

1 **SECTION 133.** 938.357 (3) of the statutes is amended to read:

2 938.357 (3) Subject to sub. (4) (b) and (c) and (5) (e), if the proposed change in
3 placement would involve placing a juvenile in a secured correctional facility, a
4 secured child caring institution, or a secured group home, notice shall be given as
5 provided in sub. (1) (b) 1. A hearing shall be held, unless waived by the juvenile,
6 parent, guardian, and legal custodian, before the judge makes a decision on the
7 request. The juvenile shall be entitled to counsel at the hearing, and any party
8 opposing or favoring the proposed new placement may present relevant evidence and
9 cross-examine witnesses. The proposed new placement may be approved only if the
10 judge finds, on the record, that the conditions set forth in s. 938.34 (4m) have been
11 met.

12 History: 1995 a. 27 s. 9126 (19); 1995 a. 77, 275, 352; 1997 a. 27, 35, 80, 205, 237; 1999 a. 9, 103; 2001 a. 16.

12 **SECTION 134.** 938.357 (4) (b) 2. of the statutes, as affected by 2001 Wisconsin
13 Act 16, is amended to read:

14 938.357 (4) (b) 2. If a juvenile whom the court has placed in a Type 2 child
15 caring institution under s. 938.34 (4d) violates a condition of his or her placement in
16 the Type 2 child caring institution, the child welfare agency operating the Type 2
17 child caring institution shall notify the county department that has supervision over
18 the juvenile and, if the county department agrees to a change in placement under this
19 subdivision, the child welfare agency shall notify the department, and the
20 department, after consulting with the child welfare agency, may place the juvenile
21 in a Type 1 secured correctional facility under the supervision of the department,
22 without a hearing under sub. (1) (b) 2., for not more than 10 days. If a juvenile is
23 placed in a Type 1 secured correctional facility under this subdivision, the county
24 department that has supervision over the juvenile shall reimburse the child welfare

1 agency operating the Type 2 child caring institution in which the juvenile was placed
2 at the rate established under s. 46.037, and that child welfare agency shall reimburse
3 the department at the rate specified in s. 301.26 (4) (d) 2. or 3., whichever is
4 applicable, for the cost of the juvenile's care while placed in a Type 1 secured
5 correctional facility.

6 **History:** 1995 a. 27 s. 9126 (19); 1995 a. 77, 275, 352; 1997 a. 27, 35, 80, 205, 237; 1999 a. 9, 103; 2001 a. 16.

SECTION 135. 938.357 (4) (c) 1. of the statutes is amended to read:

7 938.357 (4) (c) 1. If a juvenile is placed in a Type 2 secured correctional facility
8 operated by a child welfare agency under par. (a) and it appears that a less restrictive
9 placement would be appropriate for the juvenile, the department, after consulting
10 with the child welfare agency that is operating the Type 2 secured correctional
11 facility in which the juvenile is placed, may place the juvenile in a less restrictive
12 placement, and may return the juvenile to the Type 2 secured correctional facility
13 without a hearing under sub. (1) (b) 2. The child welfare agency shall establish a rate
14 for each type of placement in the manner provided in s. 46.037.

15 **History:** 1995 a. 27 s. 9126 (19); 1995 a. 77, 275, 352; 1997 a. 27, 35, 80, 205, 237; 1999 a. 9, 103; 2001 a. 16.

SECTION 136. 938.357 (4) (c) 2. of the statutes is amended to read:

16 938.357 (4) (c) 2. If a juvenile is placed in a Type 2 child caring institution under
17 s. 938.34 (4d) and it appears that a less restrictive placement would be appropriate
18 for the juvenile, the child welfare agency operating the Type 2 child caring
19 institution shall notify the county department that has supervision over the juvenile
20 and, if the county department agrees to a change in placement under this
21 subdivision, the child welfare agency may place the juvenile in a less restrictive
22 placement. A child welfare agency may also, with the agreement of the county
23 department that has supervision over a juvenile who is placed in a less restrictive
24 placement under this subdivision, return the juvenile to the Type 2 child caring

1 institution without a hearing under sub. (1) (b) 2. The child welfare agency shall
2 establish a rate for each type of placement in the manner provided in s. 46.037.

History: 1995 a. 27 s. 9126 (19); 1995 a. 77, 275, 352; 1997 a. 27, 35, 80, 205, 237; 1999 a. 9, 103; 2001 a. 16.

3 **SECTION 137.** 938.357 (4) (d) of the statutes is amended to read:

4 938.357 (4) (d) The department may transfer a juvenile who is placed in a Type
5 1 secured correctional facility to the Racine youthful offender correctional facility
6 named in s. 302.01 if the juvenile is 15 years of age or over and the office of juvenile
7 offender review in the department has determined that the conduct of the juvenile
8 in the Type 1 secured correctional facility presents a serious problem to the juvenile
9 or others. The factors that the office of juvenile offender review may consider in
10 making that determination shall include, but are not limited to, whether and to what
11 extent the juvenile's conduct in the Type 1 secured correctional facility is violent and
12 disruptive, the security needs of the Type 1 secured correctional facility, and whether
13 and to what extent the juvenile is refusing to cooperate or participate in the
14 treatment programs provided for the juvenile in the Type 1 secured correctional
15 facility. Notwithstanding sub. (1) (b) 2., a juvenile is not entitled to a hearing
16 regarding the department's exercise of authority under this paragraph unless the
17 department provides for a hearing by rule. A juvenile may seek review of a decision
18 of the department under this paragraph only by the common law writ of certiorari.
19 If the department transfers a juvenile under this paragraph, the department shall
20 send written notice of the transfer to the parent, guardian, legal custodian and
21 committing court.

~~NOTE: NOTE: The provisions of par. (d) that subject a juvenile to placement in an adult (Type 1) prison were held to violate Article I, s. 7 of the Wisconsin Constitution and the 6th and 14th amendments of the U. S. Constitution and to be severed from the remainder of ch. 938 by the Supreme Court in *State of Wisconsin v. Hezzie B.* 219 Wis. 2d 849, 580 N.W.2d 660 (1998).NOTE:~~

History: 1995 a. 27 s. 9126 (19); 1995 a. 77, 275, 352; 1997 a. 27, 35, 80, 205, 237; 1999 a. 9, 103; 2001 a. 16.

22 **SECTION 138.** 938.357 (5) (a) of the statutes is amended to read:

1 938.357 (5) (a) The department or a county department, whichever has been
2 designated as a juvenile's aftercare provider under s. 938.34 (4n), may revoke the
3 aftercare status of that juvenile. Revocation of aftercare supervision shall not
4 require prior notice under sub. (1) (b) 1. ✓

5 **History:** 1995 a. 27 s. 9126 (19); 1995 a. 77, 275, 352; 1997 a. 27, 35, 80, 205, 237; 1999 a. 9, 103; 2001 a. 16.

5 **SECTION 139.** 938.357 (6) of the statutes is amended to read:

6 938.357 (6) No change in placement may extend the expiration date of the
7 original order, except that if the change in placement is from a placement in the
8 juvenile's home to a placement in a foster home, treatment foster home, group home,
9 or child caring institution or in the home of a relative, ✓ the court may extend the
10 expiration date of the original order to the date on which the juvenile reaches 18
11 years of age or to the date that is one year after the date of the change in placement
12 order, whichever is later, or for a shorter period of time as specified by the court. If
13 the change in placement is from a placement in a foster home, treatment foster home,
14 group home, or child caring institution or in the home of a relative to a placement in
15 the juvenile's home and if the expiration date of the original order is more than one
16 year after the date of the change in placement order, the court shall shorten the
17 expiration date of the original order to the date that is one year after the date of the
18 change in placement order or to an earlier date as specified by the court.

19 **History:** 1995 a. 27 s. 9126 (19); 1995 a. 77, 275, 352; 1997 a. 27, 35, 80, 205, 237; 1999 a. 9, 103; 2001 a. 16.

19 **SECTION 140.** 938.365 (1) of the statutes is amended to read:

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

1 or on the date that is ~~60 days after the date on which~~ the juvenile was first removed
2 from his or her home, ~~whichever is earlier.~~

3 History: 1995 a. 77, 275, 352; 1997 a. 27, 35, 80, 237.

3 **SECTION 141.** 938.365 (2g) (b) 2. of the statutes is amended to read:

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4 938.365 (2g) (b) 2. An evaluation of the juvenile's adjustment to the placement
5 and of any progress the juvenile has made, suggestions for amendment of the
6 permanency plan, ~~a description of efforts to return the juvenile safely to his or her~~
7 home and specific information showing the efforts that have been made to achieve
8 the goal of the permanency plan, including, if applicable, the efforts of the parents
9 to remedy the factors which that contributed to the juvenile's placement and, if
10 continued placement outside of the juvenile's home is recommended, an explanation
11 of why returning the juvenile to his or her home is not safe or feasible, unless return
12 of the juvenile to the home is the goal of the permanency plan and any of the
13 circumstances specified in s. 938.355 (2d) (b) 1. to 4. applies.

14 History: 1995 a. 77, 275, 352; 1997 a. 27, 35, 80, 237.

14 **SECTION 142.** 938.365 (2g) (b) 3. of the statutes is amended to read:

15 938.365 (2g) (b) 3. If the juvenile has been placed outside of his or her home
16 for 15 of the most recent 22 months, not including any period during which the
17 juvenile was a runaway from the out-of-home placement or the juvenile was
18 returned to his or her home for a trial home visit of 6 months or less or, if authorized
19 by the court, a trial home visit of more than 6 months, a statement of whether or not
20 a recommendation has been made to terminate the parental rights of the parents of
21 the juvenile. If a recommendation for a termination of parental rights has been
22 made, the statement shall indicate the date on which the recommendation was made,
23 any previous progress made to accomplish the termination of parental rights, any
24 barriers to the termination of parental rights, specific steps to overcome the barriers

1 and when the steps will be completed, reasons why adoption would be in the best
2 interest of the juvenile and whether or not the juvenile should be registered with the
3 adoption information exchange. If a recommendation for termination of parental
4 rights has not been made, the statement shall include an explanation of the reasons
5 why a recommendation for termination of parental rights has not been made. If the
6 lack of appropriate adoptive resources is the primary reason for not recommending
7 a termination of parental rights, the agency shall recommend that the juvenile be
8 registered with the adoption information exchange or report the reason why
9 registering the juvenile is contrary to the best interest of the juvenile.

History: 1995 a. 77, 275, 352; 1997 a. 27, 35, 80, 237.

10 **SECTION 143.** 938.365 (2m) (a) of the statutes is renumbered 938.365 (2m) (a)

11 1. and amended to read:

12 938.365 (2m) (a) 1. Any party may present evidence relevant to the issue of
13 extension. If the juvenile is placed outside of his or her home, the person or agency
14 primarily responsible for providing services to the juvenile shall present as evidence
15 specific information showing that the agency has made reasonable efforts to achieve
16 the goal of the juvenile's permanency plan, unless return of the juvenile to the home
17 is the goal of the permanency plan and any of the circumstances specified in s.
18 938.355 (2d) (b) 1. to 4. applies. The court shall make findings of fact and conclusions
19 of law based on the evidence. ~~Subject to s. 938.355 (2d), the~~ The findings of fact shall
20 include a finding as to whether reasonable efforts were made by the agency primarily
21 responsible for providing services to the juvenile to ~~make it possible for the juvenile~~
22 ~~to return safely to his or her home~~ achieve the goal of the juvenile's permanency plan,
23 unless return of the juvenile to the home is the goal of the permanency plan and the

1 court finds that any of the circumstances specified in s. 938.355 (2d) (b) 1. to 4.
2 applies. An order shall be issued under s. 938.355.

History: 1995 a. 77, 275, 352; 1997 a. 27, 35, 80, 237.

3 **SECTION 144.** 938.365 (2m) (a) 2. of the statutes is created to read:

4 938.365(2m)(a) 2. If the court finds that any of the circumstances specified in
5 s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the order shall include a
6 determination that the person or agency primarily responsible for providing services
7 to the juvenile is not required to make reasonable efforts with respect to the parent
8 to make it possible for the juvenile to return safely to his or her home.

9 **SECTION 145.** 938.365 (2m) (a) 3. of the statutes is created to read:

10 938.365(2m)(a) 3. The court shall make the findings specified in subd. 1.
11 relating to reasonable efforts to achieve the goal of the juvenile's permanency plan
12 and the findings specified in subd. 2. on a case-by-case basis based on circumstances
13 specific to the juvenile and shall document the specific information on which those
14 findings are based in the order issued under s. 938.355. An order that merely
15 references subd. 1. or 2. or that merely references or incorporates the report under
16 sub. (2g) or any other document without documenting that specific information in the
17 order or an amended order that retroactively corrects an earlier order that does not
18 comply with this ~~paragraph~~ ^{subdivision} is not sufficient to comply with this ~~paragraph~~ ^{subdivision}.

History: 1977 c. 354; 1979 c. 300; 1983 a. 352, 399, 538; 1985 a. 172; 1987 a. 383; 1989 a. 31, 86, 107, 359; 1993 a. 16, 98, 377, 446; 1995 a. 27, 77, 275; 1997 a. 27, 80, 237, 292; 1999 a. 32, 149.

19 **SECTION 146.** 938.365 (2m) (ad) of the statutes is created to read:

20 938.365 (2m) (ad) 1. If the court finds that any of the circumstances specified
21 in s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the court shall hold a
22 hearing within 30 days after the date of that finding to determine the permanency
23 plan for the juvenile. If a hearing is held under this subdivision, the agency

Juvenile (was 3 times)

1 responsible for preparing the permanency plan shall file the permanency plan with
2 the court not less than 5 days before the date of the hearing.

3 2. If a hearing is held under subd. 1., at least 10 days before the date of the
4 hearing the court shall notify the ~~child~~, any parent, guardian, and legal custodian
5 of the ~~child~~, and any foster parent, treatment foster parent, or other physical
6 custodian described in s. 48.62 (2) of the ~~child~~ of the time, place, and purpose of the
7 hearing.

8 SECTION 147. 938.365 (2m) (ag) of the statutes is amended to read:

9 938.365 (2m) (ag) ~~In addition to any evidence presented under par. (a), the~~ The
10 court shall give a foster parent, treatment foster parent, or other physical custodian
11 described in s. 48.62 (2) of the juvenile who is notified of a hearing under ~~(sub. (2)) or~~
12 par. (ad) 2. ^{or sub. (a)} an opportunity to be heard at the hearing by permitting the foster parent,
13 treatment foster parent, or other physical custodian to make a written or oral
14 statement during the hearing, or to submit a written statement prior to the hearing,
15 relevant to the issue of extension. Any written or oral statement made under this
16 paragraph shall be made under oath or affirmation. A foster parent, treatment foster
17 parent, or other physical custodian described in s. 48.62 (2) who receives notice of a
18 hearing under ~~(sub. (2)) or~~ par. (ad) 2. ^{or} and an opportunity to be heard under this
19 paragraph 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.

History: 1995 a. 77, 275, 352; 1997 a. 27, 35, 80, 237.

21 SECTION 148. 938.365 (5) of the statutes is amended to read:

22 938.365 (5) Except as provided in s. 938.368, ~~all orders~~ an order under this
23 section that continues the placement of a juvenile in his or her home or that extends
24 an order under s. 938.34 (4d), (4h), (4m), or (4n) shall be for a specified length of time

1 not to exceed one year after its date of entry. Except as provided in s. 938.368, an
2 order under this section that continues the placement of a juvenile in a foster home,
3 treatment foster home, group home, or child caring institution or in the home of a
4 relative shall be for a specified length of time not to exceed the date on which the
5 juvenile reaches 18 years of age or one year after the date of entry of the order,
6 whichever is later.

History: 1995 a. 77, 275, 352; 1997 a. 27, 35, 80, 237.

7 SECTION 149. 938.38 (2) (intro.) of the statutes is amended to read:

8 938.38 (2) PERMANENCY PLAN REQUIRED. (intro.) Except as provided in sub. (3),
9 for each juvenile living in a foster home, treatment foster home, group home, child
10 caring institution, secure detention facility, or shelter care facility or in the home of
11 a relative, the agency that placed the juvenile or arranged the placement or the
12 agency assigned primary responsibility for providing services to the juvenile under
13 s. 938.355 shall prepare a written permanency plan, if any of the following conditions
14 exists:

History: 1995 a. 77, 275, 352; 1997 a. 35, 237, 296; 1999 a. 9.

15 SECTION 150. 938.38 (2) (c) of the statutes is amended to read:

16 938.38 (2) (c) The juvenile is under the supervision of an agency under s. 48.64
17 (2) ~~or pursuant to,~~ under a consent decree under s. 938.32 (1) (c), or under a court
18 order under s. 938.355.

History: 1995 a. 77, 275, 352; 1997 a. 35, 237, 296; 1999 a. 9.

19 SECTION 151. 938.38 (2) (f) of the statutes is amended to read:

20 938.38 (2) (f) The juvenile's care is ~~paid~~ would be paid for under s. 49.19 but
21 for s. 49.19 (20). ✓

History: 1995 a. 77, 275, 352; 1997 a. 35, 237, 296; 1999 a. 9.

22 SECTION 152. 938.38 (3) (intro.) of the statutes is amended to read:

1 938.38 (3) TIME. (intro.) Subject to s. 938.355 (2d) (c) 1., the agency shall file
2 the permanency plan with the court within 60 days after the date on which the
3 juvenile was first held in physical custody or placed outside of removed from his or
4 her home ~~under a court order~~, except under either of the following conditions:

History: 1995 a. 77, 275, 352; 1997 a. 35, 237, 296; 1999 a. 9.

5 **SECTION 153.** 938.38 (4) (intro.) of the statutes is amended to read:

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6 938.38 (4) CONTENTS OF PLAN. (intro.) The permanency plan shall include a
7 ~~description of~~ all of the following:

History: 1995 a. 77, 275, 352; 1997 a. 35, 237, 296; 1999 a. 9.

8 **SECTION 154.** 938.38 (4) (a) of the statutes is renumbered 938.38 (4) (ar) and
9 amended to read:

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10 938.38 (4) (ar) ~~The A description of the services offered and any service services~~
11 provided in an effort to prevent holding or placing the juvenile outside of the removal
12 of the juvenile from his or her home, while assuring that the health and safety of the
13 juvenile are the paramount concerns, and to ~~make it possible for the juvenile to~~
14 ~~return safely home, achieve the goal of the permanency plan,~~ except that the
15 permanency plan ~~need not~~ is not required to include a description of ~~these the~~
16 services offered or provided with respect to a parent of the juvenile to prevent the
17 removal of the juvenile from the home or to achieve the permanency plan goal of
18 returning the child safely to his or her home if any of the circumstances specified in
19 s. 938.355 (2d) (b) 1., ~~2., 3. or to~~ 4. apply to that parent.

History: 1995 a. 77, 275, 352; 1997 a. 35, 237, 296; 1999 a. 9.

20 **SECTION 155.** 938.38 (4) (ag) of the statutes is created to read:

21 938.38 (4) (ag) The name, address, and telephone number of the juvenile's
22 parent, guardian, and legal custodian.

23 **SECTION 156.** 938.38 (4) (am) of the statutes is created to read:

1 938.38 (4) (am) The date on which the juvenile was removed from his or her
2 home and the date on which the juvenile was placed in out-of-home care.

3 **SECTION 157.** 938.38 (4) (bm) of the statutes is amended to read:

4 938.38 (4) (bm) ~~The A statement as to the~~ availability of a safe and appropriate
5 placement with a fit and willing relative of the juvenile and, if a decision is made not
6 to place the juvenile with an available relative, a statement as to why placement with
7 the relative is not safe or appropriate.

History: 1995 a. 77, 275, 352; 1997 a. 35, 237, 296; 1999 a. 9.

8 **SECTION 158.** 938.38 (4) (dg) of the statutes is created to read:

9 938.38 (4) (dg) Information about the juvenile's education, including all of the
10 following:

11 1. The name and address of the school in which the juvenile is or was most
12 recently enrolled.

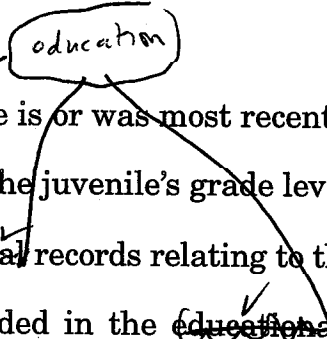
13 2. Any special education programs in which the juvenile is or was previously
14 enrolled.

15 3. The grade level in which the juvenile is or was most recently enrolled and
16 all information that is available concerning the juvenile's grade level performance.

17 4. A summary of all available ~~educational~~ records relating to the juvenile that
18 are relevant to any ~~educational~~ goals included in the ~~educational~~ services plan
19 prepared under s. 938.33 (1) (e).

20 **SECTION 159.** 938.38 (4) (dm) of the statutes is created to read:

21 938.38 (4) (dm) If as a result of the placement the juvenile has been or will be
22 transferred from the school in which the juvenile is or most recently was enrolled,
23 documentation that a placement that would maintain the juvenile in that school is



1 either unavailable or inappropriate or that a placement that would result in the
2 juvenile's transfer to another school would be in the juvenile's best interests.

3 **SECTION 160.** 938.38 (4) (dr) of the statutes is created to read:

4 938.38 (4) (dr) Medical information relating to the juvenile, including all of the
5 following:

6 1. The names and addresses of the juvenile's physician, dentist, and any other
7 health care provider that is or was previously providing health care services to the
8 juvenile.

9 2. The juvenile's immunization record, including the name and date of each
10 immunization administered to the juvenile.

11 3. Any known medical condition for which the juvenile is receiving medical care
12 or treatment and any known serious medical condition for which the juvenile has
13 previously received medical care or treatment.

14 4. The name, purpose, and dosage of any medication that is being administered
15 to the juvenile and the name of any medication that causes the juvenile to suffer an
16 allergic or other negative reaction.

17 **SECTION 161.** 938.38 (4) (e) of the statutes is amended to read:

18 938.38 (4) (e) The A plan for ensuring the safety and appropriateness of the
19 placement and a description of the services provided to meet the needs of the juvenile
20 and family, including a discussion of services that have been investigated and
21 considered and are not available or likely to become available within a reasonable
22 time to meet the needs of the juvenile or, if available, why such services are not safe
23 or appropriate.

24 **History:** 1995 a. 77, 275, 352; 1997 a. 35, 237, 296; 1999 a. 9.

SECTION 162. 938.38 (4) (f) (intro.) of the statutes is amended to read:

1 938.38 (4) (f) (intro.) The A description of the services that will be provided to
2 the juvenile, the juvenile’s family, and the juvenile’s foster parent, the juvenile’s
3 treatment foster parent ~~or~~, the operator of the facility where the juvenile is living,
4 or the relative with whom the juvenile is living to carry out the dispositional order,
5 including services planned to accomplish all of the following:

History: 1995 a. 77, 275, 352; 1997 a. 35, 237, 296; 1999 a. 9.

6 **SECTION 163.** 938.38 (4) (fg) of the statutes is created to read:

7 938.38 (4) (fg) The goal of the permanency plan or, if the agency is making
8 concurrent reasonable efforts under s. 938.355 (2b), the goals of the permanency
9 plan, in the order of preference specified in subds. 1. to 5. If a goal of the permanency
10 plan is any goal other than return of the juvenile to his or her home, the permanency
11 plan shall include the rationale for deciding on that goal. If a goal of the permanency
12 plan is an alternative permanent placement under subd. 5., the permanency plan
13 shall document a compelling reason why it would not be in the best interest of the
14 juvenile to pursue a goal specified in subd. 1. to 4. The agency shall determine the
15 goal or goals of a juvenile’s permanency plan in the following order of preference:

- 16 1. Return of the juvenile to the juvenile’s home.
- 17 2. Placement of the juvenile for adoption.
- 18 3. Placement of the juvenile with a guardian.
- 19 4. Permanent placement of the juvenile with a fit and willing relative.
- 20 5. Some other alternative permanent placement, including sustaining care,
21 independent living, or long-term foster care.

22 **SECTION 164.** 938.38 (4) (fm) of the statutes is amended to read:

23 938.38 (4) (fm) If the goal of the permanency plan calls for placing is to place
24 the juvenile for adoption, with a guardian, with a fit and willing relative, or in some

1 other alternative permanent placement, the efforts made to place the juvenile for
2 adoption, with a guardian or in some other alternative permanent placement achieve
3 that goal.

4 **History:** 1995 a. 77, 275, 352; 1997 a. 35, 237, 296; 1999 a. 9.

SECTION 165. 938.38 (4) (h) of the statutes is created to read:

5 938.38 (4) (h) If the juvenile is 15 years of age or over, a description of the
6 programs and services that are or will be provided to assist the juvenile in preparing
7 for the transition from out-of-home care to independent living. The description
8 shall include all of the following:

9 1. The anticipated age at which the juvenile will be discharged from
10 out-of-home care.

11 2. The anticipated amount of time available in which to prepare the juvenile
12 for the transition from out-of-home care to independent living.

13 3. The anticipated location and living situation of the juvenile on discharge
14 from out-of-home care.

15 4. A description of the assessment processes, tools, and methods that have been
16 or will be used to determine the programs and services that are or will be provided
17 to assist the juvenile in preparing for the transition from out-of-home care to
18 independent living.

19 5. The rationale for each program or service that is or will be provided to assist
20 the juvenile in preparing for the transition from out-of-home care to independent
21 living, the time frames for delivering those programs or services, and the intended
22 outcome of those programs or services.

23 **SECTION 166.** 938.38 (5) (a) of the statutes is amended to read:

later

1 938.38 (5) (a) The court or ~~subject to this paragraph~~, a panel appointed under
 2 this paragraph shall review the permanency plan ~~every not more than 6 months from~~
 3 after the date on which the juvenile was first held in physical custody or placed
 4 outside of removed from his or her home and every 12 months after a previous review
 5 under this subsection for as long as the juvenile is placed outside the home. The
 6 review that is conducted not more than 6 months after the juvenile was first removed
 7 from his or her home and the reviews that are conducted every 12 months after that
 8 review shall be conducted by the court or panel as provided in this subsection. The
 9 review that is conducted not more than 12 months after the juvenile was first
 10 removed from his or her home and the reviews that are conducted every 12 months
 11 after that review shall be conducted by the court as provided in sub. (5m). If the court
 12 elects not to review the permanency plan, the court shall appoint a panel to review
 13 the permanency plan. The panel shall consist of 3 persons who are either designated
 14 by an independent agency that has been approved by the chief judge of the judicial
 15 administrative district or designated by the agency that prepared the permanency
 16 plan. A voting majority of persons on each panel shall be persons who are not
 17 employed by the agency that prepared the permanency plan and who are not
 18 responsible for providing services to the juvenile or the parents of the juvenile whose
 19 permanency plan is the subject of the review.

History: 1995 a. 77, 275, 352; 1997 a. 35, 237, 296; 1999 a. 9.

SECTION 167. 938.38 (5) (b) of the statutes is amended to read:

21 938.38 (5) (b) The court or the agency shall notify the parents of the juvenile,
 22 the juvenile, if he or she is 10 years of age or older, and the juvenile's foster parent,
 23 the juvenile's treatment foster parent or, the operator of the facility in which the
 24 juvenile is living, or the relative with whom the juvenile is living of the date, time,

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

History: 1995 a. 77, 275, 352; 1997 a. 35, 237, 296; 1999 a. 9.

14 **SECTION 168.** 938.38 (5) (c) 6. (intro.) of the statutes is amended to read:

15 938.38 (5) (c) 6. (intro.) If the juvenile has been placed outside of his or her
16 home, as described in s. 938.365 (1), for 15 of the most recent 22 months, not including
17 any period during which the juvenile was a runaway from the out-of-home
18 placement or the juvenile was returned to his or her home for a trial home visit of 6
19 months or less or, if authorized by the court, a trial home visit of more than 6 months,
20 the appropriateness of the permanency plan and the circumstances which prevent
21 the juvenile from any of the following:

History: 1995 a. 77, 275, 352; 1997 a. 35, 237, 296; 1999 a. 9.

22 **SECTION 169.** 938.38 (5) (c) 6. am. of the statutes is renumbered 938.38 (5) (c)

23 6. cm. and amended to read:

1 938.38 (5) (c) 6. cm. Being placed in the home of a fit and willing relative of the
2 juvenile.

History: 1983 a. 399; 1985 a. 70 ss. 1, 10; 1985 a. 176; 1985 a. 292 s. 3; 1985 a. 332; 1987 a. 383; 1989 a. 31, 86, 107; 1993 a. 377, 385, 395, 446, 491;
1995 a. 27 ss. 2474 to 2478, 9126 (19); 1995 a. 77, 143, 275; 1997 a. 27, 35, 104, 237; 1999 a. 149; 2001 a. 2.

3 **SECTION 170.** 938.38 (5) (c) ^{6.}cg. of the statutes is created to read:

4 938.38 (5) (c) 6. cg. Being placed with a guardian.

5 **SECTION 171.** 938.38 (5) (c) 6. d. of the statutes is amended to read:

6 938.38 (5) (c) 6. d. Being placed in some other alternative permanent
7 placement, including sustaining care, independent living, or long-term foster care.

History: 1983 a. 399; 1985 a. 70 ss. 1, 10; 1985 a. 176; 1985 a. 292 s. 3; 1985 a. 332; 1987 a. 383; 1989 a. 31, 86, 107; 1993 a. 377, 385, 395, 446, 491;
1995 a. 27 ss. 2474 to 2478, 9126 (19); 1995 a. 77, 143, 275; 1997 a. 27, 35, 104, 237; 1999 a. 149; 2001 a. 2.

8 **SECTION 172.** 938.38 (5) (c) 7. of the statutes is amended to read:

9 938.38 (5) (c) 7. Whether reasonable efforts were made by the agency to ~~make~~
10 ~~it possible for the juvenile to return safely to his or her home, except that the court~~
11 ~~or panel need not determine whether those reasonable efforts were made with~~
12 ~~respect to a parent of the juvenile if any of the circumstances specified in s. 938.355~~
13 ~~(2d) (b) 1., 2., 3. or 4. apply to that parent~~ achieve the goal of the permanency plan,
14 unless return of the juvenile to the home is the goal of the permanency plan and any
15 of the circumstances specified in s. 938.355 (2d) (b) 1. to 4. applies.

History: 1995 a. 77, 275, 352; 1997 a. 35, 237, 296; 1999 a. 9.

16 **SECTION 173.** 938.38 (5m) of the statutes is created to read:

17 938.38 (5m) PERMANENCY PLAN HEARING. (a) The court shall hold a hearing to
18 review the permanency plan and to make the determinations specified in sub. (5) (c)
19 ^{later} no ~~more~~ than 12 months after the date on which the juvenile was first removed from
20 the home and every 12 months after a previous hearing under this subsection for as
21 long as the juvenile is placed outside the home.

22 (b) Not less than 30 days before the date of the hearing [✓] the court shall notify
23 the juvenile; the juvenile's parent, guardian, and legal custodian; the juvenile's foster

1 parent or treatment foster parent, the operator of the facility in which the juvenile
2 is living, or the relative with whom the juvenile is living; the agency that prepared
3 the permanency plan; and the person representing the interests of the public of the
4 date, time, and place of the hearing.

5 (c) Any person who is provided notice of the hearing may have an opportunity
6 to be heard at the hearing by submitting written comments relevant to the
7 determinations specified in sub. (5) (c) not less than 10 working days before the date
8 of the hearing or by participating at the hearing. Any written or oral comment made
9 to the court under this paragraph by a foster parent, treatment foster parent,
10 operator of a facility in which a juvenile is living, or relative with whom a juvenile
11 is living shall be made under oath or affirmation. A foster parent, treatment foster
12 parent, operator of a facility in which a juvenile is living, or relative with whom a
13 juvenile is living who receives notice of a hearing under par. (b) and an opportunity
14 to be heard under this paragraph does not become a party to the proceeding on which
15 the hearing is held solely on the basis of receiving that notice and opportunity to be
16 heard.

17 (d) At least 5 days before the date of the hearing the agency that prepared the
18 permanency plan shall provide a copy of the permanency plan and any written
19 comments submitted under par. (c) to the court, to the juvenile's parent, guardian,
20 and legal custodian, to the person representing the interests of the public, and to the
21 juvenile's counsel or guardian ad litem. Notwithstanding s. 938.78 (2) (a), the person
22 representing the interests of the public and the juvenile's counsel or guardian ad
23 litem may have access to any other records concerning the juvenile for the purpose
24 of participating in the review. A person permitted access to a juvenile's records under

1 this paragraph may not disclose any information from the records to any other
2 person.

3 (e) After the hearing,^v the court shall make written findings of fact and
4 conclusions of law relating to the determinations under sub. (5) (c) and shall provide
5 a copy of those findings of fact and conclusions of law to the juvenile; the juvenile's
6 parent, guardian, and legal custodian; the juvenile's foster parent or treatment foster
7 parent, the operator of the facility in which the juvenile is living, or the relative with
8 whom the juvenile is living; the agency that prepared the permanency plan; and the
9 person representing the interests of the public. The court shall make the findings
10 specified in sub. (5) (c) 7. on a case-by-case basis based on circumstances specific to
11 the juvenile and shall document the specific information on which those findings are
12 based in the findings of fact and conclusions of law prepared under this paragraph.
13 Findings of fact and conclusions of law that merely reference sub. (5) (c) 7. or that
14 merely reference or incorporate the permanency plan or any other document without
15 documenting that specific information in the findings of fact and conclusions of law
16 or amended findings of fact and conclusions of law that retroactively correct earlier
17 findings of fact and conclusions of law that do not comply with this paragraph are not
18 sufficient to comply with this paragraph.

19 (f) If the findings of fact and conclusions of law under par. (e) conflict with the
20 juvenile's dispositional order or provide for any additional services not specified in
21 the dispositional order, the court shall revise the dispositional order under s. 938.363
22 or order a change in placement under s. 938.357, as appropriate.

23 **SECTION 174.** 938.78 (2) (a) of the statutes is amended to read:

24 938.78 (2) (a) No agency may make available for inspection or disclose the
25 contents of any record kept or information received about an individual in its care

1 or legal custody, except as provided under sub. (3) or s. 938.371, 938.38 (5) (b) or (d)
2 or (5m) (d), or 938.51 or by order of the court.

History: 1995 a. 27 s. 9126 (19); 1995 a. 77, 230, 352; 1997 a. 205, 207, 283; 1999 a. 9.

3 **SECTION 9123. Nonstatutory provisions; health and family services.**

4 (1) RELATIVE PLACEMENT PERMANENCY PLANS. (a) Notwithstanding sections 48.38

5 (3) and 938.38 (3) of the statutes, for children or juveniles who are living in the home
6 of a relative, as defined in section 48.02 (15) or 938.02 (15) of the statutes, under the
7 supervision of an agency under section 48.64 (2) of the statutes, under a consent
8 decree under section 48.32 or 938.32 of the statutes, or under an order under section
9 48.355 or 938.355 of the statutes on the day before the effective date of this
10 ~~subsection~~ ^{Paragraph}, the agency assigned primary responsibility for providing services to
11 those children or juveniles shall file a permanency plan with that court with respect
12 to not less than 33% of those children or juveniles by July 1, 2002, with respect to not
13 less than 67% of those children or juveniles by September 1, 2002, and with respect
14 to all of those children or juveniles by November 1, 2002, giving priority to those
15 children or juveniles who have been living in the home of a relative for the longest
16 period of time.

17 (b) The agency shall request the court assigned to exercise jurisdiction under
18 chapters 48 and 938 of the statutes, as affected by this act, to make a finding under
19 section 48.363 or 938.363 of the statutes that reasonable efforts have been made to
20 prevent the removal of the child or juvenile from the home or that those efforts are
21 not required to be made because a circumstance specified in s^{ection} 48.355 (2d) (b) 1. to
22 5. of the statutes, as affected by this act, or ^{section} 938.355 (2d) (b) 1. to 4. of the statutes,
23 as affected by this act, applies, not more than 60 days after the date on which the
24 permanency plan is filed.

1 (c) Notwithstanding section 48.38 (5) (a) of the statutes, as affected by this act,
2 section 48.38 (5m) of the statutes, as created by this act, section 938.38 (5) (a) of the
3 statutes, as affected by this act, and section 938.38 (5m) of the statutes, as created
4 by this act, a permanency plan filed under this subsection shall be reviewed within
5 6 months after the date on which the permanency plan is filed and a permanency
6 plan hearing shall be had to review a permanency plan filed under this subsection
7 within 12 months after the date on which the permanency plan is filed.

8 **SECTION 9323. Initial applicability; health and family services.**

9 (1) JUVENILE COURT ORDERS. The treatment of sections 48.21 (5) (b) 1. and 3., (c),
10 and (d), 48.355 (2) (b) 6. and 6r., (2c) (b), (2d) (b) (intro.), 1., 2., 3., 4., and 5. and (bm),
11 and (4), 48.357 (6), 48.365 (2m) (ag) and (5), 48.977 (2) (f), 938.21 (5) (b) 1. and 3., (c),
12 and (d), 938.32 (1) (c) and (d), 938.355 (2) (b) 6. and 6r., (2c) (b), (2d) (b) (intro.), 1.,
13 2., 3., 4., and 5. and (bm), (4) (a) and (b), (6) (a), and (6m) (cm), 938.357 (6), and
14 938.365 (2m) (ag) and (5) of the statutes, the renumbering and amendment of
15 sections 48.32 (1), 48.355 (2d) (c), 48.365 (2m) (a), 938.355 (2d) (c), and 938.365 (2m)
16 (a) of the statutes, and the creation of sections 48.32 (1) (b) and (c), 48.355 (2d) (c) 2.
17 and 3., 48.365 (2m) (a) 2. and 3. and (ad), 938.355 (2d) (c) 2. and 3., and 938.365 (2m)
18 (a) 2. and 3. and (ad) of the statutes first apply to a physical custody order, consent
19 decree, dispositional order, change in placement order, extension order, sanction
20 order, or guardianship order entered on the effective date of this subsection.

21 (2) JUVENILE COURT REPORTS. The treatment of sections 48.33 (4) (intro.) and (c),
22 48.365 (1) (2g) (b) 2. and 3., 938.33 (4) (intro.) and (c), and 938.365 (1) (2g) (b) 2. and
23 3. of the statutes first applies to reports filed with the court assigned to exercise
24 jurisdiction under chapters 48 and 938 of the statutes on the effective of this
25 subsection.

1 (3) JUVENILE COURT HEARINGS. The treatment of sections 48.21 (3) (am), 48.27
 2 (3) (a) 1m., 48.335 (3g), 48.42 (2g) (am), 48.427 (1m), 938.21 (2) (am) and (3) (am),
 3 938.27 (3) (a) 1m., ^{and} 938.335 (3g) of the statutes first applies to hearings held by the
 4 court assigned to exercise jurisdiction under chapters 48 and 938 of the statutes on
 5 the effective of this subsection.

6 (4) PERMANENCY PLAN CONTENTS. The treatment of sections 48.38 (4) (intro.), (a),
 7 (ag), (am), (bm), (dg), (dm), (dr), (e), (f) (intro.), (fg), (fm), and (h) and ~~938.38~~ 938.38 (4) (intro.),
 8 (a), (ag), (am), (bm), (dg), (dm), (dr), (e), (f) (intro.), (fg), (fm), and (h) of the statutes
 9 first applies to permanency plans filed on the effective date of this subsection.

10 (5) PERMANENCY PLAN REVIEWS AND HEARINGS. The treatment of sections 48.38
 11 (5) (a), (b), and (c) 6. (intro.), am., cg., and d. and 7. and (5m) and 938.38 (5) (a), (b),
 12 and (c) 6. (intro.), am., cg., and d. and 7. and (5m) of the statutes first applies to
 13 permanency plan reviews and hearings for which notice is provided on the effective
 14 date of this subsection.

15 (6) CHANGES IN PLACEMENT. The treatment of sections 48.357 (2) and (2r) and
 16 938.357 (2), (2r), (3), (4) (b) 2., (c) 1. and 2., and (d), and (5) (a) of the statutes, the
 17 renumbering and amendment of sections ~~48.38~~ (1), (2m), and (2v) and ~~938.38~~ (1),
 18 (2m), and (2v) of the statutes, and the creation of sections ~~48.38~~ (1) (b) 3., and (c), (2m)
 19 (c), and (2v) (a) (intro.), 1., and 3., (b), and (c) and ~~938.38~~ (1) (b) 3., and (c), (2m) (c), and
 20 (2v) (a) (intro.), 1., and 3., (b), and (c) of the statutes first apply to changes in
 21 placement requested or proposed on the effective date of this subsection.

22 (7) TIME LIMITS. The treatment of sections 48.315 (2m) and 938.315 (2m) of the
 23 statutes first applies to continuances and extensions granted, and periods of delay
 24 that begin, on the effective date of this subsection.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4375/1dn

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Representative Kestell:

When the DHFS legal and program staff review this draft, they should note all of the following:

1. **Physical custody hearings and orders.** In ss. 48.21 (3) (am) and 938.21 (2) (am) and (3) (am) the drafting instructions would eliminate the requirement that a parent or juvenile who has waived his or her right to participate in the physical custody hearing be granted a rehearing on request. The draft does not eliminate that requirement because eliminating that requirement would contradict ss. 48.21 (1) (a) and 938.21 (1) (a), which require a parent who is not present at the hearing to be granted a rehearing on request, and ss. 48.21 (3) (e) and 938.21 (2) (e) and (3) (e), which permit a parent or juvenile who is not represented by counsel at the hearing to request a rehearing and which provide that any custody order is subject to rehearing on good cause shown.

Also, in ss. 48.21 (5) (b) 1. and 938.21 (5) (b) 1. the draft requires the court to include in a custody order not only a finding that reasonable efforts to prevent the removal of the child from the home were made but also a finding that continued placement of the child in the home would be contrary to the welfare of the child and a finding that reasonable efforts were made to return the child to the home. The draft requires the ~~contrary to welfare~~ finding because 45 CFR 1356.21 (c) requires that finding to be made in the first court ruling that sanctions, even temporarily, the removal of a child from the home. The draft requires the reasonable efforts to return the child to the home finding because s. 48.20 (2) (ag) and (7) (b) and 938.20 (2) (ag) and (7) (b) require the person who took the child into custody and the intake worker to make every effort to release the child to his or her parents. ✓

In addition, in ss. 48.21 (5) (b) 1. and 938.21 (5) (b) 1. the draft does not require that the ~~contrary to welfare~~ and reasonable ~~efforts~~ findings be made within 60 days after the child is removed from the home because current ss. 48.21 (1) (a) and 938.21 (1) (a) already require the custody hearing to be held within 48 hours after the child is taken into custody, not including Saturdays, Sundays, and legal holidays, with one 72-hour extension permitted. Instead, that 60-day time limit is covered in ss. 48.315 (2m) and 938.315 (2m), as created by the draft, relating to time limits.

2. **Documentation of judicial findings.** The drafting instructions would require the CHIPS, JIPS, delinquency, or civil law or ordinance violation petition under s.

48.255 or 938.255 to allege the factual basis for the contrary-to-welfare and reasonable efforts findings. The draft does not require the petition to make those allegations because not every petition results in an out-of-home placement. Also, even if the disposition does ultimately result in an out-of-home placement, it would be premature to make those allegations at the petition stage before the case has been fully investigated and a permanency plan determined. Accordingly, the draft instead requires the agency to include that factual basis in the court report under ss. 48.33 and 938.33 and to present evidence as to that factual basis at the dispositional hearing under ss. 48.335 and 938.335.

Also, the federal regulations prohibit "nunc pro tunc" orders, which literally means "now for then" orders. Rather than draft a Latin term that nobody understands, the draft translates that term to mean "an amended order that retroactively corrects an earlier order" that does not comply with the federal requirements.

3. **Time limits.** In s. 48.315 (2m), which prohibits extensions, continuances, and periods of delay that would result in the court making the contrary-to-welfare and reasonable efforts findings more than 60 days after the child is removed from the home or in the court finalizing the permanency plan more than 12 months after the child is removed from the home, the draft includes a provision that is similar to s. 938.315 (3) under current law clarifying that a failure to meet those time limits does not deprive the court of jurisdiction or of competency to exercise that jurisdiction and providing the court with flexibility in fashioning remedies for a failure to meet those time limits, such as dismissing the proceeding with or without prejudice, ordering the release of the child, or granting such other relief as the court considers appropriate.

The draft includes that provision because under current law, failure to meet a time limit results in the court losing competency to proceed, which in turn results in the child being returned to the home, without regard to whether the home is safe. This draconian remedy does not serve to protect children; instead it only serves to punish the child for the error of the district attorney. With the inflexible time limits mandated by the federal regulations, some fail-safe mechanism is necessary to protect children in those rare, but inevitable, cases in which a time limit is missed through no fault of the child. Indeed, you might wish to consider drafting a provision in s. 48.315 that is similar to s. 938.315 (3) to protect children in all cases of missed time limits and not just those cases covered in this draft.

4. **Termination of orders.** The drafting instructions would amend ss. 48.355 (4), 48.357 (6), 48.365 (5), 938.355 (4) (a) and (b), 938.357 (6), and 938.365 (5) to provide that a dispositional order, which currently must be extended every year, continues until the child reaches 18 years of age unless terminated sooner. The concern expressed is that with a permanency plan review scheduled every six months, a permanency plan hearing scheduled every 12 months, and an extension hearing scheduled every 12 months and with all of those time periods starting from different starting points, the court would be required to hold at least two or three hearings annually for a child, which would increase the chances of missed time limits.

This draft accomplishes those instructions, but distinguishes in-home placements from out-of-home placements because, as noted earlier, not every dispositional order

years old

results in an out-of-home placement. Accordingly, the draft provides that for out-of-home placements, the order continues until the child is 18, unless the court specifies a shorter period of time or terminates the order sooner. For an in-home placement, an order would continue to terminate after one year, unless extended, as under current law.

Similarly, the draft addresses the issue of duplication of six-month permanency plan reviews and 12-month permanency plan hearings in ss. 48.38 (5) (a) and ~~938~~ 938.38 (5) (a) by requiring that the permanency plan review be conducted six months after the child is removed from the home and every 12 months after that review and that the permanency plan hearing be conducted 12 months after the child is removed from the home and every 12 months after that hearing. As such, the six-month reviews and the annual hearings will not overlap, but rather will alternate.

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6. Reasonable-efforts findings. The drafting instructions would delete from s. 48.355 (2) (b) 6. and 938.355 (2) (b) 6. the reference to making reasonable efforts to return the child to the home and would replace that reference with a reference to achieving the goal of the permanency plan on the theory that the general category of achieving the goal of the permanency plan includes the specific goal of returning the child to the home and, therefore, the reference to returning the child to the home is unnecessary.

The draft adds the reference to achieving the goal of the permanency plan, but provides an exception for when the goal of the permanency plan is to return the child to the home and one of the aggravated circumstances specified in s. 48.355 (2d) (b) 1. to 5. or 938.355 (2d) (b) 1. to 4. applies. The draft provides that exception because those aggravated circumstances only excuse the agency from making reasonable efforts to return the child to the home; they do not excuse the agency from making reasonable efforts to achieve other permanency plan goals such as adoption.

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Also, with respect to the permanency hearing that is required to be held not more than 30 days after a finding that reasonable efforts to return the child to the home are not required, the draft specifies that the child's foster parent must receive notice and an opportunity to be heard at the hearing as required under 45 CFR 1356.21 (o). See ss. 48.21 (5) (d), 48.32 (1) (c), 48.355 (2d) (c), 48.357 (2v) (c), 938.21 (5) (d), 938.32 (1) (d), 938.355 (2d) (c), and 48.357 (2v) (c), as created by the draft.

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7. Minor variations. The draft also makes a couple of other minor variations from the drafting instructions. Specifically:

a. *Trial home visits.* The drafting instructions provide that trial home visits of less than six months are not counted in determining whether the child has been out of the home for 15 of the most recent 22 months. 45 CFR 1356.21 (e), however, permits a trial home visit to last for more than six months if authorized by the court. Accordingly, the draft excludes trial home visits of more than six months that are authorized by the court as well as trial visits of less than six months in counting those 15 months. See ss. 48.365 (2g) (b) 3., 48.38 (5) (c) 6. (intro.), 48.417 (1) (a), 938.365 (2g) (b) 3., and 938.38 (5) (c) 6. (intro.), as affected by the draft.

b. *Child placed in home of a relative.* The drafting instructions specify in s. 48.38 (2) (intro.) and 938.38 (2) (intro.) that the agency that placed or arranged the placement

the home

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of a child in the home of a relative *either under court order or a voluntary placement agreement* must prepare a permanency plan for the child. The draft does not include the court order or voluntary placement agreement language in ss. 48.38 (2) (intro.) and 938.38 (2) (intro.) because those requirements are already covered in ss. 48.38 (2) (c) and (d) and 938.38 (2) (c) and (d). ~~As such~~, the qualifying language is unnecessary.

Also, on the effective date of the draft there will already be children placed in the homes of relatives for whom permanency plans must be prepared. Accordingly, the draft includes a nonstatutory transitional provision, ~~section~~ 9123 (1), that provides a timeline for preparing permanency plans for those children. That timeline was based on similar language found in the budget bill, 2001 SB-55, ~~section~~ 9123 (1).

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§. Technical cleanups. Finally, in addition to the language changes requested by DHFS, the draft makes the following technical cleanups to chs. 48 and 938:

a. *Foster parent statements.* The draft amends ss. 48.27 (3) (a) 1m., 48.38 (5) (b), 48.42 (2g), 48.427 (1m), 938.27 (3) (a) 1m., and 938.38 (5) (b) to require a statement made by a foster parent at a CHIPS or TPR hearing or at a permanency plan review to be made under oath or affirmation. A similar requirement already exists for such statements made at a change placement, revision, or extension hearing under s. 48.357 (2r), 48.363 (1m), 48.365 (2m) (ag), 938.357 (2r), 938.363 (1m), or 938.365 (2m) (ag).

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b. *Aggravated circumstances* ~~judgment of conviction~~. Currently, ss. 48.355 (2d) (b) (intro.) and 938.355 (2d) (b) (intro.) refer to certain findings in the subdivisions that follow ~~as evidenced by a final judgment of conviction~~. Not all of the subdivisions that follow, however, reference criminal convictions. For example, ss. 48.355 (2d) (b) 4. and 938.355 (2d) (b) 4. reference a TPR. The draft amends ss. 48.355 (2d) (b) (intro.), 1., 2., 3., 4., and 5. and 938.355 (2d) (b) (intro.), 1., 2., 3., and 4. to specify in each of those subdivisions whether the finding must be evidenced by a judgment of conviction or some other final judgment.

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c. *Payment for child's care.* Sections 48.38 (2) (f) and 938.38 (2) (f) require a permanency plan to be prepared if the child's care is paid for under s. 49.19, which is the former AFDC program. The draft amends that qualification to require a permanency plan to be prepared if the child's care *would be* paid for under s. 49.19, but for the fact that the program no longer exists.

d. *Permanency plan review.* Finally, the draft creates 48.38 (5) (c) 6. cg. and d. so that that subdivision parallels s. 48.38 (4) (fg), as created by the draft.

If as you review this draft you have any questions about the draft or about any of the issues raised in this drafter's note, please do not hesitate to contact me directly at the phone number or e-mail address listed below.

Gordon M. Malaise
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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4375/1dn
GMM.kg.pg

February 4, 2002

Representative Kestell:

When the DHFS legal and program staff review this draft, they should note all of the following:

1. ***Physical custody hearings and orders.*** In ss. 48.21 (3) (am) and 938.21 (2) (am) and (3) (am) the drafting instructions would eliminate the requirement that a parent or juvenile who has waived his or her right to participate in the physical custody hearing be granted a rehearing on request. The draft does not eliminate that requirement because eliminating that requirement would contradict ss. 48.21 (1) (a) and 938.21 (1) (a), which require a parent who is not present at the hearing to be granted a rehearing on request, and ss. 48.21 (3) (e) and 938.21 (2) (e) and (3) (e), which permit a parent or juvenile who is not represented by counsel at the hearing to request a rehearing and which provide that any custody order is subject to rehearing on good cause shown.

Also, in ss. 48.21 (5) (b) 1. and 938.21 (5) (b) 1. the draft requires the court to include in a custody order not only a finding that reasonable efforts to prevent the removal of the child from the home were made but also a finding that continued placement of the child in the home would be contrary to the welfare of the child and a finding that reasonable efforts were made to return the child to the home. The draft requires the contrary-to-welfare finding because 45 CFR 1356.21 (c) requires that finding to be made in the first court ruling that sanctions, even temporarily, the removal of a child from the home. The draft requires the reasonable efforts to return the child to the home finding because s. 48.20 (2) (ag) and (7) (b) and 938.20 (2) (ag) and (7) (b) require the person who took the child into custody and the intake worker to make every effort to release the child to his or her parents.

In addition, in ss. 48.21 (5) (b) 1. and 938.21 (5) (b) 1. the draft does not require that the contrary-to-welfare and reasonable-efforts findings be made within 60 days after the child is removed from the home because current ss. 48.21 (1) (a) and 938.21 (1) (a) already require the custody hearing to be held within 48 hours after the child is taken into custody, not including Saturdays, Sundays, and legal holidays, with one 72-hour extension permitted. Instead, that 60-day time limit is covered in ss. 48.315 (2m) and 938.315 (2m), as created by the draft, relating to time limits.

2. ***Documentation of judicial findings.*** The drafting instructions would require the CHIPS, JIPS, delinquency, or civil law or ordinance violation petition under s.

48.255 or 938.255 to allege the factual basis for the contrary-to-welfare and reasonable-efforts findings. The draft does not require the petition to make those allegations because not every petition results in an out-of-home placement. Also, even if the disposition does ultimately result in an out-of-home placement, it would be premature to make those allegations at the petition stage before the case has been fully investigated and a permanency plan determined. Accordingly, the draft instead requires the agency to include that factual basis in the court report under ss. 48.33 and 938.33 and to present evidence as to that factual basis at the dispositional hearing under ss. 48.335 and 938.335.

Also, the federal regulations prohibit "nunc pro tunc" orders, which literally means "now for then" orders. Rather than draft a Latin term that nobody understands, the draft translates that term to mean "an amended order that retroactively corrects an earlier order" that does not comply with the federal requirements.

3. **Time limits.** In s. 48.315 (2m), which prohibits extensions, continuances, and periods of delay that would result in the court making the contrary-to-welfare and reasonable-efforts findings more than 60 days after the child is removed from the home or in the court finalizing the permanency plan more than 12 months after the child is removed from the home, the draft includes a provision that is similar to s. 938.315 (3) under current law clarifying that a failure to meet those time limits does not deprive the court of jurisdiction or of competency to exercise that jurisdiction and providing the court with flexibility in fashioning remedies for a failure to meet those time limits, such as dismissing the proceeding with or without prejudice, ordering the release of the child, or granting such other relief as the court considers appropriate.

The draft includes that provision because, under current law, failure to meet a time limit results in the court losing competency to proceed, which in turn results in the child being returned to the home, without regard to whether the home is safe. This draconian remedy does not serve to protect children; instead it only serves to punish the child for the error of the district attorney. With the inflexible time limits mandated by the federal regulations, some fail-safe mechanism is necessary to protect children in those rare, but inevitable, cases in which a time limit is missed through no fault of the child. Indeed, you might wish to consider drafting a provision in s. 48.315 that is similar to s. 938.315 (3) to protect children in all cases of missed time limits and not just those cases covered in this draft.

4. **Termination of orders.** The drafting instructions would amend ss. 48.355 (4), 48.357 (6), 48.365 (5), 938.355 (4) (a) and (b), 938.357 (6), and 938.365 (5) to provide that a dispositional order, which currently must be extended every year, continues until the child reaches 18 years of age unless terminated sooner. The concern expressed is that with a permanency plan review scheduled every six months, a permanency plan hearing scheduled every 12 months, and an extension hearing scheduled every 12 months and with all of those time periods starting from different starting points, the court would be required to hold at least two or three hearings annually for a child, which would increase the chances of missed time limits.

This draft accomplishes those instructions, but distinguishes in-home placements from out-of-home placements because, as noted earlier, not every dispositional order

results in an out-of-home placement. Accordingly, the draft provides that for out-of-home placements the order continues until the child is 18 years old unless the court specifies a shorter period of time or terminates the order sooner. For an in-home placement, an order would continue to terminate after one year, unless extended, as under current law.

Similarly, the draft addresses the issue of duplication of six-month permanency plan reviews and 12-month permanency plan hearings in ss. 48.38 (5) (a) and 938.38 (5) (a) by requiring that the permanency plan review be conducted six months after the child is removed from the home and every 12 months after that review and that the permanency plan hearing be conducted 12 months after the child is removed from the home and every 12 months after that hearing. As such, the six-month reviews and the annual hearings will not overlap, but rather will alternate.

5. **Reasonable-efforts findings.** The drafting instructions would delete from s. 48.355 (2) (b) 6. and 938.355 (2) (b) 6. the reference to making reasonable efforts to return the child to the home and would replace that reference with a reference to achieving the goal of the permanency plan on the theory that the general category of achieving the goal of the permanency plan includes the specific goal of returning the child to the home and, therefore, the reference to returning the child to the home is unnecessary.

The draft adds the reference to achieving the goal of the permanency plan, but provides an exception for when the goal of the permanency plan is to return the child to the home and one of the aggravated circumstances specified in s. 48.355 (2d) (b) 1. to 5. or 938.355 (2d) (b) 1. to 4. applies. The draft provides that exception because those aggravated circumstances only excuse the agency from making reasonable efforts to return the child to the home; they do not excuse the agency from making reasonable efforts to achieve other permanency plan goals such as adoption.

Also, with respect to the permanency plan hearing that is required to be held not more than 30 days after a finding that reasonable efforts to return the child to the home are not required, the draft specifies that the child's foster parent must receive notice and an opportunity to be heard at the hearing as required under 45 CFR 1356.21 (o). See ss. 48.21 (5) (d), 48.32 (1) (c), 48.355 (2d) (c), 48.357 (2v) (c), 938.21 (5) (d), 938.32 (1) (d), 938.355 (2d) (c), and 48.357 (2v) (c), as created by the draft.

6. **Minor variations.** The draft also makes a couple of other minor variations from the drafting instructions. Specifically:

a. **Trial home visits.** The drafting instructions provide that trial home visits of less than six months are not counted in determining whether the child has been out of the home for 15 of the most recent 22 months. 45 CFR 1356.21 (e), however, permits a trial home visit to last for more than six months if authorized by the court. Accordingly, the draft excludes trial home visits of more than six months that are authorized by the court as well as trial home visits of less than six months in counting those 15 months. See ss. 48.365 (2g) (b) 3., 48.38 (5) (c) 6. (intro.), 48.417 (1) (a), 938.365 (2g) (b) 3., and 938.38 (5) (c) 6. (intro.), as affected by the draft.

b. **Child placed in the home of a relative.** The drafting instructions specify in s. 48.38 (2) (intro.) and 938.38 (2) (intro.) that the agency that placed or arranged the placement

of a child in the home of a relative *either under court order or a voluntary placement agreement* must prepare a permanency plan for the child. The draft does not include the court order or voluntary placement agreement language in ss. 48.38 (2) (intro.) and 938.38 (2) (intro.) because those requirements are already covered in ss. 48.38 (2) (c) and (d) and 938.38 (2) (c) and (d). As such, the qualifying language is unnecessary.

Also, on the effective date of the draft there will already be children placed in the homes of relatives for whom permanency plans must be prepared. Accordingly, the draft includes a nonstatutory transitional provision, SECTION 9123 (1), that provides a timeline for preparing permanency plans for those children. That timeline was based on similar language found in the 2001-02 budget bill, 2001 SB-55, SECTION 9123 (1).

7. Technical cleanups. Finally, in addition to the language changes requested by DHFS, the draft makes the following technical cleanups to chs. 48 and 938:

a. *Foster parent statements.* The draft amends ss. 48.27 (3) (a) 1m., 48.38 (5) (b), 48.42 (2g), 48.427 (1m), 938.27 (3) (a) 1m., and 938.38 (5) (b) to require a statement made by a foster parent at a CHIPS or TPR hearing or at a permanency plan review to be made under oath or affirmation. A similar requirement already exists for such statements made at a change-of-placement, revision, or extension hearing under s. 48.357 (2r), 48.363 (1m), 48.365 (2m) (ag), 938.357 (2r), 938.363 (1m), or 938.365 (2m) (ag).

b. *Aggravated circumstances — judgment of conviction.* Currently, ss. 48.355 (2d) (b) (intro.) and 938.355 (2d) (b) (intro.) refer to certain findings in the subdivisions that follow them *as evidenced by a final judgment of conviction*. Not all of the subdivisions that follow them, however, reference criminal convictions. For example, ss. 48.355 (2d) (b) 4. and 938.355 (2d) (b) 4. reference a TPR. The draft amends ss. 48.355 (2d) (b) (intro.), 1., 2., 3., 4., and 5. and 938.355 (2d) (b) (intro.), 1., 2., 3., and 4. to specify in each of those subdivisions whether the finding must be evidenced by a judgment of conviction or some other final judgment.

c. *Payment for child's care.* Sections 48.38 (2) (f) and 938.38 (2) (f) require a permanency plan to be prepared if the child's care is paid for under s. 49.19, which is the former AFDC program. The draft amends that qualification to require a permanency plan to be prepared if the child's care *would be* paid for under s. 49.19, *but for* the fact that the program no longer exists.

d. *Permanency plan review.* Finally, the draft creates 48.38 (5) (c) 6. cg. and d. so that that subdivision parallels s. 48.38 (4) (fg), as created by the draft.

If as you review this draft you have any questions about the draft or about any of the issues raised in this drafter's note, please do not hesitate to contact me directly at the phone number or e-mail address listed below.

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Basford, Sarah

From: Basford, Sarah
Sent: Tuesday, February 05, 2002 2:48 PM
To: Matzen, David
Subject: LRB -4375/1 (attached)



01-4375/1

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February 5, 2002

MEMORANDUM

To: Representative Kestell

From: Gordon M. Malaise, Senior Legislative Attorney

Re: LRB-4375/1 Conformity with federal Adoption and Safe Families Act

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 266-9738 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.

* ✓ May reference another document

Therese Durkin
Michelle Jensen
DAFS

* ✓ "Contrary to welfare"

Meeting Th. 2/7

delete health, safety
= just ~~health~~ welfare

search "health, safety and (or) welfare"

* ✓ Rehearing on good cause

(1)(a) not present and not waived

* ✓ 48.255

If child has been removed, allege contrary to welfare
& cas. efforts to prevent removal
or cas. efforts not required in

~~granted
rescinded
expired~~

* ✓ SEC 27

age 18 - but 46.261 finish high school

or age 19, whichever is sooner

✓ 48.38 (2)(f) 46.261 instead of 49.19
Circular 46.261 ~~49.19~~

~~SEC 5~~
~~AB 596~~

✓ 6 mo review perm. review by panel
12 mo. review perm. hearing by ct.

Make it clear

review every SIX months

may do six mo. hearing at 12 mos.

"perm plan review" use terms consistently

"perm. plan hearing" separate out no separate procedures

12 mo panel review or ct. hearing, or both

✓ relative who is not a parent 4.8-39 (2) (intro.)

✓ Trial home visit - delete 7 6 months
IF authorized by cts