

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

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The drafter of the federal language relating to jurisdictional barriers to adoption, specifically, the language that states that a state may not deny or delay a child's adoptive placement when an approved family is available *outside the jurisdiction that is responsible for handling the case of the child*, appears to have been confused in his or her use of the word "jurisdiction". Specifically, "jurisdiction" can mean either the *authority of a sovereign power to govern* as in "DHFS has jurisdiction . . ." or the *territorial limit* of that authority as in a state or county. The federal language starts out by using "jurisdiction" in the territorial sense, *i.e.*, "outside the jurisdiction," but then goes on to confuse that sense of the word with the sovereign power sense of the word, *i.e.*, "jurisdiction that is responsible for handling the case of the child". It appears that the intent of the federal language is to use "jurisdiction" in the territorial sense of the word in that the policy behind the language is to promote intercounty and interstate adoptions. Therefore, so as to not perpetuate the federal drafter's confusion, this draft employs language that clearly and unmistakably refers to territory and not to sovereign power.

Moreover, use of "jurisdiction" in this draft, even in the territorial sense, is confusing in that the jurisdiction of DHFS is statewide, so "outside the jurisdiction" can only mean outside the state and not outside the county in which the child is located, but that interpretation would conflict with the federal policy of promoting *intercounty* adoptions. Accordingly, this draft uses the phrase "outside the county in which the child is located" to describe the physical location of the family that has been approved as a placement for the child.

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266-9738
E-mail: Gordon.Malaise@legis.state.wi.us