

## 1999 ASSEMBLY BILL 926

March 24, 2000 – Introduced by Representatives PLALE, JESKEWITZ, GOETSCH, REYNOLDS, LADWIG, STASKUNAS, MUSSER, GUNDERSON, BALOW, KLUSMAN, OTT, HUEBSCH, MORRIS-TATUM, OWENS, HASENOHRL, RYBA, COLON, BOYLE, SYKORA, SCHOOFF, SPILLNER, SINICKI, OLSEN, WASSERMAN, KEDZIE, KREIBICH, BERCEAU, HANDRICK and JENSEN, cosponsored by Senators CLAUSING, ROESSLER, ROBSON, BURKE and DARLING. Referred to Committee on Children and Families.

1 **AN ACT to amend** 48.355 (2d) (c), 48.38 (4) (a), 48.38 (5) (c) 7., 48.42 (2) (a), 48.422  
2 (9) (a), 48.425 (2), 48.977 (2) (f), 938.355 (2d) (c), 938.38 (4) (a) and 938.38 (5)  
3 (c) 7.; and **to create** 48.13 (2m), 48.195, 48.355 (2d) (b) 5., 48.41 (2) (e), 48.415  
4 (1m) and 938.355 (2d) (b) 5. of the statutes; **relating to:** relinquishing custody  
5 of a newborn child and granting rule-making authority.

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### ***Analysis by the Legislative Reference Bureau***

Under current law, a child may be taken into custody under various circumstances, including circumstances under which a law enforcement officer believes on reasonable grounds that the child is in immediate danger from his or her surroundings and removal from those surroundings is necessary. If the child is not returned to his or her parents, the person taking the child into custody must deliver the child to the intake worker of the court assigned to exercise jurisdiction under the children's code (juvenile court). The intake worker must then determine whether to release the child or hold the child in custody. The intake worker may determine to hold the child in custody if certain grounds exist for holding the child in custody, for example, there is probable cause to believe that the child is within the jurisdiction of the juvenile court and that the child's parent is unavailable to provide care and supervision for the child and services to ensure the child's safety and well-being are not available or would be inadequate. If the intake worker determines to hold the child in custody, a hearing must be held to determine whether the child shall continue to be held in custody, and a petition alleging that the child is in need of protection or services must be filed with the juvenile court.

**ASSEMBLY BILL 926**

If the child is found to be in need of protection or services, the juvenile court may impose certain dispositions to maintain and protect the well-being of the child, including placing the child in a foster home and transferring legal custody of the child to the county department of human services or social services, a licensed child welfare agency or, in Milwaukee County, the department of health and family services (DHFS). If the child is placed outside of the child's home, the agency primarily responsible for providing services for the child, subject to certain exceptions, must make reasonable efforts to make it possible for the child to return safely to his or her home and may, at the same time as the agency is making those efforts, make reasonable efforts to place the child for adoption, with a guardian or in some other alternative permanent placement. Before a child may be adopted, however, the juvenile court must terminate the parental rights of the child's parents. A termination of parental rights (TPR) may be ordered either with the voluntary consent of the child's parents or involuntarily. For the juvenile court to order an involuntary TPR, certain grounds must be proven, among them, abandonment.

This bill permits a parent of a child who is 30 days old or younger (newborn child) to relinquish custody of the newborn child to a law enforcement officer, an emergency medical technician or a hospital emergency room staff member rather than to abandon the child. Under the bill, if a parent of a newborn child relinquishes custody of the newborn child to a law enforcement officer, an emergency medical technician or a hospital emergency room staff member and expresses the intent not to return for the child, the law enforcement officer, emergency medical technician or hospital emergency room staff member must take the newborn child into custody, take any action necessary to protect the health and safety of the newborn child and, within 24 hours after taking the newborn child into custody, deliver the newborn child to the intake worker.

A parent who relinquishes his or her newborn child under the bill and any person who assists the parent in that relinquishment have the right to leave at any time and to remain anonymous, and no person may follow or pursue the parent or person assisting the parent or induce or coerce a parent or person assisting a parent who wishes to remain anonymous into revealing his or her identity. The bill also prohibits any officer, employe or agent of the state or a political subdivision of the state from attempting to locate or ascertain the identity of a parent who relinquishes custody of his or her newborn child under the bill or any person who assists the parent in that relinquishment. In addition, the bill provides for the confidentiality, subject to certain exceptions, of all records relating to the relinquishment of a newborn child under the bill.

The bill requires a law enforcement officer, an emergency medical technician or a hospital emergency room staff member who takes a newborn child into custody to make available to the parent who relinquishes custody of the child information relating to the means by which the parent may, until the granting of a TPR order, choose to be identified as the child's parent and a set of written materials prescribed by DHFS that describe the services that are available to assist parents and newborn children and that include information as to how a parent may regain custody of a newborn child relinquished under the bill if the parent later decides to do so. The

**ASSEMBLY BILL 926**

law enforcement officer, emergency medical technician or hospital emergency room staff member must also make available to the parent an affidavit by which the parent may voluntarily disclaim any parental rights that he or she may have to the newborn child and a form on which the parent may disclose the medical and genetic history of the newborn child. The decision whether to accept that information or those written materials, whether to complete that affidavit or whether to complete, in whole or in part, that form, however, is entirely voluntary on the part of the parent. Under the bill, no person may induce or coerce a parent into accepting that information or those materials or into completing that affidavit or form.

The bill grants a parent who relinquishes custody of his or her newborn child under the bill and any person who assists a parent in that relinquishment immunity from any civil or criminal liability for any good faith act or omission in connection with that relinquishment, including immunity for exercising the right to remain anonymous, the right to leave at any time or the right not to accept any information or written materials, and not to complete any affidavit or form, made available to the parent. Similarly, the bill grants a law enforcement officer, an emergency medical technician or a hospital emergency room staff member immunity from any civil or criminal liability for any good faith act or omission occurring within the scope of his or her duties under the bill.

Finally, the bill permits a juvenile court to exercise its child in need of protection or services jurisdiction over a newborn child who has been relinquished under the bill and to grant an involuntary TPR over a newborn child on the grounds that custody of the newborn child has been relinquished under the bill.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

- 1           **SECTION 1.** 48.13 (2m) of the statutes is created to read:
- 2           48.13 (2m) Whose parent has relinquished custody of the child under s. 48.195
- 3           (1);
- 4           **SECTION 2.** 48.195 of the statutes is created to read:
- 5           **48.195 Taking a newborn child into custody. (1)** TAKING CHILD INTO
- 6           CUSTODY. In addition to being taken into custody under s. 49.19, a child who is 30 days
- 7           old or younger may be taken into custody under circumstances in which a parent of
- 8           the child relinquishes custody of the child to a law enforcement officer, an emergency

**ASSEMBLY BILL 926****SECTION 2**

1 medical technician or a hospital emergency room staff member with the intent not  
2 to return for the child. If a parent of a child who is 30 days old or younger relinquishes  
3 custody of the child to a law enforcement officer, emergency medical technician or  
4 hospital emergency room staff member and expresses the intent not to return for the  
5 child, the law enforcement officer, emergency medical technician or hospital  
6 emergency room staff member shall take the child into custody, take any action  
7 necessary to protect the health and safety of the child and, within 24 hours after  
8 taking the child into custody, deliver the child to the intake worker under s. 48.20.

9 **(2) ANONYMITY AND CONFIDENTIALITY.** (a) A parent who relinquishes custody of  
10 a child under sub. (1) and any person who assists the parent in that relinquishment  
11 have the right to remain anonymous. The exercise of that right shall not affect the  
12 manner in which a law enforcement officer, emergency medical technician or  
13 hospital emergency room staff member performs his or her duties under this section.  
14 No person may induce or coerce or attempt to induce or coerce a parent or person  
15 assisting a parent who wishes to remain anonymous into revealing his or her  
16 identity.

17 (b) A parent who relinquishes custody of a child under sub. (1) and any person  
18 who assists the parent in that relinquishment may leave the presence of the law  
19 enforcement officer, emergency medical technician or hospital emergency room staff  
20 member who took custody of the child at any time, and no person may follow or  
21 pursue the parent or person assisting the parent.

22 (c) No officer, employe or agent of this state or of a political subdivision of this  
23 state may attempt to locate or ascertain the identity of a parent who relinquishes  
24 custody of a child under sub. (1) or any person who assists the parent in that  
25 relinquishment.

**ASSEMBLY BILL 926**

1 (d) All records relating to the relinquishment of a child under sub. (1) are  
2 confidential and may not be disclosed, except to the following persons:

3 1. The birth parent of the child, if the birth parent has waived his or her right  
4 under sub. (2) (a) to remain anonymous, or the adoptive parent of the child, if the  
5 child is later adopted.

6 2. Appropriate staff of the department, county department or licensed child  
7 welfare agency that is providing services to the child.

8 3. A person authorized to provide or providing intake or dispositional services  
9 under s. 48.067, 48.069 or 48.10.

10 4. An attending physician for purposes of diagnosis and treatment of the child.

11 5. The child's foster parent, treatment foster parent or other person having  
12 physical custody of the child.

13 6. A court conducting proceedings under s. 48.21, proceedings relating to a  
14 petition under s. 48.13 (2m) or 48.42 or dispositional proceedings under subch. VI or  
15 VIII relating to the child, the county corporation counsel, district attorney or agency  
16 legal counsel representing the interests of the public in those proceedings or the  
17 guardian ad litem representing the interests of the child in those proceedings.

18 7. A tribal court, or other adjudicative body authorized by an American Indian  
19 tribe or band to perform child welfare functions, that is exercising jurisdiction over  
20 proceedings relating to the child, an attorney representing the interests of the  
21 American Indian tribe or band in those proceedings or an attorney representing the  
22 interests of the child in those proceedings.

23 **(3) PARENTAL OPTIONS.** (a) Subject to par. (b), a law enforcement officer,  
24 emergency medical technician or hospital emergency room staff member who takes

**ASSEMBLY BILL 926**

1 a child into custody under sub. (1) shall make available to the parent who  
2 relinquishes custody of the child all of the following:

3 1. Information relating to the means specified in sub. (4) (a) by which the parent  
4 may, until the granting of an order terminating parental rights, choose to be  
5 identified as the child's parent.

6 2. The set of written materials specified in sub. (4) (b) that describe the services  
7 that are available to assist parents and newborn children.

8 3. The affidavit specified in sub. (4) (c) by which the parent may voluntarily  
9 disclaim any parental rights that he or she may have to the child, including the right  
10 to notice of proceedings under subch. VIII.

11 4. The form specified in sub. (4) (d) on which the parent may disclose the  
12 medical and genetic information specified in s. 48.425 (1) (am).

13 (b) The decision whether to accept any information made available under par.  
14 (a) 1. or written materials made available under par. (a) 2., to complete the affidavit  
15 made available under par. (a) 3. or to complete, in whole or in part, the form made  
16 available under par. (a) 4. is entirely voluntary on the part of the parent. No person  
17 may induce or coerce or attempt to induce or coerce any parent into accepting that  
18 information or those materials or into completing that affidavit or form.

19 **(4) RULES.** The department shall promulgate rules to implement this section.  
20 In promulgating those rules, the department shall consider the different  
21 circumstances under which a parent might relinquish custody of a child under sub.  
22 (1). The rules shall include rules prescribing all of the following:

23 (a) A means by which a parent who relinquishes custody of his or her child  
24 under sub. (1) may, until the granting of an order terminating parental rights, choose  
25 to be identified as the child's parent.

**ASSEMBLY BILL 926**

1 (b) A set of written materials that describe the services that are available to  
2 assist parents and newborn children. The materials shall include materials that are  
3 directly relevant to circumstances that might cause a parent to relinquish custody  
4 of a child under sub. (1) and materials that provide information as to how a parent  
5 may regain custody of a child relinquished under sub. (1) if the parent later decides  
6 to do so.

7 (c) An affidavit by which a parent who relinquishes custody of a child under sub.  
8 (1) may voluntarily disclaim any rights that the parent may have to the child. The  
9 affidavit shall advise the parent as to the effect of an order terminating parental  
10 rights and shall recite that the parent has been informed of and understands the  
11 effect of such an order and that the parent voluntarily disclaims any rights that the  
12 parent may have to the child, including the right to notice of proceedings under  
13 subch. VIII.

14 (d) A form on which a parent who relinquishes custody of a child under sub. (1)  
15 may voluntarily disclose the medical and genetic information specified in s. 48.425  
16 (1) (am). The form prescribed under this paragraph shall be identical to the form  
17 provided by the department under s. 48.425 (1) (am), except that the form prescribed  
18 under this paragraph shall clearly and unambiguously state on each page of the form  
19 all of the following:

20 1. That the information requested is intended to facilitate the provision of  
21 medical care for the child.

22 2. That the form may be completed in whole or in part or left completely blank.

23 3. That the decision whether to complete the form in whole or in part or to leave  
24 the form completely blank is entirely voluntary on the part of the parent.

**ASSEMBLY BILL 926****SECTION 2**

1           4. That the parent may not be held civilly or criminally liable for failing to  
2 complete the form or any part of the form.

3           **(5) IMMUNITY FROM LIABILITY.** (a) Any parent who relinquishes custody of his  
4 or her child under sub. (1) and any person who assists the parent in that  
5 relinquishment are immune from any civil or criminal liability for any good faith act  
6 or omission in connection with that relinquishment. The immunity granted under  
7 this paragraph includes immunity for exercising the right to remain anonymous  
8 under sub. (2) (a), the right to leave at any time under sub. (2) (b) and the right not  
9 to accept any information or written materials and not to complete any affidavit or  
10 form under sub. (3) (b).

11           (b) Any law enforcement officer, emergency medical technician or hospital  
12 emergency room staff member who takes a child into custody under sub. (1) is  
13 immune from any civil or criminal liability for any good faith act or omission  
14 occurring within the scope of his or her duties under this section.

15           (c) In any civil or criminal proceeding, the good faith of a person specified in par.  
16 (a) or (b) is presumed. This presumption may be overcome only by clear and  
17 convincing evidence.

18           **SECTION 3.** 48.355 (2d) (b) 5. of the statutes is created to read:

19           48.355 **(2d)** (b) 5. That the parent has been found under s. 48.13 (2m) or under  
20 a law of any other state or a federal law that is comparable to s. 48.13 (2m) to have  
21 relinquished custody of the child under s. 48.195 (1) or under a law of any other state  
22 or a federal law that is comparable to s. 48.195 (1) when the child was 30 days old  
23 or younger.

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



**ASSEMBLY BILL 926**

1           48.355 **(2d)** (c) If the court makes a finding specified in par. (b) 1., 2., 3. ~~or~~ 4.  
2           or 5., the court shall hold a hearing within 30 days after the date of that finding to  
3           determine the permanency plan for the child. If a hearing is held under this  
4           paragraph, the agency responsible for preparing the permanency plan shall file the  
5           permanency plan with the court not less than 5 days before the date of the hearing.

6           **SECTION 5.** 48.38 (4) (a) of the statutes is amended to read:

7           48.38 **(4)** (a) The services offered and any service provided in an effort to  
8           prevent holding or placing the child outside of his or her home, while assuring that  
9           the health and safety of the child are the paramount concerns, and to make it possible  
10          for the child to return safely home, except that the permanency plan need not include  
11          a description of those services offered or provided with respect to a parent of the child  
12          if any of the circumstances specified in s. 48.355 (2d) (b) 1., 2., 3. ~~or~~ 4. or 5. apply to  
13          that parent.

14          **SECTION 6.** 48.38 (5) (c) 7. of the statutes is amended to read:

15          48.38 **(5)** (c) 7. Whether reasonable efforts were made by the agency to make  
16          it possible for the child to return safely to his or her home, except that the court or  
17          panel need not determine whether those reasonable efforts were made with respect  
18          to a parent of the child if any of the circumstances specified in s. 48.355 (2d) (b) 1.,  
19          2., 3. ~~or~~ 4. or 5. apply to that parent.

20          **SECTION 7.** 48.41 (2) (e) of the statutes is created to read:

21          48.41 **(2)** (e) The person filing the petition under s. 48.42 files with the court  
22          an affidavit signed by a parent who has relinquished custody of his or her child under  
23          s. 48.195 (1) and witnessed by 2 persons stating that the parent has been informed  
24          and understands the effect of an order to terminate parental rights and that the

**ASSEMBLY BILL 926****SECTION 7**

1 parent voluntarily disclaims all rights to the child, including the right to notice of  
2 proceedings under this subchapter.

3 **SECTION 8.** 48.415 (1m) of the statutes is created to read:

4 48.415 **(1m)** RELINQUISHMENT. Relinquishment, which shall be established by  
5 proving that a court of competent jurisdiction has found under s. 48.13 (2m) or under  
6 a law of any other state or a federal law that is comparable to s. 48.13 (2m) that the  
7 parent has relinquished custody of the child under s. 48.195 (1) or under a law of any  
8 other state or a federal law that is comparable to s. 48.195 (1) when the child was 30  
9 days old or younger.

10 **SECTION 9.** 48.42 (2) (a) of the statutes is amended to read:

11 48.42 **(2)** (a) The parent or parents of the child, unless the child's parent has  
12 waived the right to notice under s. 48.41 (2) (d) or (e).

13 **SECTION 10.** 48.422 (9) (a) of the statutes is amended to read:

14 48.422 **(9)** (a) If a petition for termination of the rights of a birth parent, as  
15 defined under s. 48.432 (1) (am), is filed by a person other than an agency  
16 enumerated under s. 48.069 (1) or (2) or if the court waives the report required under  
17 s. 48.425, the court shall order any parent whose rights may be terminated to file  
18 with the court the information specified under s. 48.425 (1) (am), unless the parent  
19 has chosen under s. 48.195 (3) (b) not to disclose the information.

20 **SECTION 11.** 48.425 (2) of the statutes is amended to read:

21 48.425 **(2)** The court may waive the report required under this section if  
22 consent is given under s. 48.41, but shall order the birth parent or parents to provide  
23 the department with the information specified under sub. (1) (am), unless the parent  
24 has chosen under s. 48.195 (3) (b) not to disclose the information.

25 **SECTION 12.** 48.977 (2) (f) of the statutes is amended to read:

**ASSEMBLY BILL 926**

1           48.977 **(2)** (f) That the agency primarily responsible for providing services to  
2 the child under a court order has made reasonable efforts to make it possible for the  
3 child to return to his or her home, while assuring that the child's health and safety  
4 are the paramount concerns, but that reunification of the child with the child's  
5 parent or parents is unlikely or contrary to the best interests of the child and that  
6 further reunification efforts are unlikely to be made or are contrary to the best  
7 interests of the child, except that the court need not find that the agency has made  
8 those reasonable efforts with respect to a parent of the child if any of the  
9 circumstances specified in s. 48.355 (2d) (b) 1., 2., 3. ~~or~~ 4. or 5. apply to that parent.

10           **SECTION 13.** 938.355 (2d) (b) 5. of the statutes is created to read:

11           938.355 **(2d)** (b) 5. That the parent has been found under s. 48.13 (2m) or under  
12 a law of any other state or a federal law that is comparable to s. 48.13 (2m) to have  
13 relinquished custody of the juvenile under s. 48.195 (1) or under a law of any other  
14 state or a federal law that is comparable to s. 48.195 (1) when the juvenile was 30  
15 days old or younger.

16           **SECTION 14.** 938.355 (2d) (c) of the statutes is amended to read:

17           938.355 **(2d)** (c) If the court makes a finding specified in par. (b) 1., 2., 3., ~~or~~ 4.  
18 or 5., the court shall hold a hearing within 30 days after the date of that finding to  
19 determine the permanency plan for the juvenile. If a hearing is held under this  
20 paragraph, the agency responsible for preparing the permanency plan shall file the  
21 permanency plan with the court not less than 5 days before the date of the hearing.

22           **SECTION 15.** 938.38 (4) (a) of the statutes is amended to read:

23           938.38 **(4)** (a) The services offered and any service provided in an effort to  
24 prevent holding or placing the juvenile outside of his or her home, while assuring  
25 that the health and safety of the juvenile are the paramount concerns, and to make

**ASSEMBLY BILL 926**

1 it possible for the juvenile to return safely home, except that the permanency plan  
2 need not include a description of those services offered or provided with respect to  
3 a parent of the juvenile if any of the circumstances specified in s. 938.355 (2d) (b) 1.,  
4 2., 3. ~~or~~ 4. or 5. apply to that parent.

5 **SECTION 16.** 938.38 (5) (c) 7. of the statutes is amended to read:

6 938.38 (5) (c) 7. Whether reasonable efforts were made by the agency to make  
7 it possible for the juvenile to return safely to his or her home, except that the court  
8 or panel need not determine whether those reasonable efforts were made with  
9 respect to a parent of the juvenile if any of the circumstances specified in s. 938.355  
10 (2d) (b) 1., 2., 3. ~~or~~ 4. or 5. apply to that parent.

11 **SECTION 17. Initial applicability.**

12 (1) RELINQUISHMENT OF NEWBORN CHILD. This act first applies to a child whose  
13 custody is relinquished, as described in section 48.195 (1) of the statutes, as created  
14 by this act, on the effective date of this subsection.

15 (END)