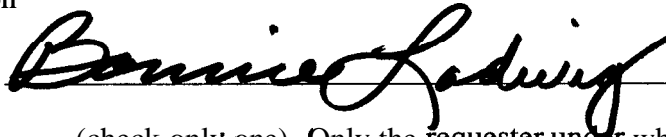
Topic

Federal adoption act conformity; technical changes

Subject(s)

Children - delinquency, Children -juvenile ct procedure, Children - miscellaneous, Children - out-of-home placement, Children - TPR and adoption

1. **JACKET** the draft for introduction



in the **Senate or the Assembly** (check only one). Only the requester under whose name the

drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please

allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached _____

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction



If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal *without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Gordon M. Malaise, Senior Legislative Attorney
Telephone: (608) 266-9738