

1/20/99 9:45:54 AM

Page 1

1999 DRAFTING REQUEST**Bill**Received: **09/9/98**Received By: **malaigm**Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget 6-2288**By/Representing: **Fossum**This file may be shown to any legislator: **NO**Drafter: **malaigm**

May Contact:

Alt. Drafters:

Subject: **Children - out-of-home placement**Extra Copies: **DHFS**

Topic:

DOA:.....Fossum - Foster parent records

Instructions:

See Attached

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>
/1	malaigm 09/30/98	gilfokm 10/2/98	lpaasch 10/5/98	_____	lrb_docadmin 10/5/98		
/2	malaigm 12/22/98	gilfokm 12/22/98	jfrantze 12/23/98	_____	lrb_docadmin 12/23/98		
/3	malaigm 01/19/99	gilfokm 01/19/99	jfrantze 01/20/99	_____	lrb_docadmin 01/20/99		

FE Sent For:

<END>

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FE Sent For: *13-1-19-99*
smg *Jb/1/20* *Jb/hh*
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FE Sent For:		12-12-22 King	12/23	12/23 J/KM <END>			

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1?	malaigm	1-10-2 King	10-5-97	10-5-97 KS			

FE Sent For:

<END>

DHFS

Department of Health and Family Services
1997-99 Biennial Budget Statutory Language Request

June 29, 1998

48.78

Title: Foster Parent Records

938.78

Current Language

Under current statutes, various statutory confidentiality provisions cover some records. Information in foster parent records is generally not specifically covered. For example, a foster parent's medical records are covered, but the family history and references and other information are not covered by the confidentiality provisions of the statutes.

Proposed Change

It is proposed that section 48.78 be amended to include a provision concerning confidentiality of foster parent, treatment foster parent and family-operated group home parent records. In this section, no agency (the department, a county department or a licensed child welfare agency) would be permitted to make available for inspection, or disclose the contents of any record maintained by the agency relating to a foster parent, treatment foster parent or family-operated group home parent or a member of the foster parent's, treatment foster parent's or family-operated group home parent's family, except as otherwise specifically provided by statute, or by order of the court, (without the permission of the foster parent, treatment foster parent or family-operated group home parent.

Specify

written

- statute
- order
- permission

Effect of the Change

Under current law, it is unclear as to whether a foster parent's file is an open record or not. As such, the balancing test of privacy vs. the public's right to know must be used. The proposed language clarifies that such records may only be released under certain circumstances.

confidential exchange?
names
addresses
of placement,
permplan

Rationale for the Change

In order to adequately meet their responsibility to protect the health, safety and welfare of children, licensing agencies must have access to very personal and private information about potential foster parents. If foster parents and individuals asked to provide references for foster parents cannot be guaranteed a certain level of confidentiality about what they disclose, it is highly likely that they will not offer the kinds and levels of information that are critical to the determination regarding whether to license or not license them as foster parents.

Except 48.33(5)

938.33(6)

48.355 (2)(b)2.

938.355 (2)(b)2.

48.481 (7)

Lack of confidentiality provisions in the statutes makes it more difficult to recruit foster parents. When foster care placements are not available to child protective services agencies, they are forced to find other, more costly and less appropriate placements, such as temporary shelters, group homes and CCIs.

Desired Effective Date: Passage of Budget Bill
Agency: DHFS
Agency Contact: Sherwood Seigel
Phone: 267-7805

DHFS Rules ch. 55

* - background check

- insurance

- health exam

* - 3 references

- fire safety

- water supply

- employment history

- other

Qualifications

P. is qualified

- no drugs or alcohol

- stable income

- good health

- crim. record - relate to foster care

- insurance



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0086/1

GMM.....

mg

Soon
Date

DOA:.....Fossum – Foster parent records

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

1

*Don't
Gen. Asst.*
AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

CORRECTIONAL SYSTEM

JUVENILE ~~CORRECTIONAL~~ SYSTEM

Under current law, subject to certain exceptions, the department of corrections (DOC), a county department of human services or social services or a licensed child welfare agency (collectively "agency") may not make available for inspection or disclose the contents of any record kept or information received about an individual in the care or legal custody of the agency except by order of the court assigned to exercise jurisdiction under the juvenile justice code (juvenile court). Current law, however, is silent as to the confidentiality of records kept and information received relating to a foster parent, treatment foster parent or family-operated group home parent (substitute care parent). This bill prohibits an agency from making available for inspection or disclosing the contents of any record kept or information received relating to a substitute care parent or a family member of a substitute care parent without first receiving the written permission of the substitute care parent, except by order of the juvenile court. The bill, however, does not prohibit an agency from disclosing to the juvenile's parent, guardian or legal custodian the name and address of the substitute care parent or from including the location of the juvenile's placement in the juvenile's permanency plan.

HEALTH AND HUMAN SERVICES**CHILDREN**

Under current law, subject to certain exceptions, the department of health and family services (DHFS), a county department of human services or social services or a licensed child welfare agency (collectively “agency”) may not make available for inspection or disclose the contents of any record kept or information received about an individual in the care or legal custody of the agency except by order of the court assigned to exercise jurisdiction under the children’s code (juvenile court). Current law, however, is silent as to the confidentiality of records kept and information received relating to a foster parent, treatment foster parent or family–operated group home parent (substitute care parent). This bill prohibits an agency from making available for inspection or disclosing the contents of any record kept or information received relating to a substitute care parent or a family member of a substitute care parent without first receiving the written permission of the substitute care parent, except by order of the juvenile court. The bill, however, does not prohibit an agency from disclosing to the child’s parent, guardian or legal custodian the name and address of the substitute care parent or from including the location of the child’s placement in the child’s permanency plan.

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

1 **SECTION 1.** 48.78 (3) of the statutes is created to read:

2 **48.78 (3) (a)** Except as provided under par. (b) or by order of the court, no agency
3 may make available for inspection or disclose the contents of any record kept or
4 information received relating to a foster parent, treatment foster parent or
5 family–operated group home, as defined in s. 48.627 (1), parent or a family member
6 of a foster parent, treatment foster parent or family–operated group home parent
7 without first receiving the written permission of the foster parent, treatment foster
8 parent or family–operated group home parent.

9 (b) Paragraph (a) does not prohibit an agency from disclosing the name and
10 address of a foster parent, treatment foster parent or family–operated group home
11 parent under s. 48.20 (8), 48.227 (2), 48.33 (5), 48.355 (2) (b) 2., 48.357 (1) or (2m) or
12 48.38 (4) (c).

1 **SECTION 2.** 938.78 (4) of the statutes is created to read:

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12 or (c) 3. or 938.38 (4) (c) or from disclosing to the parent, guardian or legal custodian
13 of a juvenile the location of an alternate placement of the juvenile under s. (3)

14 (a) 1p.

15

(END)

D.M. etc

938.538

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

LRB-0086/1dn

GMM.....

Amey

Your instructions suggested as an exception to the foster parent confidentiality requirement the language "except as otherwise specifically provided by statute". Such a broad exception does not conform to LRB drafting requirements because it gives the reader no idea as to what those exceptions actually are. Accordingly, this draft contains specific cross-references to statutes that permit the disclosure of information about a foster parent. Generally, those exceptions relate to including the location of the child's placement in the child's permanency plan and notifying the child's parents as to the placement of the child. Please have your foster care people review their policies in light of this draft to determine whether there are any other specific instances in which they would want to disclose the contents of a foster parent's file.

In addition, please note that this draft also makes the parallel changes to ch. 938.

Gordon M. Malaise
Senior Legislative Attorney
266-9738

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LRB-0086/1dn
GMM:kmg:lp

October 5, 1998

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State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0086/12

GMM:kmg:lp RMR

2000

DOA:.....Fossum – Foster parent records

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

1

*Don't
Get Cut*
AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

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From making available for inspection or disclosing the contents of a record as permitted under the child abuse and neglect reporting law, ~~the~~

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From making available for inspection or disclosing the contents of a record under s. 48.981 (7) or



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0086/2
GMM:kmg:jf
3
RMR

DOA:.....Fossum – Foster parent records

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

does not apply to the confidential exchange of information between an agency and another social welfare agency. The bill also

1 AN ACT, ^{it} relating to: the budget.
_{Don't}
_{Gen. Stat.}

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pers. to (d)

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8 parent or family-operated group home parent.

Insert
2-8

9 (d) Paragraph (a) does not prohibit an agency from making available for
10 ~~inspection or disclosing the contents of a record under s. 48.981 (7) or from disclosing~~
11 the name and address of a foster parent, treatment foster parent or family-operated

1 group home parent under s. 48.20 (8), 48.227 (2), 48.33 (5), 48.355 (2) (b) 2., 48.357
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par. and (c)

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Insert
3-10

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14 or (c) 3. or 938.38 (4) (c) or from disclosing to the parent, guardian or legal custodian
15 of a juvenile the location of an alternate placement of the juvenile under s. 938.538
16 (3) (a) 1p.

(END)

17

Insert 2-8 ✓

(b) Paragraph (a) does not apply to the confidential exchange of information between an agency and another social welfare agency. A social welfare agency that obtains information under this paragraph shall keep the information confidential as required under this section and s. 938.78.

(c) Paragraph (a) does not prohibit an agency from making available for inspection or disclosing the contents of a record under s. 48.981(7). ~~that obtains~~

(end of insert)

Insert ~~page~~ 3-10 ✓

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(end of insert)



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0086/3
GMM:kmg:jf

DOA:.....Fossum – Foster parent records

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

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3 (c) Paragraph (a) does not prohibit an agency from making available for
4 inspection or disclosing the contents of a record under s. 48.981 (7).

5 (d) Paragraph (a) does not prohibit an agency from disclosing the name and
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2 (3) (a) 1p.

3 (END)