

1999 SENATE BILL 188

June 8, 1999 – Introduced by Senators CLAUSING, DARLING, HUELSMAN, LAZICH, ROESSLER and ZIEN, cosponsored by Representatives PLOUFF, KREIBICH, GUNDERSON, LASSA, MUSSER and TURNER, by request of Melanie Wiegand. Referred to Committee on Judiciary and Consumer Affairs.

1 **AN ACT to renumber and amend** 48.355 (3), 48.428 (6) and 938.355 (3); **to**
 2 **amend** 48.207 (1) (a), 48.207 (1) (b), 48.345 (3) (a), 48.345 (3) (b), 48.42 (1m) (b),
 3 48.42 (1m) (c), 48.925 (1) (intro.), 767.245 (1), 880.155 (2), 938.207 (1) (a),
 4 938.207 (1) (b), 938.34 (3) (a) and 938.34 (3) (b); and **to create** 48.355 (3) (b),
 5 48.357 (4d), 48.42 (1m) (e), 48.428 (6) (b), 48.925 (1m), 767.245 (1m), 767.245
 6 (6), 767.247, 767.325 (4m), 880.155 (3m), 880.155 (4m), 880.157, 938.355 (3) (b)
 7 and 938.357 (4d) of the statutes; **relating to:** prohibiting a parent or other
 8 person who is convicted for the solicitation to commit the first-degree
 9 intentional homicide of a parent of a child from having visitation or physical
 10 placement with the child.

Analysis by the Legislative Reference Bureau

Under current law, in a divorce or legal separation that involves a minor child, the court must award legal custody of the child and allocate to the parents physical placement with the child. The court may not deny a parent physical placement unless the court finds that the physical placement would endanger the child's physical, mental or emotional health. In an action affecting the family, the court may

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grant visitation with a minor child to a grandparent, stepparent or person who has had a relationship similar to a parent–child relationship with the child if the court determines that the visitation is in the child’s best interest. In a guardianship matter that involves a minor child, the court may grant visitation rights to a grandparent or stepparent of the child if one or both of the child’s parents are deceased and the court determines that the visitation is in the child’s best interest.

This bill prohibits a court from granting visitation or physical placement rights with a child to a parent of the child or to another person if that parent or other person has been convicted for solicitation to commit the first–degree intentional homicide of a parent of the child. The prohibition applies in any action affecting the family that involves the child and in any guardianship matter that involves the child. Additionally, a court is required to modify an existing physical placement or visitation order by denying physical placement or visitation with a child if the parent or other person is convicted for solicitation to commit the first–degree intentional homicide of the child’s other parent. The prohibition on the granting of physical placement or visitation applies regardless of whether the conviction occurred before or occurs after the passage of the bill, and the requirement to modify any physical placement or visitation order applies regardless of when the conviction occurred or occurs and regardless of whether the order exists when the bill is passed or is granted after the passage of the bill.

Under current law, the court assigned to exercise jurisdiction under the children’s code and the juvenile justice code (juvenile court) may place a child or a juvenile who is in need of temporary physical custody or who has been adjudged to be delinquent or in need of protection or services in, among other placements, the home of a parent or other relative of the child or, if the placement is for less than 30 days, the home of a guardian of the child. Also, under current law, if the juvenile court places such a child or juvenile outside of his or her home, the juvenile court may set reasonable rules of parental visitation if the juvenile court finds that parental visitation would be in the best interests of the child. In addition, under current law, the juvenile court may issue a temporary restraining order and injunction prohibiting a parent against whom a petition for involuntary termination of parental rights (TPR) has been filed from visitation or contact with the child and may order or prohibit visitation by a birth parent of a child who has been placed in sustaining care following a TPR. Finally, under current law, the juvenile court may grant reasonable visitation rights to a relative, for example, a grandparent, who has maintained a relationship similar to a parent–child relationship with a child who has been adopted by a stepparent or relative.

This bill prohibits a juvenile court from placing a child or juvenile who is in need of temporary physical custody or who has been adjudged to be delinquent or in need of protection or services in the home of a parent, other relative or guardian of the child or juvenile if the parent, other relative or guardian has been convicted for solicitation to commit the first–degree intentional homicide of a parent of the child. The bill also requires a juvenile court, when a child or juvenile is placed in the home of a parent by juvenile court order, to change the placement of the child or juvenile

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to a placement outside of that home if the parent is convicted for solicitation to commit the first-degree intentional homicide of a parent of the child or juvenile.

In addition, the bill prohibits a juvenile court from granting visitation to a parent of a child or juvenile who has been adjudged to be delinquent or in need of protection or services, to a birth parent of a child who has been placed in sustaining care following a TPR or to a relative who has maintained a relationship similar to a parent-child relationship with a child if the parent, birth parent or relative has been convicted for solicitation to commit the first-degree intentional homicide of a parent of the child or juvenile. The bill also requires a juvenile court, when such a parent, birth parent or relative has previously been granted visitation, to issue an order prohibiting any further visitation if the parent is convicted for solicitation to commit the first-degree intentional homicide of a parent of the child or juvenile.

Additionally, the bill requires a juvenile court, on petition, to prohibit a parent against whom a petition for involuntary TPR has been filed from visitation or contact with the child if the parent has been convicted for solicitation to commit the first-degree intentional homicide of the child's other parent.

The prohibition on the juvenile court placing a child or juvenile in the home of a parent, other relative or guardian or granting visitation with a child or juvenile and the requirement that a juvenile court prohibit any visitation or contact with a child or juvenile apply regardless of when the conviction occurs.

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

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

2 48.207 (1) (a) The home of a parent or guardian, except that a child may not
3 be held in the home of a parent or guardian if the parent or guardian has been
4 convicted under s. 939.30 for the solicitation to commit the first-degree intentional
5 homicide of a parent of the child, and the conviction has not been reversed, set aside
6 or vacated.

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

8 48.207 (1) (b) The home of a relative, except that a child may not be held in the
9 home of a relative if the relative has been convicted under s. 939.30 for the
10 solicitation to commit the first-degree intentional homicide of a parent of the child,
11 and the conviction has not been reversed, set aside or vacated.

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

2 48.345 (3) (a) The home of a parent or other relative of the child, except that
3 the judge may not designate the home of a parent or other relative of the child as the
4 child's placement if the parent or other relative has been convicted under s. 939.30
5 for the solicitation to commit the first-degree intentional homicide of a parent of the
6 child, and the conviction has not been reversed, set aside or vacated.

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

8 48.345 (3) (b) ~~A home which need not be~~ The home of a person who is not
9 required to be licensed if placement is for less than 30 days, except that the judge may
10 not designate the home of a person who is not required to be licensed as the child's
11 placement if the person has been convicted under s. 939.30 for the solicitation to
12 commit the first-degree intentional homicide of a parent of the child, and the
13 conviction has not been reversed, set aside or vacated.

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

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

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

21 48.355 (3) (b) 1. The court may not grant visitation under par. (a) to a parent
22 of a child if the parent has been convicted under s. 939.30 for the solicitation to
23 commit the first-degree intentional homicide of the child's other parent, and the
24 conviction has not been reversed, set aside or vacated.

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1 2. If a parent who is granted visitation rights with a child under par. (a) is
2 convicted under s. 939.30 for the solicitation to commit the first-degree intentional
3 homicide of the child's other parent, and the conviction has not been reversed, set
4 aside or vacated, the court shall issue an order prohibiting the parent from having
5 visitation with the child on petition of the child, the guardian or legal custodian of
6 the child, a person or agency bound by the dispositional order or the district attorney
7 or corporation counsel of the county in which the dispositional order was entered, or
8 on the court's own motion, and on notice to the parent.

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

10 48.357 (4d) (a) The court may not change a child's placement to a placement
11 in the home of a person who has been convicted under s. 939.30 for the solicitation
12 to commit the first-degree intentional homicide of a parent of the child, if the
13 conviction has not been reversed, set aside or vacated.

14 (b) If a parent in whose home a child is placed is convicted under s. 939.30 for
15 the solicitation to commit the first-degree intentional homicide of the child's other
16 parent, and the conviction has not been reversed, set aside or vacated, the court shall
17 change the child's placement to a placement out of the home of the parent on petition
18 of the child, the guardian or legal custodian of the child, a person or agency bound
19 by the dispositional order or the district attorney or corporation counsel of the county
20 in which the dispositional order was entered, or on the court's own motion, and on
21 notice to the parent.

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

23 48.42 (1m) (b) ~~The Subject to par. (e), the~~ court may issue the temporary order
24 ex parte or may refuse to issue the temporary order and hold a hearing on whether
25 to issue an injunction. The temporary order is in effect until a hearing is held on the

1 issuance of an injunction. The court shall hold a hearing on the issuance of an
2 injunction on or before the date of the hearing on the petition to terminate parental
3 rights under s. 48.422 (1).

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

5 48.42 **(1m)** (c) Notwithstanding any other order under s. 48.355 (3), the court,
6 subject to par. (e), may grant an injunction prohibiting the respondent from visiting
7 or contacting the child if the court determines that the prohibition would be in the
8 best interests of the child. An injunction under this subsection is effective according
9 to its terms but may not remain in effect beyond the date the court dismisses the
10 petition for termination of parental rights under s. 48.427 (2) or issues an order
11 terminating parental rights under s. 48.427 (3).

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

13 48.42 **(1m)** (e) The court shall issue a temporary order and injunction
14 prohibiting a parent of a child from visitation or contact with the child if the parent
15 has been convicted under s. 939.30 for the solicitation to commit the first-degree
16 intentional homicide of the child's other parent, and the conviction has not been
17 reversed, set aside or vacated.

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

20 48.428 **(6)** (a) The Except as provided in par. (b), the court may order or prohibit
21 visitation by a birth parent of a child placed in sustaining care.

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

23 48.428 **(6)** (b) 1. The court may not grant visitation under par. (a) to a birth
24 parent of a child who has been placed in sustaining care if the birth parent has been
25 convicted under s. 939.30 for the solicitation to commit the first-degree intentional

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

3 2. If a birth parent who is granted visitation rights with a child under par. (a)
4 is convicted under s. 939.30 for the solicitation to commit the first-degree intentional
5 homicide of the child's other birth parent, and the conviction has not been reversed,
6 set aside or vacated, the court shall issue an order prohibiting the birth parent from
7 having visitation with the child on petition of the child, the guardian or legal
8 custodian of the child, or the district attorney or corporation counsel of the county in
9 which the dispositional order was entered, or on the court's own motion, and on notice
10 to the birth parent.

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

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

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

21 48.925 (1m) (a) The court may not grant visitation rights under sub. (1) to a
22 relative who has maintained a relationship similar to a parent-child relationship
23 with a child if the relative has been convicted under s. 939.30 for the solicitation to
24 commit the first-degree intentional homicide of a parent of the child, and the
25 conviction has not been reversed, set aside or vacated.

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1 (b) If a relative who is granted visitation rights with a child under sub. (1) is
2 convicted under s. 939.30 for the solicitation to commit the first-degree intentional
3 homicide of a parent of the child, and the conviction has not been reversed, set aside
4 or vacated, the court shall issue an order prohibiting the relative from having
5 visitation with the child on petition of the child or the parent, guardian or legal
6 custodian of the child, or on the court's own motion, and on notice to the relative.

7 **SECTION 15.** 767.245 (1) of the statutes is amended to read:

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

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

14 767.245 (1m) The court may not grant visitation rights under sub. (1) to a
15 person who has been convicted under s. 939.30 for the solicitation to commit the
16 first-degree intentional homicide of a parent of the child, and the conviction has not
17 been reversed, set aside or vacated.

18 **SECTION 17.** 767.245 (6) of the statutes is created to read:

19 767.245 (6) If a person granted visitation rights with a child under this section
20 is convicted under s. 939.30 for the solicitation to commit the first-degree intentional
21 homicide of a parent of the child, and the conviction has not been reversed, set aside
22 or vacated, the court shall modify the visitation order by denying visitation with the
23 child upon petition, motion or order to show cause by a parent or guardian of the
24 child, or upon the court's own motion, and upon notice to the person granted
25 visitation rights.

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1 **SECTION 18.** 767.247 of the statutes is created to read:

2 **767.247 Prohibiting visitation or physical placement if a parent kills**
3 **other parent.** Notwithstanding ss. 767.23 (1) (am), 767.24 (1), (4) and (5), 767.51
4 (3) and 767.62 (4) (a), in an action under this chapter that affects a minor child, a
5 court or family court commissioner may not grant to the child's parent visitation or
6 physical placement rights with the child if the parent has been convicted under s.
7 939.30 for the solicitation to commit the first-degree intentional homicide of the
8 child's other parent, and the conviction has not been reversed, set aside or vacated.

9 **SECTION 19.** 767.325 (4m) of the statutes is created to read:

10 **767.325 (4m) DENIAL OF PHYSICAL PLACEMENT FOR KILLING OTHER PARENT.**
11 Notwithstanding subs. (1) to (4), upon petition, motion or order to show cause by a
12 party or on its own motion, a court shall modify a physical placement order by
13 denying a parent physical placement with a child if the parent has been convicted
14 under s. 939.30 for the solicitation to commit the first-degree intentional homicide
15 of the child's other parent, and the conviction has not been reversed, set aside or
16 vacated.

17 **SECTION 20.** 880.155 (2) of the statutes is amended to read:

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

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1 the surviving parent or other person who has custody of the child has notice of the
2 hearing and if the court determines that visitation is in the best interest of the child.

3 **SECTION 21.** 880.155 (3m) of the statutes is created to read:

4 **880.155 (3m)** The court may not grant visitation privileges to a grandparent
5 or stepparent under this section if the grandparent or stepparent has been convicted
6 under s. 939.30 for the solicitation to commit the first-degree intentional homicide
7 of a parent of the child, and the conviction has not been reversed, set aside or vacated.

8 **SECTION 22.** 880.155 (4m) of the statutes is created to read:

9 **880.155 (4m)** If a grandparent or stepparent granted visitation privileges with
10 respect to a child under this section is convicted under s. 939.30 for the solicitation
11 to commit the first-degree intentional homicide of a parent of the child, and the
12 conviction has not been reversed, set aside or vacated, the court shall modify the
13 visitation order by denying visitation with the child upon petition, motion or order
14 to show cause by a person having custody of the child, or upon the court's own motion,
15 and upon notice to the grandparent or stepparent granted visitation privileges.

16 **SECTION 23.** 880.157 of the statutes is created to read:

17 **880.157 Prohibiting visitation or physical placement if a parent kills**
18 **other parent.** In an action under this chapter that affects a minor child, a court may
19 not grant to a parent of the child visitation or physical placement rights with the
20 child if the parent has been convicted under s. 939.30 for the solicitation to commit
21 the first-degree intentional homicide of the child's other parent, and the conviction
22 has not been reversed, set aside or vacated.

23 **SECTION 24.** 938.207 (1) (a) of the statutes is amended to read:

24 **938.207 (1) (a)** The home of a parent or guardian, except that a juvenile may
25 not be held in the home of a parent or guardian if the parent or guardian has been

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1 convicted under s. 939.30 for the solicitation to commit the first-degree intentional
2 homicide of a parent of the juvenile, and the conviction has not been reversed, set
3 aside or vacated.

4 **SECTION 25.** 938.207 (1) (b) of the statutes is amended to read:

5 938.207 (1) (b) The home of a relative, except that a juvenile may not be held
6 in the home of a relative if the relative has been convicted under s. 939.30 for the
7 solicitation to commit the first-degree intentional homicide of a parent of the
8 juvenile, and the conviction has not been reversed, set aside or vacated.

9 **SECTION 26.** 938.34 (3) (a) of the statutes is amended to read:

10 938.34 (3) (a) The home of a parent or other relative of the juvenile, except that
11 the court may not designate the home of a parent or other relative of the juvenile as
12 the juvenile's placement if the parent or other relative has been convicted under s.
13 939.30 for the solicitation to commit the first-degree intentional homicide of a parent
14 of the juvenile, and the conviction has not been reversed, set aside or vacated.

15 **SECTION 27.** 938.34 (3) (b) of the statutes is amended to read:

16 938.34 (3) (b) ~~A home which need not be~~ The home of a person who is not
17 required to be licensed if placement is for less than 30 days, except that the judge may
18 not designate the name of a person who is not required to be licensed as the juvenile's
19 placement if the person has been convicted under s. 939.30 for the solicitation to
20 commit the first-degree intentional homicide of a parent of the juvenile, and the
21 conviction has not been reversed, set aside or vacated.

22 **SECTION 28.** 938.355 (3) of the statutes is renumbered 938.355 (3) (a) and
23 amended to read:

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1 938.355 (3) (a) If Except as provided in par. (b), if, after a hearing on the issue
2 with due notice to the parent or guardian, the court finds that it would be in the best
3 interest of the juvenile, the court may set reasonable rules of parental visitation.

4 **SECTION 29.** 938.355 (3) (b) of the statutes is created to read:

5 938.355 (3) (b) 1. The court may not grant visitation under par. (a) to a parent
6 of a juvenile if the parent has been convicted under s. 939.30 for the solicitation to
7 commit the first-degree intentional homicide of the juvenile's other parent, and the
8 conviction has not been reversed, set aside or vacated.

9 2. If a parent who is granted visitation rights with a juvenile under par. (a) is
10 convicted under s. 939.30 for the solicitation to commit the first-degree intentional
11 homicide of the juvenile's other parent, and the conviction has not been reversed, set
12 aside or vacated, the court shall issue an order prohibiting the parent from having
13 visitation with the juvenile on petition of the juvenile, the guardian or legal
14 custodian of the juvenile, a person or agency bound by the dispositional order or the
15 district attorney or corporation counsel of the county in which the dispositional order
16 was entered, or on the court's own motion, and on notice to the parent.

17 **SECTION 30.** 938.357 (4d) of the statutes is created to read:

18 938.357 (4d) (a) The court may not change a juvenile's placement to a
19 placement in the home of a person who has been convicted under s. 939.30 for the
20 solicitation to commit the first-degree intentional homicide of a parent of the
21 juvenile, if the conviction has not been reversed, set aside or vacated.

22 (b) If a parent in whose home a juvenile is placed is convicted under s. 939.30
23 for the solicitation to commit the first-degree intentional homicide of the juvenile's
24 other parent, and the conviction has not been reversed, set aside or vacated, the court
25 shall change the juvenile's placement to a placement out of the home of the parent

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1 on petition of the juvenile, the guardian or legal custodian of the juvenile, a person
2 or agency bound by the dispositional order or the district attorney or corporation
3 counsel of the county in which the dispositional order was entered, or on the court's
4 own motion, and on notice to the parent.

5 **SECTION 31. Initial applicability.**

6 (1) This act first applies to orders for visitation or physical placement, and to
7 orders modifying or revising visitation or physical placement orders, that are
8 granted on the effective date of this subsection; to petitions to restrain and enjoin
9 visitation and contact with a child that are filed on the effective date of this
10 subsection; and to orders of the juvenile court placing a child in or removing a child
11 from the home of a parent, guardian or relative or granting or prohibiting parental
12 visitation granted on the effective date of this subsection; regardless of when the
13 conviction for solicitation to commit first-degree intentional homicide occurred.

14 (END)