

1999 DRAFTING REQUEST

Bill

Received: 02/11/2000

Received By: malaigm

Wanted: Soon

Identical to LRB:

For: Health and Family Services 6-3262

By/Representing: Kevin Lewis

This file may be shown to any legislator: NO

Drafter: malaigm

May Contact:

Alt. Drafters:

Subject: Children - TPR and adoption

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Jurisdictional barriers to adoption

Instructions:

Draft senate companion to LRB-4484/1.

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 02/11/2000	jgeller 02/11/2000		_____			S&L
/1			jfrantze 02/14/2000	_____	lrb_docadmin 02/14/2000		S&L
/2	malaigm 02/22/2000	jgeller 02/22/2000	jfrantze 02/23/2000	_____	lrb_docadmin 02/23/2000	lrb_docadmin 02/25/2000	

FE Sent For:

<END>

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<END>

for Senator Plache
(sent to)

Oked by
Kevin
Lewis

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/?	malaigm	1 2/11 jlg	2/14	2/14			

FE Sent For:

<END>

Malaise, Gordon

From: Lewis, Kevin
Sent: Friday, February 11, 2000 8:32 AM
To: Malaise, Gordon
Subject: two requests

good morning.

I have two (hopefully simple) issues:

(1) Adoptive placements
Can you please draft a companion bill to LRB 4484/1 for the Senate?
(And can you please e-mail me the text of LRB 4484/1?)

(2) Foster care records
DOC may have a problem with SB 339 b/c they think it restricts their ability to share information with school districts and law enforcement. Do you have any thoughts on this? I will be talking more with our program staff and Corrections, but want to alert you that we may need to discuss a possible amendment.

Thank you.

Soon

1999 - 2000 LEGISLATURE

Draft

45341

LRB-4484/1

GMM/jlg/jf

1999 BILL

Regen

- 1 AN ACT *to amend* 48.833 of the statutes; **relating to:** the placement of a child
2 for adoption outside of the county where the child is located.

Analysis by the Legislative Reference Bureau

Under current law, the department of health and family services (DHFS), a county department of human services or social services (county department) or a child welfare agency may place a child for adoption in a licensed foster home without a court order if DHFS, the county department or the child welfare agency is the guardian of the child or makes the placement at the request of another agency that is the guardian of the child. Current law requires DHFS, a county department or a child welfare agency, before placing a child for adoption, to consider the availability of a placement for adoption with a relative of the child. In addition, current federal law prohibits a state that is receiving federal foster care and adoption assistance moneys under Title IV-E of the federal Social Security Act from denying or delaying the adoptive placement of a child when an approved family is available outside of the jurisdiction that is responsible for handling the case of the child. This bill prohibits DHFS, a county department or a child welfare agency from denying or delaying the placement of a child for adoption when a family that has been approved as an adoptive placement for the child is available outside of the county where the child is located.

BILL

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.** 48.833 of the statutes is amended to read:

2 **48.833 Placement of children for adoption by the department, county**
3 **departments and child welfare agencies.** The department, a county department
4 under s. 48.57 (1) (c) or (hm) or a child welfare agency licensed under s. 48.60 may
5 place a child for adoption in a licensed foster home or a licensed treatment foster
6 home without a court order if the department, county department under s. 48.57 (1)
7 (e) or (hm) or the child welfare agency is the guardian of the child or makes the
8 placement at the request of another agency which is the guardian of the child. Before
9 placing a child for adoption under this section, the department, county department
10 or child welfare agency making the placement shall consider the availability of a
11 placement for adoption with a relative of the child who is identified in the child's
12 permanency plan under s. 48.38 or 938.38 or who is otherwise known by the
13 department, county department or child welfare agency. The department, county
14 department or child welfare agency may not deny or delay the placement of a child
15 for adoption when a family that has been approved as an adoptive placement for the
16 child is available outside of the county where the child is located. When a child is
17 placed under this section in a licensed foster home or a licensed treatment foster
18 home for adoption, the department, county department or child welfare agency
19 making the placement shall enter into a written agreement with the adoptive parent,
20 which shall state the date on which the child is placed in the licensed foster home or
21 licensed treatment foster home for adoption by the adoptive parent.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

4534/12n
LRB-4484/1dn
GMM/jlgjf

February 7, 2000 } new date

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

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

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4534/1dn

GMM:jlg:jf

February 14, 2000

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

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



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-4534/2

GMM:jlg:jf

RWR

1999 BILL

- 1 *Regen*
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2 for adoption outside of the county where the child is located.

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appropriate ✓

BILL

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:

SECTION 1. 48.833^X of the statutes is amended to read:

48.833 **Placement of children for adoption by the department, county departments and child welfare agencies.** The department, a county department under s. 48.57 (1) (e) or (hm) or a child welfare agency licensed under s. 48.60 may place a child for adoption in a licensed foster home or a licensed treatment foster home without a court order if the department, county department under s. 48.57 (1) (e) or (hm) or the child welfare agency is the guardian of the child or makes the placement at the request of another agency which is the guardian of the child. Before placing a child for adoption under this section, the department, county department or child welfare agency making the placement shall consider the availability of a placement for adoption with a relative of the child who is identified in the child's permanency plan under s. 48.38 or 938.38 or who is otherwise known by the department, county department or child welfare agency. The department, county department or child welfare agency may not deny or delay the placement of a child for adoption when a family that has been approved as an adoptive placement for the child is available outside of the county where the child is located. When a child is placed under this section in a licensed foster home or a licensed treatment foster home for adoption, the department, county department or child welfare agency making the placement shall enter into a written agreement with the adoptive parent, which shall state the date on which the child is placed in the licensed foster home or licensed treatment foster home for adoption by the adoptive parent.

Appropriate

**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: 02/23/2000

To: Health and Family Services (Kevin Lewis)

Relating to LRB drafting number: LRB-4534

Topic

Jurisdictional barriers to adoption

Subject(s)

Children - TPR and adoption

1. **JACKET** the draft for introduction

Jim Plache (Senator Plache)

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