

2001 SENATE BILL 28

January 25, 2001 – Introduced by Senators BURKE, ROSENZWEIG, BAUMGART, DARLING, S. FITZGERALD, GROBSCHMIDT, HUELSMAN, PLACHE, RISSER, ROBSON and ROESSLER, cosponsored by Representatives PLALE, JESKEWITZ, AINSWORTH, ALBERS, BALOW, BERCEAU, BOCK, BOYLE, COLON, CULLEN, FREESE, GRONEMUS, HOVEN, HUBER, HUNDERTMARK, JENSEN, KESTELL, KRAWCZYK, KREIBICH, KREUSER, KRUSICK, LADWIG, LA FAVE, J. LEHMAN, MILLER, MONTGOMERY, MUSSER, OLSEN, OTT, OWENS, POWERS, RHOADES, SCHNEIDER, SCHOOFF, SHERMAN, SINICKI, STASKUNAS, STEINBRINK, SUDER, SYKORA, TURNER, URBAN, VRAKAS, WALKER, WARD and WASSERMAN. Referred to Committee on Judiciary, Consumer Affairs, and Campaign Finance Reform.

1 **AN ACT** *to renumber and amend* 48.42 (2m); *to amend* 48.355 (2d) (c), 48.38
 2 (4) (a), 48.38 (5) (c) 7. and 48.977 (2) (f); and *to create* 48.13 (2m), 48.195, 48.355
 3 (2d) (b) 5., 48.415 (1m) and 48.42 (2m) (b) of the statutes; **relating to:**
 4 relinquishing custody of a newborn child and granting rule-making authority.

Analysis by the Legislative Reference Bureau

Under current law, a child may be taken into custody under various circumstances, including circumstances under which a law enforcement officer believes on reasonable grounds that the child is in immediate danger from his or her surroundings and removal from those surroundings is necessary. If the child is not returned to his or her parents, the person taking the child into custody must deliver the child to the intake worker of the court assigned to exercise jurisdiction under the Children's Code (juvenile court). The intake worker must then determine whether to release the child or hold the child in custody. The intake worker may determine to hold the child in custody if certain grounds exist for holding the child in custody, for example, there is probable cause to believe that the child is within the jurisdiction of the juvenile court and that the child's parent is unavailable to provide care and supervision for the child and services to ensure the child's safety and well-being are not available or would be inadequate. If the intake worker determines to hold the child in custody, a hearing must be held to determine whether the child shall continue to be held in custody, and a petition alleging that the child is in need of protection or services must be filed with the juvenile court.

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If the child is found to be in need of protection or services, the juvenile court may impose certain dispositions to maintain and protect the well-being of the child, including placing the child in a foster home and transferring legal custody of the child to the county department of human services or social services, a licensed child welfare agency, or, in Milwaukee County, the department of health and family services (DHFS). If the child is placed outside of the child's home, the agency primarily responsible for providing services for the child, subject to certain exceptions, must make reasonable efforts to make it possible for the child to return safely to his or her home and may, at the same time as the agency is making those efforts, make reasonable efforts to place the child for adoption, with a guardian, or in some other alternative permanent placement. Before a child may be adopted, however, the juvenile court must terminate the parental rights of the child's parents. A termination of parental rights (TPR) may be ordered either with the voluntary consent of the child's parents or involuntarily. For the juvenile court to order an involuntary TPR, certain grounds must be proven, among them, abandonment.

This bill permits a child whom a law enforcement officer, emergency medical technician, or hospital staff member reasonably believes to be 72 hours old or younger (newborn child) to be taken into custody under circumstances in which a parent of the newborn child relinquishes custody of the newborn child to the law enforcement officer, emergency medical technician, or hospital staff member and does not express an intent to return for the newborn child. The bill also permits a parent who wishes to relinquish a newborn child, but who is unable to travel to a place where a law enforcement officer, emergency medical technician, or hospital staff member is located, to call "911" and requires the person receiving the call to dispatch a law enforcement officer or emergency medical technician to meet the parent and take the newborn child into custody. A law enforcement officer, emergency medical technician, or hospital staff member who takes a newborn child into custody must take any action necessary to protect the health and safety of the newborn child and, within 24 hours after taking the newborn child into custody, deliver the newborn child to the intake worker.

A parent who relinquishes his or her newborn child under the bill and any person who assists the parent in that relinquishment have the right to leave at any time and to remain anonymous, and no person may follow or pursue the parent or person assisting the parent or induce or coerce a parent or person assisting a parent who wishes to remain anonymous into revealing his or her identity, unless the person has reasonable cause to suspect that the child has been the victim of abuse or neglect. The bill also prohibits any officer, employee, or agent of the state or a political subdivision of the state from attempting to locate or ascertain the identity of a parent who relinquishes custody of his or her newborn child under the bill or any person who assists the parent in that relinquishment, unless the officer, employee, or agent has reasonable cause to suspect that the child has been the victim of abuse or neglect. In addition, the bill provides for the confidentiality, subject to certain exceptions, of all records relating to the relinquishment of a newborn child under the bill.

The bill requires a law enforcement officer, an emergency medical technician, or a hospital staff member who takes a newborn child into custody to make available

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to the parent who relinquishes custody of the child the maternal and child health toll-free telephone number maintained by DHFS under the federal Maternal and Child Health Services Block Grant Act and the telephone number of the local health department. The decision whether to accept that information is entirely voluntary on the part of the parent, and no person may induce or coerce a parent into accepting that information.

The bill grants a parent who relinquishes custody of his or her newborn child under the bill and any person who assists a parent in that relinquishment immunity from any civil or criminal liability for any good faith act or omission in connection with that relinquishment, including immunity for exercising the right to remain anonymous, the right to leave at any time, and the right not to accept any information made available to the parent and immunity from prosecution for abandonment of a child or for neglecting a child. Similarly, the bill grants a law enforcement officer, an emergency medical technician, or a hospital staff member immunity from any civil or criminal liability for any good faith act or omission occurring within the scope of his or her duties under the bill.

Finally, the bill permits a juvenile court to exercise jurisdiction over a newborn child who has been relinquished under the bill and who is alleged to be in need of protection or services and to grant an involuntary TPR over a newborn child on the grounds that custody of the newborn child has been relinquished under the 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.** 48.13 (2m) of the statutes is created to read:
2 48.13 (2m) Whose parent has relinquished custody of the child under s. 48.195
3 (1);
4 **SECTION 2.** 48.195 of the statutes is created to read:
5 **48.195 Taking a newborn child into custody. (1)** TAKING CHILD INTO
6 CUSTODY. In addition to being taken into custody under s. 48.19, a child whom a law
7 enforcement officer, emergency medical technician, or hospital staff member
8 reasonably believes to be 72 hours old or younger may be taken into custody under
9 circumstances in which a parent of the child relinquishes custody of the child to the
10 law enforcement officer, emergency medical technician, or hospital staff member and

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1 does not express an intent to return for the child. If a parent who wishes to relinquish
2 custody of his or her child under this subsection is unable to travel to a sheriff's office,
3 police station, fire station, hospital, or other place where a law enforcement officer,
4 emergency medical technician, or hospital staff member is located, the parent may
5 dial the telephone number "911" or, in an area in which the telephone number "911"
6 is not available, the number for an emergency medical service provider, and the
7 person receiving the call shall dispatch a law enforcement officer or emergency
8 medical technician to meet the parent and take the child into custody. A law
9 enforcement officer, emergency medical technician, or hospital staff member who
10 takes a child into custody under this subsection shall take any action necessary to
11 protect the health and safety of the child and, within 24 hours after taking the child
12 into custody, deliver the child to the intake worker under s. 48.20.

13 **(2) ANONYMITY AND CONFIDENTIALITY.** (a) Except as provided in this paragraph,
14 a parent who relinquishes custody of a child under sub. (1) and any person who
15 assists the parent in that relinquishment have the right to remain anonymous. The
16 exercise of that right shall not affect the manner in which a law enforcement officer,
17 emergency medical technician, or hospital staff member performs his or her duties
18 under this section. No person may induce or coerce or attempt to induce or coerce a
19 parent or person assisting a parent who wishes to remain anonymous into revealing
20 his or her identity, unless the person has reasonable cause to suspect that the child
21 has been the victim of abuse or neglect, as defined in s. 48.981 (1) (d).

22 (b) A parent who relinquishes custody of a child under sub. (1) and any person
23 who assists the parent in that relinquishment may leave the presence of the law
24 enforcement officer, emergency medical technician, or hospital staff member who
25 took custody of the child at any time, and no person may follow or pursue the parent

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1 or person assisting the parent, unless the person has reasonable cause to suspect
2 that the child has been the victim of abuse or neglect, as defined in s. 48.981 (1) (d).

3 (c) No officer, employee, or agent of this state or of a political subdivision of this
4 state may attempt to locate or ascertain the identity of a parent who relinquishes
5 custody of a child under sub. (1) or any person who assists the parent in that
6 relinquishment, unless the officer, employee, or agent has reasonable cause to
7 suspect that the child has been the victim of abuse or neglect, as defined in s. 48.981
8 (1) (d).

9 (d) All records relating to the relinquishment of a child under sub. (1) are
10 confidential and may not be disclosed, except to the following persons:

11 1. The birth parent of the child, if the birth parent has waived his or her right
12 under par. (a) to remain anonymous, or the adoptive parent of the child, if the child
13 is later adopted.

14 2. Appropriate staff of the department, county department, or licensed child
15 welfare agency that is providing services to the child.

16 3. A person authorized to provide or providing intake or dispositional services
17 under s. 48.067, 48.069, or 48.10.

18 4. An attending physician for purposes of diagnosis and treatment of the child.

19 5. The child's foster parent, treatment foster parent, or other person having
20 physical custody of the child.

21 6. A court conducting proceedings under s. 48.21, proceedings relating to a
22 petition under s. 48.13 (2m) or 48.42, or dispositional proceedings under subch. VI
23 or VIII relating to the child, the county corporation counsel, district attorney, or
24 agency legal counsel representing the interests of the public in those proceedings, or
25 the guardian ad litem representing the interests of the child in those proceedings.

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1 7. A tribal court, or other adjudicative body authorized by an American Indian
2 tribe or band to perform child welfare functions, that is exercising jurisdiction over
3 proceedings relating to the child, an attorney representing the interests of the
4 American Indian tribe or band in those proceedings, or an attorney representing the
5 interests of the child in those proceedings.

6 **(3) INFORMATION FOR PARENT.** (a) Subject to par. (b), a law enforcement officer,
7 emergency medical technician, or hospital staff member who takes a child into
8 custody under sub. (1) shall make available to the parent who relinquishes custody
9 of the child the maternal and child health toll-free telephone number maintained by
10 the department under 42 USC 705 (a) (5) (E) and the telephone number of the local
11 health department, as defined in s. 250.01 (4).

12 (b) The decision whether to accept the information made available under par.
13 (a) is entirely voluntary on the part of the parent. No person may induce or coerce
14 or attempt to induce or coerce any parent into accepting that information.

15 **(4) IMMUNITY FROM LIABILITY.** (a) Any parent who relinquishes custody of his
16 or her child under sub. (1) and any person who assists the parent in that
17 relinquishment are immune from any civil or criminal liability for any good faith act
18 or omission in connection with that relinquishment. The immunity granted under
19 this paragraph includes immunity for exercising the right to remain anonymous
20 under sub. (2) (a), the right to leave at any time under sub. (2) (b), and the right not
21 to accept any information under sub. (3) (b) and immunity from prosecution under
22 s. 948.20 for abandonment of a child or under s. 948.21 for neglecting a child.

23 (b) Any law enforcement officer, emergency medical technician, or hospital
24 staff member who takes a child into custody under sub. (1) is immune from any civil

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1 or criminal liability for any good faith act or omission occurring within the scope of
2 that person's duties under this section.

3 (c) In any civil or criminal proceeding, the good faith of a person specified in par.
4 (a) or (b) is presumed. This presumption may be overcome only by clear and
5 convincing evidence.

6 **(5) MEDICAL ASSISTANCE ELIGIBILITY.** A child who is taken into custody under sub.
7 (1) is presumed to be eligible for medical assistance under s. 49.46 or 49.47.

8 **(6) RULES.** The department shall promulgate rules to implement this section.
9 In promulgating those rules, the department shall consider the different
10 circumstances under which a parent might relinquish custody of a child under sub.
11 (1). The rules shall include rules prescribing a means by which a parent who
12 relinquishes custody of his or her child under sub. (1) may, until the granting of an
13 order terminating parental rights, choose to be identified as the child's parent.

14 **SECTION 3.** 48.355 (2d) (b) 5. of the statutes is created to read:

15 48.355 **(2d)** (b) 5. That the parent has been found under s. 48.13 (2m) to have
16 relinquished custody of the child under s. 48.195 (1) when the child was 72 hours old
17 or younger.

18 **SECTION 4.** 48.355 (2d) (c) of the statutes is amended to read:

19 48.355 **(2d)** (c) If the court makes a finding specified in par. (b) 1., 2., 3. ~~or~~ 4.,
20 or 5., the court shall hold a hearing within 30 days after the date of that finding to
21 determine the permanency plan for the child. If a hearing is held under this
22 paragraph, the agency responsible for preparing the permanency plan shall file the
23 permanency plan with the court not less than 5 days before the date of the hearing.

24 **SECTION 5.** 48.38 (4) (a) of the statutes is amended to read:

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1 48.38 (4) (a) The services offered and any service provided in an effort to
2 prevent holding or placing the child outside of his or her home, while assuring that
3 the health and safety of the child are the paramount concerns, and to make it possible
4 for the child to return safely home, except that the permanency plan need not include
5 a description of those services offered or provided with respect to a parent of the child
6 if any of the circumstances specified in s. 48.355 (2d) (b) 1., 2., 3. ~~or~~ 4., or 5. apply to
7 that parent.

8 **SECTION 6.** 48.38 (5) (c) 7. of the statutes is amended to read:

9 48.38 (5) (c) 7. Whether reasonable efforts were made by the agency to make
10 it possible for the child to return safely to his or her home, except that the court or
11 panel need not determine whether those reasonable efforts were made with respect
12 to a parent of the child if any of the circumstances specified in s. 48.355 (2d) (b) 1.,
13 2., 3. ~~or~~ 4., or 5. apply to that parent.

14 **SECTION 7.** 48.415 (1m) of the statutes is created to read:

15 48.415 (1m) RELINQUISHMENT. Relinquishment, which shall be established by
16 proving that a court of competent jurisdiction has found under s. 48.13 (2m) that the
17 parent has relinquished custody of the child under s. 48.195 (1) when the child was
18 72 hours old or younger.

19 **SECTION 8.** 48.42 (2m) of the statutes is renumbered 48.42 (2m) (a) and
20 amended to read:

21 48.42 (2m) (a) *Parent as a result of sexual assault.* Except as provided in this
22 ~~subsection paragraph~~, notice is not required to be given to a person who may be the
23 father of a child conceived as a result of a sexual assault in violation of s. 940.225 (1),
24 (2) or (3), 948.02 (1) or (2), ~~or~~ 948.025 if a physician attests to his or her belief that
25 a sexual assault as specified in this ~~subsection paragraph~~ has occurred or if the

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1 person who may be the father of the child has been convicted of sexual assault as
2 specified in this subsection paragraph for conduct which may have led to the child's
3 conception. A person who under this subsection paragraph is not given notice does
4 not have standing to appear and contest a petition for the termination of his parental
5 rights. This subsection paragraph does not apply to a person who may be the father
6 of a child conceived as a result of a sexual assault in violation of s. 948.02 (1) or (2)
7 if that person was under 18 years of age at the time of the sexual assault.

8 **SECTION 9.** 48.42 (2m) (b) of the statutes is created to read:

9 48.42 (2m) (b) *Parent who relinquished child.* Except as provided in this
10 paragraph, notice is not required to be given to a parent who has relinquished
11 custody of his or her child under s. 48.195 (1) and who has exercised his or her right
12 to remain anonymous under s. 48.195 (2) (a). A person who under this paragraph is
13 not given notice does not have standing to appear and contest a petition for the
14 termination of his or her parental rights. This paragraph does not apply to a parent
15 who, prior to the granting of an order terminating parental rights, chooses to be
16 identified as the child's parent.

17 **SECTION 10.** 48.977 (2) (f) of the statutes is amended to read:

18 48.977 (2) (f) That the agency primarily responsible for providing services to
19 the child under a court order has made reasonable efforts to make it possible for the
20 child to return to his or her home, while assuring that the child's health and safety
21 are the paramount concerns, but that reunification of the child with the child's
22 parent or parents is unlikely or contrary to the best interests of the child and that
23 further reunification efforts are unlikely to be made or are contrary to the best
24 interests of the child, except that the court need not find that the agency has made

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1 those reasonable efforts with respect to a parent of the child if any of the
2 circumstances specified in s. 48.355 (2d) (b) 1., 2., 3. ~~or~~ 4. or 5. apply to that parent.

3 **SECTION 11. Initial applicability.**

4 (1) RELINQUISHMENT OF NEWBORN CHILD. This act first applies to a child whose
5 custody is relinquished, as described in section 48.195 (1) of the statutes, as created
6 by this act, on the effective date of this subsection.

7 (END)