

1999 DRAFTING REQUEST

Senate Amendment (SA-SB339)

Received: **02/16/2000**

Received By: **malaigm**

Wanted: **Soon**

Identical to LRB:

For: **Health and Family Services**

By/Representing: **Kevin Lewis**

This file may be shown to any legislator: **NO**

Drafter: **malaigm**

May Contact:

Alt. Drafters:

Subject: **Children - out-of-home placement**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Disclosure of foster parent records to school and law enforcement agencies

Instructions:

See attached--permit foster parent records to be disclosed to law enforcement agencies and the child's school in the same manner as records relating to the child may be disclosed under current law.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	malaigm 02/16/2000	jgeller 02/17/2000		_____			
/1			martykr 02/17/2000	_____	lrb_docadmin 02/17/2000	lrb_docadmin 02/17/2000	
/2	malaigm 02/29/2000	jgeller 03/01/2000	jfrantze 03/01/2000	_____	lrb_docadmin 03/01/2000	lrb_docadmin 03/01/2000	

FE Sent For:

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63/1 *Self*
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/?	malaigm	1 2/17 jlg	1 m 2/17		Sub 2/17		

FE Sent For:

<END>

Malaise, Gordon

From: Lewis, Kevin
Sent: Wednesday, February 16, 2000 8:17 AM
To: Malaise, Gordon
Cc: Durkin, Therese; Mitchell, Mark
Subject: RE: SB-339--Foster Parent Records

Gordon,
good morning. It appears that we have resolution concerning the foster parents record issue.
please go ahead and draft the amendment you described in your message below. please have it done at DHFS' request. (Can you please e-mail me the amendment when finished?) I will then forward it with a cover letter to the Committee Chair.

thank you.

>>> Malaise, Gordon 02/11/00 11:44AM >>>
Kevin and Shelley:

I can see why DOC would be concerned about disclosure of records to law enforcement agencies and schools. Specifically, ss. 48.78 (3) (b) and 938.78 (4) (b), as created by the bill, provide an exception for the confidential exchange of information between social welfare agencies, but do not provide for a similar exception for law enforcement agencies and schools. Sections 48.78 (3) (b) and 938.78 (4) (b) were modeled after ss. 48.78 (2) (b) and 938.78 (2) (b) 1., which include not only social welfare agencies, but also law enforcement agencies, schools and, in the case of s. 938.78 (2) (b) 1., victim-witness coordinators and fire investigators.

As such, it would be relatively easy to amend the bill to make s. 48.78 (3) (b) exactly parallel to s. 48.78 (2) (b) and to make s. 938.78 (4) (b) exactly parallel to s. 938.78 (2) (b) 1. If that is what you and DOC want me to do, please advise and I will draft an amendment to make that change forthwith.

Gordon M. Malaise
Senior Legislative Attorney
Legislative Reference Bureau
Phone: (608) 266-9738

Malaise, Gordon

From: Lewis, Kevin
Sent: Monday, February 14, 2000 4:32 PM
To: Durkin, Therese; Mitchell, Mark
Cc: Malaise, Gordon
Subject: RE: SB-339--Foster Parent Records

Mark and Therese:

While I am not convinced that there is definitely a problem to be solved, I am receptive to the concern that "contents of any record kept or information received" could be construed loosely to include bits of information pertaining to the juvenile that is also part of the foster parent record. Is there any downside to amending the bill with the suggestion crafted by Gordon? I don't see any (although I don't work with these issues day in/day out) and the amendment would make DJC sleep better at night. What do you think?
Kevin

>>> Mark Mitchell 02/14/00 12:04PM >>>

Hi, Shelley. Actually, the names and addresses of foster parents are public information. The only time there is a problem is under s. 48.355(2)(b)2., Stats., (and maybe corresponding language in Ch. 938?) where the court, after a hearing, determines that the parent should not be notified of the address of the foster home.

>>> Hagan, Shelley M. DOC 02/14/00 10:11AM >>>
Thank you for your thoughtful consideration of my concerns.

As I had stated initially, my question is a one of definition: When is "information about a foster child" equal to "information about a foster parent"?

It seems to me that some information about foster children is the exact same information about their foster parents. One example of this is home address. The home address of the foster child IS the home address of the foster parent. So, by telling law enforcement where a youth in foster care lives, the DJC field agent is also revealing to law enforcement the address of the foster parent: i.e., information about the foster parent..

I understand that this is not the type of information that DHFS wants to protect. But, it is possible to read the new s. 938.78 (4) (a) to imply that the address of the FP is protected. Such an interpretation is strengthened when the new s. 938.78 (4) (c) is also taken into consideration. Sub (c) permits telling a youth's parent the address of the foster home in which the youth has been placed. So, the conclusion is logical that the prohibited exchange of information in sub (a) also applies to the youth's placement location, except when the location information is being shared with a youth's parent.

This is why I believe that an amendment that specifies the type of information that may not be shared - that is, the information given by the sub care parent to an agency as part of the license process - would be necessary to prevent an unwanted interpretation of the law.

No, I don't think that law enforcement needs to know a foster family's annual income, or whether the foster mom has ever been treated for alcoholism, or the 1001 other personal bits of information that nice, well-meaning people have to give up when they apply to be foster parents. DOC normally is not a recipient of this licensing information, and we'd be glad to agree that if we do receive it, we'd hold it confidentially. But I'm concerned that SB 339 may be interpreted as covering a broader universe of information, to the extent that

DOC would be required to treat youth in foster care differently from other youth whom we supervise on parole.

If you tell me that the above interpretation could never be made in your reading of SB 339, I'll accept your view and close my comments. SH

-----Original Message-----

From: Malaise, Gordon
Sent: Friday, February 11, 2000 12:05 PM
To: Lewis, Kevin
Cc: Hagan, Shelley M. DOC
Subject: RE: SB-339--Foster Parent Records

That is a good question, Kevin. Indeed, that is why the exception in the original draft was limited to social welfare agencies--why would law enforcement or the child's school or, indeed, the victim-witness coordinator or a fire investigator need to know information about the child's foster parents?

Gordon

-----Original Message-----

From: Lewis, Kevin
Sent: Friday, February 11, 2000 11:57 AM
To: Malaise, Gordon
Cc: Hagan, Shelley M. DOC
Subject: Re: SB-339--Foster Parent Records

This seems like a good possibility, although I do have one question before DHFS can endorse any change. (And maybe this is more for Corrections than for you as drafter.) 48.78(2b) concerns information about individuals in our care as foster kids, not the parents. Whereas SB 339 is specific to the records of the foster care parent. Why would the sharing of information about a foster care parent by Corrections need to mimic the same allowances provided for information about the foster care child?

(Shelley, if you have any examples or can elucidate your reasoning this would help not only me, but also the Senate Cmte on Human Services and Aging.)
Thanks.

>>> Malaise, Gordon 02/11/00 11:44AM >>>
Kevin and Shelley:

I can see why DOC would be concerned about disclosure of records to law enforcement agencies and schools. Specifically, ss. 48.78 (3) (b) and 938.78 (4) (b), as created by the bill, provide an exception for the confidential exchange of information between social welfare agencies, but do not provide for a similar exception for law enforcement agencies and schools. Sections 48.78 (3) (b) and 938.78 (4) (b) were modeled after ss. 48.78 (2) (b) and 938.78 (2) (b) 1., which include not only social welfare agencies, but also law enforcement agencies, schools and, in the case of s. 938.78 (2) (b) 1., victim-witness coordinators and fire investigators.

As such, it would be relatively easy to amend the bill to make s. 48.78 (3) (b) exactly parallel to s. 48.78 (2) (b) and to make s. 938.78 (4) (b) exactly parallel to s. 938.78 (2) (b) 1. If that is what you and DOC want me to do, please advise and I will draft an amendment to make that change forthwith.

Gordon M. Malaise
Senior Legislative Attorney
Legislative Reference Bureau
Phone: (608) 266-9738

Malaise, Gordon

From: Malaise, Gordon
Sent: Monday, February 07, 2000 11:26 AM
To: Hagan, Shelley M. DOC
Subject: RE: SB 339

Shelley:

Well, every legislative session is odd in its own way.

SB 339 was drafted at the behest of the DHFS budget office. It was originally included in the Governor's budget bill, but was yanked out and introduced separately. The thought process behind SB 339 appears to be that Title IV-E of the federal Social Security Act requires the states to keep confidential information about "persons receiving services from the states' foster care systems" and that foster parents arguably are included within the scope of those "persons receiving services". Because a delinquent or JIPS kid could be placed in foster care that is funded by IV-E moneys, SB 339 also amends the ch. 938 counterpart to s. 48.78.

For further information relating to the impetus behind SB 339, you might want to talk to Sherwood Seigel of the DHFS budget office 7-7605.

Gordon

-----Original Message-----

From: Hagan, Shelley M. DOC
Sent: Monday, February 07, 2000 10:31 AM
To: Malaise, Gordon
Subject: SB 339

Hi Gordon -

I hope this message finds you well, and enjoying this rather odd legislative session.

I'm trying to track down the impetus/intent behind 99 SB 339, re information about a substitute care parent.

Spoke with Sen. Wirch's office, who suggested it was intended to protect the license information for the sub-care parents, so as to not discourage people from becoming licensed for fear that their personal business would become public record.

If this is so, I'm wondering whether the provision in Ch. 938 is necessary, since DOC doesn't have the authority to license PF's. As it is, a broad construction would suggest that DOC would not be allowed to share certain information about a youth in foster care with, eg, the police and the school... because by doing so we would be sharing information "about" the foster parent - where they live, for example.

Am I just being an overly-sensitive bureaucrat? It would be great to know a little more about what's behind this bill, if you'd have a few minutes to write back or call me.

Thanks - Shelley



State of Wisconsin
1999 - 2000 LEGISLATURE

2000

LRBa1405/1
GMM.....

10
Jg

**SENATE AMENDMENT ,
TO 1999 SENATE BILL 339**

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 2, line 9: delete lines 9 to 12[✓] and substitute:

3 “(bm) Paragraph (a) does not apply to the confidential exchange of information
4 between an agency and another social welfare agency, a law enforcement agency, a
5 public school or a private school regarding an individual in the care or legal custody
6 of the agency. A social welfare agency that obtains information under this paragraph[✓]
7 shall keep the information confidential as required under this section and s. 938.78.

8 A law enforcement agency that obtains information under this paragraph shall keep
9 the information confidential as required under ss. 48.396 (1)[✓] and 938.396 (1). A
10 public school that obtains information under this paragraph shall keep the
11 information confidential as required under s. 188.125[✓] and a private school that
12 obtains information under this paragraph shall keep the information confidential in
13 the same manner as is required of a public school under s. 118.125.”.

1 **2.** Page 3, line 6: delete lines 6 to 9 and substitute:

2 “(bm) Paragraph (a) does not apply to the confidential exchange of information
3 between an agency and another social welfare agency, a law enforcement agency, the
4 victim-witness coordinator, a fire investigator under s. 165.55 (15), a public school
5 or a private school regarding an individual in the care or legal custody of the agency.
6 A social welfare agency that obtains information under this paragraph shall keep the
7 information confidential as required under this section and s. 48.78. A law
8 enforcement agency that obtains information under this paragraph shall keep the
9 information confidential as required under ss. 48.396 (1) and 938.396 (1). A public
10 school that obtains information under this paragraph shall keep the information
11 confidential as required under s. 188.125 and a private school that obtains
12 information under this paragraph shall keep the information confidential in the
13 same manner as is required of a public school under s. 118.125.”

14

(END)



State of Wisconsin
1999 - 2000 LEGISLATURE

LRBa1405/1 (2)
GMM;jlg:km RMR

3/1 8:00 AM

SENATE AMENDMENT,
TO 1999 SENATE BILL 339

✓ 118.125

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2 1. Page 2, line 9: delete lines 9 to 12 and substitute:

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4 between an agency and another social welfare agency, a law enforcement agency, a

5 public school or a private school regarding an individual in the care or legal custody

6 of the agency. A social welfare agency that obtains information under this paragraph

7 shall keep the information confidential as required under this section and s. 938.78.

8 A law enforcement agency that obtains information under this paragraph shall keep

9 the information confidential as required under ss. 48.396 (1) and 938.396 (1). A

10 public school that obtains information under this paragraph shall keep the

11 information confidential as required under s. ~~118.125~~ and a private school that

12 obtains information under this paragraph shall keep the information confidential in

13 the same manner as is required of a public school under s. 118.125."

Barman, Mike

From: Darman, Mike
Sent: Wednesday, March 01, 2000 8:55 AM
To: Lewis, Kevin
Cc: Malaise, Gordon
Subject: LRB 99a1405/2

Kevin ...

LRB 99a1405/2 is ready to go. We need the amendment jacket back from the "/1" version before we can release "/2".

Thanks,

Mike Barman

Mike Barman - Senior Program Asst. (PH. 608-266-3561)
(E-Mail: mike.barman@legis.state.wi.us) (FAX: 608-264-6948)

State of Wisconsin
Legislative Reference Bureau - Legal Section - Front Office
100 N. Hamilton Street - 5th Floor
Madison, WI 53703

Barman, Mike

From: Lewis, Kevin
Sent: Wednesday, March 01, 2000 8:59 AM
To: Barman, Mike
Cc: Malaise, Gordon
Subject: Re: LRB 99a1405/2

thanks Mike. I think both /1's should be back (or on their way back) to your offices by now. If you don't have them by noon, please let me know.

Kevin

>>> Barman, Mike 03/01/00 08:54AM >>>
Kevin ...

LRB 99a1405/2 is ready to go. We need the amendment jacket back from the "/1" version before we can release "/2".

Thanks,

Mike Barman
Mike Barman - Senior Program Asst. (PH 608-266-3561)
(E-Mail: mike.barman@legis.state.wi.us) (FAX: 608-264-6948)

State of Wisconsin
Legislative Reference Bureau - Legal Section - Front Office
100 N. Hamilton Street - 5th Floor
Madison, WI 53703