

1999 DRAFTING REQUEST

Bill

Received: **01/18/2000**

Received By: **malaigm**

Wanted: **As time permits**

Identical to LRB:

For: **Judy Robson (608) 266-2253**

By/Representing: **Aide**

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:

Draft a senate companion for LRB99-2177/5.

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 01/18/2000	chanaman 01/18/2000		_____			S&L
/1			martykr 01/18/2000	_____	lrb_docadmin 01/18/2000	lrb_docadmin 01/24/2000	

FE Sent For:

<END>

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~~1999 ASSEMBLY BILL 647~~

1
~~January 11, 2000 - Introduced by Representative LADWIG, cosponsored by Senator ROBSON. Referred to Committee on Children and Families.~~

refer
act

1 AN ACT *to repeal* 48.27 (3) (a) 1m., 48.42 (2g) (am) and 938.27 (3) (a) 1m.; *to*
2 *renumber* 48.43 (5) (b); *to renumber and amend* 48.355 (2b) and 938.355
3 (2b); *to amend* 20.435 (3) (pm), 48.27 (3) (a) 2., 48.27 (6), 48.355 (2d) (a) 1.,
4 48.355 (2d) (a) 2., 48.355 (2d) (b) (intro.), 48.355 (2d) (b) 2., 48.355 (2d) (b) 3.,
5 48.355 (2d) (b) 4., 48.38 (5) (b), 48.42 (2g) (b), 48.427 (1m), 938.27 (3) (a) 2.,
6 938.27 (6), 938.355 (2d) (a) 1., 938.355 (2d) (a) 2., 938.355 (2d) (b) (intro.),
7 938.355 (2d) (b) 2., 938.355 (2d) (b) 3., 938.355 (2d) (b) 4., 938.365 (1) and 938.38
8 (5) (b); and *to create* 48.355 (2d) (a) 1d., 48.355 (2d) (a) 1j., 48.355 (2d) (a) 3.,
9 48.355 (2d) (d), 48.38 (4) (am), 48.43 (5) (b) 2., 938.355 (2d) (a) 1d., 938.355 (2d)
10 (a) 1j., 938.355 (2d) (a) 3., 938.355 (2d) (d) and 938.38 (4) (am) of the statutes;
11 **relating to:** the efforts that are required to prevent the removal of a child or
12 juvenile from the home or to make it possible for a child or juvenile to return
13 safely to his or her home when a juvenile court order places the child or juvenile
14 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 foster
2 parent, treatment foster parent or other substitute care provider of a child or
3 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.

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

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(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 reasonable efforts to place the child with a guardian or in some alternative permanent placement. 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 terminating 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.

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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) 1m. 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~~
21 ~~who is the subject of the proceeding is in the care of a foster parent, treatment foster~~

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

4 SECTION 5. 48.355 (2b) of the statutes is renumbered 48.355 (2b) (intro.) and
5 amended to read:

6 48.355 (2b) CONCURRENT REASONABLE EFFORTS PERMITTED. (intro.) 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., ~~work~~ do one or both of the
11 following:

12 (a) Work with the department, a county department under s. 48.57 (1) (e) or
13 (hm) or a child welfare agency licensed under s. 48.61 (5) in making reasonable
14 efforts to place the child for adoption,

15 (b) Work with the department, a county department or a child welfare agency
16 in making reasonable efforts to place the child with a guardian or in some other
17 alternative permanent placement.

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

19 48.355 (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
24 s. 48.13 (2) or under a law of any other state or a federal law that is comparable to
25 s. 48.13 (2), as evidenced by a final order of a court of competent jurisdiction.

ASSEMBLY BILL 647**SECTION 7**

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

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

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

5 48.355 (2d) (a) 1j. “Chronic abuse” means 2 or more violations of s. 940.19 (1)
6 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,
7 if that violation would be a violation of s. 940.19 (1) or (6) or 948.03 (2) (b) or (c) or
8 (3) (b) or (c) if committed in this state, that result in bodily harm, as defined in s.
9 939.22 (4), as evidenced by final judgments of conviction on 2 or more separate
10 occasions.

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

12 48.355 (2d) (a) 2. “Sexual abuse” means a violation of s. 940.225, 944.30,
13 948.02, 948.025, 948.05, 948.055, 948.06, 948.09 or 948.10 or a violation of the law
14 of any other state or federal law if that violation would be a violation of s. 940.225,
15 944.30, 948.02, 948.025, 948.05, 948.055, 948.06, 948.09 or 948.10 if committed in
16 this state, as evidenced by a final judgment of conviction.

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

18 48.355 (2d) (a) 3. “Torture” means a violation of s. 940.21 or 948.04 (1) or a
19 violation of the law of any other state or federal law if that violation would be a
20 violation of s. 940.21 or 948.04 (1) if committed in this state, as evidenced by a final
21 judgment of conviction.

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

23 48.355 (2d) (b) (intro.) Notwithstanding sub. (2) (b) 6., the court need not
24 include in a dispositional order a finding as to whether the county department, the
25 department, in a county having a population of 500,000 or more, or the agency

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

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

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

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

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

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

ASSEMBLY BILL 647**SECTION 14**

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.

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

22 48.38 (4) (am) Any efforts to place the child for adoption, with a guardian or
23 in some other alternative permanent placement that were made under s. 48.355 (2b)
24 at the same time as the services described in par. (a) were offered or provided or, if
25 those efforts were not made, the basis for the decision not to make those efforts.

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

2 48.38 (5) (b) The court or the agency shall notify the parents of the child, the
3 child if he or she is 12 years of age or older and the child's foster parent, the child's
4 treatment foster parent or the operator of the facility in which the child is living of
5 the date, time and place of the review, of the issues to be determined as part of the
6 review, of the fact that they may have an opportunity to be heard at the review by
7 submitting written comments not less than 10 working days before the review or by
8 participating at the review. The court or agency shall notify the person representing
9 the interests of the public, the child's counsel and the child's guardian ad litem of the
10 date of the review, of the issues to be determined as part of the review and of the fact
11 that they may submit written comments not less than 10 working days before the
12 review. Any written or oral statement made to the court under this paragraph by a
13 foster parent, treatment foster parent or operator of a facility in which a child is
14 living shall be made under oath or affirmation. The notices under this paragraph
15 shall be provided in writing not less than 30 days before the review and copies of the
16 notices shall be filed in the child's case record.

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

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

19 48.42 (2g) (b) Failure to give notice under par. (a) to a foster parent, treatment
20 foster parent or other physical custodian described in s. 48.62 (2) does not deprive the
21 court of jurisdiction in the proceeding. If a foster parent, treatment foster parent or
22 other physical custodian described in s. 48.62 (2) is not given notice of a hearing
23 under par. (a) and if the court is required under s. 48.427 (1m) to permit that person
24 to make a written or oral statement during the hearing or to submit a written
25 statement prior to the hearing and that person does not make or submit such a

ASSEMBLY BILL 647**SECTION 19**

1 statement, that person may request a rehearing on the matter at any time prior to
2 the entry of an order under s. 48.427 (2) or (3). If the request is made, the court shall
3 order a rehearing.

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

5 48.427 (1m) In addition to any evidence presented under sub. (1), the court
6 shall give the foster parent, treatment foster parent or other physical custodian
7 described in s. 48.62 (2) of the child an opportunity to be heard at the dispositional
8 hearing by permitting the foster parent, treatment foster parent or other physical
9 custodian to make a written or oral statement during the dispositional hearing, or
10 to submit a written statement prior to disposition, relevant to the issue of disposition.

11 Any written or oral statement made under this subsection shall be made under oath
12 or affirmation. A foster parent, treatment foster parent or other physical custodian
13 described in s. 48.62 (2) who receives notice of a hearing under s. 48.42 (2g) (a) and
14 an opportunity to be heard under this subsection does not become a party to the
15 proceeding on which the hearing is held solely on the basis of receiving that notice
16 and opportunity to be heard.

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

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

19 48.43 (5) (b) 2. The court shall give a foster parent, treatment foster parent or
20 other physical custodian described in s. 48.62 (2) who is notified of a hearing under
21 subd. 1. an opportunity to be heard at the hearing by permitting the foster parent,
22 treatment foster parent or other physical custodian to make a written or oral
23 statement during the hearing, or to submit a written statement prior to the hearing,
24 relevant to the issues to be determined at the hearing. Any written or oral statement
25 made under this subdivision shall be made upon oath or affirmation. A foster parent,

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

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

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

7 938.27 (3) (a) 2. Failure to give notice under subd. 1. to a foster parent,
8 treatment foster parent or other physical custodian described in s. 48.62 (2) does not
9 deprive the court of jurisdiction in the action or proceeding. If a foster parent,
10 treatment foster parent or other physical custodian described in s. 48.62 (2) is not
11 given notice of a hearing under subd. 1. and if the court is required under this chapter
12 to permit that person to make a written or oral statement during the hearing or to
13 submit a written statement prior to the hearing and that person does not make or
14 submit such a statement, that person may request a rehearing on the matter during
15 the pendency of an order resulting from the hearing. If the request is made, the court
16 shall order a rehearing.

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

18 938.27 (6) When a proceeding is initiated under s. 938.14, 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~~
21 ~~juvenile who is the subject of the proceeding is in the care of a foster parent,~~
22 ~~treatment foster parent or other physical custodian described in s. 48.62 (2), the court~~
23 ~~shall give the foster parent, treatment foster parent or other physical custodian~~
24 ~~notice and an opportunity to be heard as provided in sub. (3) (a).~~

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1 SECTION 26. 938.355 (2b) of the statutes is renumbered 938.355 (2b) (intro.) and
2 amended to read:

3 938.355 (2b) CONCURRENT REASONABLE EFFORTS PERMITTED. (intro.) 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 (2) (b) 6., work do one or both of the following:

8 (a) Work with the department of health and family services, a county
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.,

11 (b) Work with the department of health and family services, a county
12 department or a child welfare agency in making reasonable efforts to place the child
13 with a guardian or in some other alternative permanent placement.

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

15 938.355 (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 28. 938.355 (2d) (a) 1d. of the statutes is created to read:

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

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

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1 938.355 (2d) (a) 1j. “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 30.** 938.355 (2d) (a) 2. of the statutes is amended to read:

8 938.355 (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 31.** 938.355 (2d) (a) 3. of the statutes is created to read:

14 938.355 (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 32.** 938.355 (2d) (b) (intro.) of the statutes is amended to read:

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

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

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

5 938.355 (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 34.** 938.355 (2d) (b) 3. of the statutes is amended to read:

12 938.355 (2d) (b) 3. That the parent has committed a violation of s. 940.19 (2),
13 (3), (4) or (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025 or 948.03 (2) (a) or (3) (a)
14 or a violation of the law of any other state or federal law, if that violation would be
15 a violation of s. 940.19 (2), (3), (4) or (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025
16 or 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 ~~938.22~~ 939.22 (14), or in substantial bodily harm, as defined in s. ~~938.22~~ 939.22 (38),
19 to the juvenile or another child of the parent.

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

21 938.355 (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 36.** 938.355 (2d) (d) of the statutes is created to read:

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1 938.355 (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 juvenile, if 12 years of age or over, any
3 parent, guardian and legal custodian of the juvenile and any foster parent, treatment
4 foster parent or other physical custodian described in s. 48.62 (2) of the juvenile of
5 the 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 37.** 938.365 (1) of the statutes is amended to read:

18 938.365 (1) In this section, a juvenile is considered to have been placed outside
19 of his or her home on the date on which the juvenile was first placed outside of his
20 or her home pursuant to an order under ~~this section~~ or s. 938.345, or 938.357 ~~or~~
21 938.363 or on the date that is 60 days after the date on which the juvenile was
22 removed from his or her home, whichever is earlier.

23 **SECTION 38.** 938.38 (4) (am) of the statutes is created to read:

24 938.38 (4) (am) Any efforts to place the juvenile for adoption, with a guardian
25 or in some other alternative permanent placement that were made under s. 938.355

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1 (2b) at the same time as the services described in par. (a) were offered or provided
2 or, if those efforts were not made, the basis for the decision not to make those efforts.

3 **SECTION 39.** 938.38 (5) (b) of the statutes is amended to read:

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

20 **SECTION 40. Initial applicability.**

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

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1 (2) PERMANENCY PLAN FILINGS. The treatment of sections 48.38 (4) (am) and
2 938.38 (4) (am) of the statutes first applies to permanency plans that are filed with
3 the court assigned to exercise jurisdiction under chapters 48 and 938 of the statutes
4 on the effective date of this subsection.

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

11 (4) PERMANENCY PLAN HEARINGS. The treatment of sections 48.355 (2d) (d) and
12 938.355 (2d) (d) of the statutes first applies to permanency plan hearings held 10
13 days after the effective date of this subsection.

14 (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: 01/18/2000

To: Senator Robson

Relating to LRB drafting number: LRB-4256

Tonic

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 Judy Robson
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