

2001 DRAFTING REQUEST

Bill

Received: 10/02/2000

Received By: malaigm

Wanted: As time permits

Identical to LRB:

For: Suzanne Jeskewitz (608) 266-3796

By/Representing: Erin Bilot

This file may be shown to any legislator: NO

Drafter: malaigm

May Contact:

Alt. Drafters:

Subject: Children - TPR and adoption

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Relinquishment of newborn child

Instructions:

See Attached--redraft 99-4772/1 with attached changes.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	malaigm 10/11/2000	gilfokm 10/11/2000					
/1			pgreensl 10/13/2000		lrb_docadmin 10/13/2000		S&L
/2	malaigm 12/05/2000	gilfokm 12/06/2000	martykr 12/07/2000		lrb_docadmin 12/07/2000		S&L
/3	malaigm 12/12/2000	gilfokm 12/13/2000	martykr 12/13/2000		lrb_docadmin 12/13/2000	lrb_docadmin 12/20/2000	S&L

sent to Rep. Plale
(see attached "Submittal" Form)

FE Sent For:

<END>

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FE Sent For:

3-12/13 King
km 12
km 13
km 13

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/1	12-12/Kmg		pgreensl 10/13/2000		lrb_docadmin 10/13/2000		S&L

FE Sent For:

Km 12/6 *207 Km 12/7*

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1?	malaigm	11-10/11/00 <i>[Signature]</i>	10/13 PEI	10/13 PEI/SF			

FE Sent For:

<END>



**WISCONSIN LEGISLATIVE COUNCIL
STAFF MEMORANDUM**

TO: REPRESENTATIVES JEFFREY PLALE AND SUZANNE JESKEWITZ AND MEMBERS OF THE SPEAKER'S TASK FORCE ON ABANDONED BABIES

FROM: Anne Sappenfield, Senior Staff Attorney

RE: 1999 Assembly Bill 926, Relating to Relinquishing Custody of a Newborn Child

DATE: September 19, 2000

This memorandum describes 1999 Assembly Bill 926, relating to relinquishing custody of a newborn child. The bill was introduced on March 24, 2000 by Representatives Plale and Jeskewitz; cosponsored by Senator Clausing.

The bill creates provisions permitting a parent to relinquish custody of a newborn to certain persons anonymously and without risk of prosecution for abandoning a child.

Relinquishing Custody

Under the bill, a law enforcement officer, an emergency medical technician (EMT) or a hospital emergency room staff person must take a child who is 30 days old or younger (a "newborn") into custody if the parent relinquishes custody to him or her and expresses the intent not to return for the newborn. The person taking custody must then take any action necessary to protect the health and safety of the newborn and, within 24 hours, deliver the newborn to a juvenile court intake worker.¹

Under the bill, a law enforcement officer, EMT or hospital emergency room staff person who takes a newborn into custody must make all of the following available to the parent:

¹ A juvenile court intake worker determines whether to release a child or hold a child in custody, if certain grounds exist. For example, a child may be held in custody if 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 an intake worker decides to hold the child in custody, a hearing must be held to determine whether to continue custody and a petition alleging the child is in need of protection or services must be filed with the juvenile court.

1. Information relating to the means by which the parent may choose to be identified as the child's parent, provided that the parent's parental rights have not yet been terminated. The Department of Health and Family Services (DHFS) is required to promulgate rules that prescribe how a parent may elect to be identified.
2. A set of written materials that describe the services that are available to assist parents and newborns. The set must include materials required by DHFS by rule. The bill provides that the set must include materials that are directly relevant to circumstances that might cause a parent to relinquish custody of a newborn and materials that provide information as to how a parent may regain custody if the parent later decides to do so.
3. An affidavit by which the parent may voluntarily disclaim any parental rights to the child, including the right to notice of termination of parental rights (TPR) proceedings. The affidavit must be developed by DHFS by rule. It must advise the parent as to the effect of a TPR order and must recite that the parent has been informed of and understands the effect of such an order.
4. A form on which the parent may disclose family medical and genetic information. The form must be developed by DHFS by rule and must clearly and unambiguously state all of the following on each page of the form:
 - a. That the information requested is intended to facilitate the provision of medical care for the newborn.
 - b. That the form may be completed in whole or in part or left completely blank.
 - c. That the decision whether to complete the form in whole or in part or to leave the form completely blank is entirely voluntary on the part of the parent.
 - d. That the parent may not be held civilly or criminally liable for failing to complete the form or any part of the form.

The bill specifies that the decision whether to accept any information or complete the form or affidavit, as described above, is entirely voluntary on the part of the parent. No one may induce, coerce or attempt to induce or coerce any parent into accepting information or materials or into completing the affidavit or form.

Right to Remain Anonymous

A parent who relinquishes custody of a newborn and any person who assists the parent in relinquishing the newborn have the right to remain anonymous under the bill. If the parent or other person exercises this right, it may not affect the manner in which a law enforcement officer, EMT or hospital room staff person performs the duties required under the bill. Further, no one may induce, coerce or attempt to induce or coerce a parent or other person to reveal his or her identity if the person wishes to remain anonymous.

A parent who relinquishes custody, as provided for under the bill, and any person who assists the parent may leave the presence of the law enforcement officer, EMT or hospital emergency room staff

person who took custody of the newborn at any time, and no one may follow or pursue the parent or person assisting the parent.

In addition, no officer, employee or agent of the state or of a political subdivision of this state may attempt to locate or ascertain the identity of a parent who relinquishes custody of a newborn or any person who assists the parent.

Immunity from Liability

Under the bill, a parent who relinquishes custody of his or her newborn and any person who assists the parent are immune from civil or criminal liability for any good faith act or omission in connection with that relinquishment. This includes immunity for exercising the right to remain anonymous, the right to leave at any time and the right not to accept any information or written materials and not to complete any affidavit or form.

In addition, any law enforcement officer, EMT or hospital emergency room staff person who takes a newborn into custody is immune from any civil or criminal liability for any good faith act or omission occurring within the scope of the duties created by the bill.

The bill specifies that in any civil or criminal proceeding, the good faith of the person is presumed. Such a presumption may be overcome only by clear and convincing evidence.

Records

Any records relating to the relinquishment of a newborn are confidential and may not be disclosed except to the following persons:

1. The birth parent of the newborn, if the birth parent has waived the right to remain anonymous, or the adoptive parent of the newborn, if the newborn is adopted.
2. Appropriate staff of DHFS, a county department of human or social services or a licensed child welfare agency that is providing services to the newborn.
3. Juvenile court intake and dispositional staff.
4. An attending physician for purposes of diagnosis and treatment of the newborn.
5. The newborn's foster parent, treatment foster parent or other person having physical custody of the newborn.
6. A juvenile court conducting proceedings relating to the newborn under the Children's Code, the county corporation counsel, district attorney or agency legal counsel representing the interests of the public in those proceedings or the guardian ad litem representing the interests of the newborn in those proceedings.
7. A tribal court, or other adjudicative body authorized by an American Indian tribe or band to perform child welfare functions, that is exercising jurisdiction over proceedings relating to

the newborn, an attorney representing the interests of the tribe or band or an attorney representing the interests of the newborn in those proceedings.

Child in Need of Protection or Services and TPR Grounds

The bill creates a ground under which the juvenile court has jurisdiction over a newborn whose custody has been relinquished as a child in need of protection or services.² In addition, the bill creates a ground for involuntary TPR under which the court must find that the parent relinquished custody of the child when the child was 30 days old or younger.³

Effective Date

The bill first applies to a newborn whose custody is relinquished on the effective date of the act.

² If a child is found to be in need of protection or services, the juvenile court may impose certain dispositions including placing the child in a foster home and transferring legal custody to the county department of human or social services, a licensed child welfare agency or, in Milwaukee County, DHFS.

³ The juvenile court must terminate the parental rights of a child's parents before the child may be adopted. Involuntary termination of these rights may only be granted if one of several specified grounds is met and the court finds that the termination is in the best interests of the child.

TO: Speaker's Task Force on Abandoned Babies
FROM: Task Force Chairs
Representative Suzanne Jeskewitz and Representative Jeff Plale
RE: First Task Force Meeting
DATE: September 19, 2000

The first meeting of the task force on abandoned babies will be held on Tuesday, September 26th at 2:00 PM in Room 225 NW in the State Capitol. This meeting is an introductory meeting for task force members. We will be discussing the legislation and the direction of the Task Force. Public testimony will not be accepted at this time.

**Task Force on Abandoned Babies
September 26, 2000, 2:00 PM
Room 225 NW, State Capitol**

AGENDA

- I. Introductions
 - Suzanne Jeskewitz
 - Jeff Plale
- II. Review of past legislation (LRB 4772/1)
 - Memo from Anne Sappenfield, Legislative Council Attorney
- III. Role of the Task Force
- IV. What's Next?

10/18 Milwaukee Children's Hospital 10:00

10/28 Marshfield Clinic 11:00

Malaise, Gordon

From: Jeskewitz, Suzanne
Sent: Wednesday, September 20, 2000 3:56 PM
To: Anne Sappenfield; Erin Bilot; Gordon Malaise; Helen Healy; Jeff Plale; Lisa Purtell-Boyce; Nancy Korom; Sue Armacost; Sue Jeskewitz; Susie Schoof; Vince Biskupic
Cc: Jensen, Scott
Subject: Speaker's Task Force on Abandoned Babies

Attached are documents relating to the first meeting of the Task Force on Abandoned Babies. The first attachment is a meeting notice and an agenda. The second is a copy of the legislation from the past session and the third is a memo from Anne Sappenfield, of the Legislative Council, describing the bill.

We do not believe that everyone is aware of who all of the members of the task force are. Task force members, appointed by Assembly Speaker Scott Jensen, are:

Sue Armacost, Wisconsin Right to Life
Vince Biskupic, Outagamie County District Attorney
Helen Healey, Dane County Safe Place for Newborns
Nancy Korom, Children's Hospital of Wisconsin (Vice President of Patient Care Services)
Lisa Purtell-Boyce, Planned Parenthood Advocates of Wisconsin

Task Force Leaders are State Representatives Suzanne Jeskewitz and Jeff Plale. The Task Force will be staffed by Anne Sappenfield of the Legislative Council.

Hard copies of this will not be sent unless requested. If you have trouble opening any of the attachments or would like a hard copy, please call Rep. Jeskewitz's Office at (608) 266-3796.

We look forward to seeing you on Tuesday.

Representatives Jeskewitz and Plale



Abandoned Babies
Task Force Me...



99-4772/1



Abandoned Babies
Memo, AS, 9.2...

Malaise, Gordon

From: Malaise, Gordon
Sent: Tuesday, October 10, 2000 4:09 PM
To: Schooff, Susie
Subject: RE: Speaker's Abandoned Babies Task Force

Susie:

I am working on the Abandoned Babies draft as we speak. Now, just to make sure that we are on the same page, the redraft will involve the following changes:

1. Shorten from 30 days to 72 hours the maximum age of a baby who can be taken into custody under the draft.
2. Specify unequivocally that a parent who relinquishes a baby under the draft cannot be prosecuted for abandonment.
3. Delete all the language about all the information and other materials that under the previous draft had to be provided to the parent. Instead leave it to the individual hospitals and programs to develop their own materials.
4. In general, stick to the main ideas that a parent shall have **anonymity** and **immunity** from prosecution.

In addition to doing the redraft, I have also taken it upon myself to review the enactments and proposals from the other states that have enacted or introduced abandoned baby legislation to see how they are handling some of the issues that we have discussed. I will share my findings with you in a drafter's note to the redraft.

Gordon

-----Original Message-----

From: Schooff, Susie
Sent: Tuesday, October 10, 2000 3:49 PM
To: Malaise, Gordon
Subject: Speaker's Abandoned Babies Task Force

Gordon,

Hello there! I just wanted to send you a quick email regarding the Speaker's Task Force on Abandoned Babies. Can you make the necessary language changes that were discussed at the first meeting?

As soon as you have the draft changes I will forward the bill to the members.

Please contact my office, or Representative Jeskewitz's office with any questions. Thanks for your help and also thank you for attending the meeting. Jeff was really pleased with both you and Anne Sapefield and we were commenting on what a great job people from the Legislative Reference Bureau and Legislative Council do for the state of Wisconsin.

Susie Schooff
Office of Representative Jeff Plale
(608)266-0610



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
P. O. BOX 2037
MADISON, WI 53701-2037

STEPHEN R. MILLER
CHIEF

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-6948
REFERENCE SECTION: (608) 266-0341
REFERENCE FAX: (608) 266-5648

October 11, 2000

MEMORANDUM

To: Representatives Jeskewitz and Plale
From: Gordon M. Malaise, Senior Legislative Attorney
Subject: Abandoned Babies Legislation of Other States

Introduction

I have reviewed the abandoned babies legislation enacted or proposed in other states to give you a sense of how the other states that have enacted or proposed such legislation have addressed some of the issues that the Task Force must address. This memorandum will summarize how those states have addressed those issues.

Discussion

I. Age of the child. The most common maximum age limits under which a newborn child may be taken into custody are 72 hours and 30 days. The maximum age of a child who may be taken into custody varies as follows:

- A. Seventy-two hours.** Alabama, Colorado, Florida, Michigan, Minnesota, and Ohio.
- B. Five days.** New York.
- C. One week.** Georgia.
- D. Fifteen days.** North Carolina and Pennsylvania.
- E. Thirty days.** Connecticut, Kentucky, Louisiana, Missouri, New Jersey, South Carolina, Texas, and West Virginia.
- F. Forty-five days.** Kansas.
- G. Twelve months.** Illinois.
- H. Twenty-four months.** Oklahoma.

In addition, some states provide a little wiggle room regarding the age of the child. Those states are Florida (reasonably believes, approximately), Minnesota (to a reasonable degree of medical certainty), and South Carolina (as reasonably determined by the hospital).

II. Who may relinquish a child. Most states permit only a parent to relinquish custody of his or her child. A few states permit a person authorized by a parent to do so as well. A few other states permit anyone to relinquish a child. The persons who may relinquish a child are as follows:

A. Parent only. Alabama, Colorado, Georgia, Illinois, Kentucky, Michigan, Missouri, North Carolina, Ohio, Oklahoma, Texas, and West Virginia.

B. Parent or person authorized by parent. Connecticut (parent's lawful agent), Kansas (person with lawful custody), Minnesota (person who has mother's approval), New Jersey (person arranged by parent), and Pennsylvania (person with physical custody).

C. Anyone. Florida, Louisiana, and South Carolina.

III. Who may accept a child. The most common option for who may accept a child is a medical facility, which some states narrowly defined to mean only a hospital with an emergency room, other states define as any hospital, and other states define as any medical or health care facility, which presumably would include outpatient clinics. Other common options include fire fighters, emergency medical technicians, and law enforcement officers. It appears that a common denominator is that the person must have some medical or, at least, first aid training, presumably due to the fact that a mother in that predicament most likely has not received any prenatal care, therefore the child might be in rough shape. The persons or places that may accept a child are as follows:

A. Medical or health care facilities.

1. Hospital with emergency room. Alabama (expressly excludes private offices and clinics unless they voluntarily accept a child), Connecticut, Florida, Kentucky, and New Jersey.

2.. Any hospital. Colorado, Georgia (expressly excludes private offices), Illinois, Louisiana, Michigan, Minnesota, North Carolina, and Ohio.

3. Any medical or health care facility. Kansas, Missouri, Oklahoma, South Carolina (expressly includes outpatient facilities), and West Virginia.

B. Fire fighter. Colorado, Florida, Kansas, Louisiana, and Michigan

C. Emergency medical technician. Florida, Kentucky, North Carolina, Ohio, Pennsylvania, and Texas.

D. Law enforcement officer. Kentucky, Louisiana, Michigan, New Jersey, North Carolina, and Ohio.

E. Local health department. Georgia, Kansas, Louisiana, and North Carolina.

F. Social services department. North Carolina.

G. Social worker, therapist. Oklahoma.

H. Pregnancy crisis facility. Louisiana.

IV. Where or to whom child may be relinquished. Certain states specify that a child must be relinquished *at* the hospital, fire station, or police station. Other states specify that the relinquishment may be *to* the hospital, law enforcement officer, emergency medical technician, or

other person, thereby implying that the relinquishment may occur anywhere. No state surveyed specifies that the parent may call the public safety emergency system (9-1-1) and have the emergency medical technicians come out and get the child. On the issue of where or to whom a child may be relinquished, the states fall as follows:

A. At the hospital, etc. Colorado, Florida, Illinois, Kansas, Louisiana, Michigan, Minnesota, New Jersey, North Carolina, South Carolina, and West Virginia.

B. To the hospital, etc. Alabama, Connecticut, Kentucky, Georgia, Missouri, North Carolina, (to law enforcement officer anywhere, to others at the hospital or fire station only), Ohio, Oklahoma, Pennsylvania, and Texas.

V. Whether a child may have been harmed. On the important and difficult issue of whether a parent may relinquish a child who has been harmed and still enjoy anonymity and immunity from prosecution, the states appear to be almost equally divided. Some states are silent on the issue of harm, thereby implying that a parent may relinquish a child in a harmed condition and still enjoy anonymity and immunity. Other states specify that if the child has been abused or harmed, the parent does not enjoy anonymity or immunity. On the harm issue, the states fall as follows:

A. Child may have been harmed. Alabama, Colorado, Connecticut, Illinois, Kentucky, Louisiana, Oklahoma, Pennsylvania, Texas, and West Virginia.

B. Child must be unharmed. Florida, Georgia, Kansas, Michigan, Minnesota, Missouri, New Jersey, Ohio, and South Carolina.

C. Mitigation. North Carolina takes a middle ground approach. For misdemeanor child abuse, the parent enjoys immunity. For felony child abuse, however, the parent may be prosecuted, but the fact that the parent relinquished the child is a mitigating factor in sentencing.

VI. Immunity of person accepting child. Most states provide that a person taking a child into custody is immune from liability arising out of taking the child into custody and providing care for the child in good faith. Other states provide for limited immunity. Other states are silent on that issue. On the issue of immunity, the states fall as follows:

A. Complete immunity if good faith. Alabama, Colorado, Georgia, Illinois, Kansas, Minnesota, Missouri, New Jersey, Ohio, and South Carolina.

B. Limited immunity. Florida (not for negligence), Louisiana, (not for willful or wanton misconduct or gross negligence), North Carolina (not for gross negligence or wanton or intentional wrongdoing).

C. No immunity. Connecticut, Kentucky, Michigan, New York, Oklahoma, Pennsylvania, Texas, and West Virginia.

VII. Mandatory or permissive. The majority of states *require* a hospital or other person specified in their legislation to take into custody a child who has been relinquished. A few states *permit*, but do not require, such a person to take a child into custody. Instead, those states merely provide for immunity for a parent who relinquishes his or her child. On the mandatory/permissive issue, the states fall as follows:

A. Mandatory. Alabama, Colorado, Connecticut, Florida, Kansas, Kentucky, Minnesota, Missouri, New Jersey, North Carolina, Ohio, South Carolina, Texas, and West Virginia.

B. Permissive. Georgia, Illinois, Louisiana, Michigan, New York, Oklahoma, and Pennsylvania.

VIII. Anonymity of parent. Some states provide for an absolute right of the parent to remain anonymous. Other states permit the parent to remain anonymous unless the child has been abused. Surprisingly, many states do not specify that the parent enjoys the right to remain anonymous. On the issue of anonymity, the states fall as follows:

A. Absolute right. Connecticut, Kentucky, North Carolina, and West Virginia.

B. Conditional right. Florida and Ohio do not permit the parent to remain anonymous if the child has been abused or neglected. In Minnesota, New Jersey, and South Carolina the legislation applies only if the child is unharmed. In addition, in South Carolina the parent must identify the child's other parent and a person other than a parent must identify the parents.

C. No right. Alabama, Colorado, Georgia, Illinois, Kansas, Louisiana, Michigan, Missouri, New York, Oklahoma, Pennsylvania, and Texas.

IX. Medical history. On the issue of trying to obtain the medical history of the mother and child, the majority of states are silent, neither requiring nor prohibiting the hospital to inquire about that information. Other states permit the hospital to request that information, but specify that the parent is not required to provide the information. A couple of states require the hospital to attempt to acquire that information. On the issue of obtaining the medical history of the child and mother, the states fall as follows:

A. Neither required nor prohibited to inquire. Alabama, Colorado, Florida, Georgia, Kansas, Louisiana, Michigan, Missouri, New York, Oklahoma, Pennsylvania, Texas, and West Virginia.

B. Permitted to inquire. Connecticut, Kentucky, Minnesota, New Jersey, North Carolina, and Ohio.

C. Required to inquire. Illinois and South Carolina. Illinois has a little wrinkle that is not found elsewhere. In Illinois, the parent's immunity from prosecution is conditioned on providing the medical information.

X. Information to parents. The majority of states are silent on the issue of providing information to parents who relinquish their newborns. A few states require certain information, such as the services that are available to assist a parent with a newborn and information on how to reunite with the newborn, to be provided to the parent. Other states require a media campaign to be conducted to make the public aware of the safe haven option. On the issue of providing information to the parent or to the public, the states fall as follows:

A. No information required. Alabama, Colorado, Illinois, Kansas, Louisiana, Michigan, Missouri, New York, Oklahoma, Pennsylvania, Texas, and West Virginia.

B. Must offer information to parent. Connecticut, Kentucky, Minnesota, and Ohio.

C. Media campaign required. Florida, New Jersey, North Carolina, and South Carolina.

Conclusion

I hope that this outline is helpful to you. If you have any questions, especially questions about the content of the abandoned babies legislation of any particular state, please do not hesitate to contact me at the phone number or e-mail address listed below.

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

Friday 10/13

-0609/1

~~1999-2000~~ LEGISLATURE

LRB-4772/1

GMM:km

D-Note

King

~~1999 ASSEMBLY BILL 926~~

~~March 24, 2000 - Introduced by Representatives PLALE, JESKEWITZ, GOETSCH, REYNOLDS, LADWIG, STASKUNAS, MUSSER, GUNDERSON, BALOW, KLUSMAN, OTT, HUERSCH, MORRIS-TATUM, OWENS, HASENOHRL, RYBA, COLON, BOYLE, SYKORA, SCHOOFF, SPILLNER, SINICKI, OLSEN, WASSERMAN, KEDZIE, KREIBICH, BERCEAU, HANDRICK and JENSEN, cosponsored by Senators CLAUSING, ROESSLER, ROBSON, BURKE and DARLING. Referred to Committee on Children and Families.~~

LPS: All questions to King.

Regenerate

1 AN ACT to amend 48.355 (2d) (c), 48.38 (4) (a), 48.38 (5) (c) 7., 48.42 (2) (a), 48.422
2 (9) (a), 48.425 (2), 48.977 (2) (f), 938.355 (2d) (c), 938.38 (4) (a) and 938.38 (5)
3 (c) 7.; and to create 48.13 (2m), 48.195, 48.355 (2d) (b) 5., 48.41 (2) (e), 48.415
4 (1m) and 938.355 (2d) (b) 5. of the statutes, relating to: relinquishing custody
5 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.

ASSEMBLY BILL 926

72 hours

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 ~~WIHRSN~~. 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 parent of a child who is 30 days old or younger (newborn child) to relinquish custody of the newborn child to a law enforcement officer, an emergency medical technician or a hospital emergency room staff member rather than to abandon the child. Under the bill, if a parent of a newborn child relinquishes custody of the newborn child to a law enforcement officer, an emergency medical technician or a hospital emergency room staff member and expresses the intent not to return for the child, the law enforcement officer, emergency medical technician or hospital emergency room staff member must take the newborn child into custody, 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.~~

does not express an

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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. 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. 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 emergency room staff member who takes a newborn child into custody to make available to the parent who relinquishes custody of the child information relating to the means by which the parent may, until the granting of a TPR order, choose to be identified as the child's parent and a set of written materials prescribed by DHFS that describe the services that are available to assist parents and newborn children and that include information as to how a parent may regain custody of a newborn child relinquished under the bill if the parent later decides to do so. The~~

ASSEMBLY BILL 926

- 3 -
and immunity from prosecution for abandonment of a child or for neglecting a child

~~law enforcement officer, emergency medical technician or hospital emergency room staff member must also make available to the parent an affidavit by which the parent may voluntarily disclaim any parental rights that he or she may have to the newborn child and a form on which the parent may disclose the medical and genetic history of the newborn child. The decision whether to accept that information or those written materials, whether to complete that affidavit or whether to complete, in whole or in part, that form, however, is entirely voluntary on the part of the parent. Under the bill, no person may induce or coerce a parent into accepting that information or those materials or into completing that affidavit or form.~~

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 or the right not to accept any information or written materials, and not to complete any affidavit or form, made available to the parent. Similarly, the bill grants a law enforcement officer, an emergency medical technician or a hospital emergency room 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 its child in need of protection or services jurisdiction over a newborn child who has been relinquished under the bill 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.

and provision that those persons are not required to report under the child abuse reporting law any suspected abuse or neglect of a newborn child taken into custody under the bill

and who is alleged to be in need of protection or services

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. ~~48.195~~, a child who is 30 days
7 old or younger may be taken into custody under circumstances in which a parent of
8 the child relinquishes custody of the child to ^{the} law enforcement officer, ^{whom} an emergency

48.19

appears ~~where~~ a law enforcement officer, emergency medical technician, or hospital emergency room staff member reasonably believes to be 72 hours

ASSEMBLY BILL 926

and does not express an

1 medical technician or a hospital emergency room staff member with the intent not
 2 to return for the child. If a parent of a child who is 30 days old or younger relinquishes
 3 custody of the child to a law enforcement officer, emergency medical technician or
 4 hospital emergency room staff member and expresses the intent not to return for the
 5 child, the law enforcement officer, emergency medical technician, or hospital
 6 emergency room staff member shall take the child into custody, take any action
 7 necessary to protect the health and safety of the child and, within 24 hours after
 8 taking the child into custody, deliver the child to the intake worker under s. 48.20.

9 (2) ANONYMITY AND CONFIDENTIALITY. (a) A parent who relinquishes custody of
 10 a child under sub. (1) and any person who assists the parent in that relinquishment
 11 have the right to remain anonymous. The exercise of that right shall not affect the
 12 manner in which a law enforcement officer, emergency medical technician, or
 13 hospital emergency room staff member performs his or her duties under this section.
 14 No person may induce or coerce or attempt to induce or coerce a parent or person
 15 assisting a parent who wishes to remain anonymous into revealing his or her
 16 identity.

17 (b) A parent who relinquishes custody of a child under sub. (1) and any person
 18 who assists the parent in that relinquishment may leave the presence of the law
 19 enforcement officer, emergency medical technician, or hospital emergency room staff
 20 member who took custody of the child at any time, and no person may follow or
 21 pursue the parent or person assisting the parent.

22 (c) No officer, ~~employee~~ employee or agent of this state or of a political subdivision of this
 23 state may attempt to locate or ascertain the identity of a parent who relinquishes
 24 custody of a child under sub. (1) or any person who assists the parent in that
 25 relinquishment.

under this subsection shall take

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ASSEMBLY BILL 926

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

3 1. The birth parent of the child, if the birth parent has waived his or her right
4 under ~~sub. (2)~~^{par.} (a) to remain anonymous, or the adoptive parent of the child, if the
5 child is later adopted.

6 2. Appropriate staff of the department, county department¹ or licensed child
7 welfare agency that is providing services to the child.

8 3. A person authorized to provide or providing intake or dispositional services
9 under s. 48.067, 48.069² or 48.10.

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

11 5. The child's foster parent, treatment foster parent² or other person having
12 physical custody of the child.

13 6. A court conducting proceedings under s. 48.21, proceedings relating to a
14 petition under s. 48.13 (2m) or 48.12² or dispositional proceedings under subch. VI or
15 VIII relating to the child, the county corporation counsel, district attorney¹ or agency
16 legal counsel representing the interests of the public in those proceedings¹ or the
17 guardian ad litem representing the interests of the child in those proceedings.

18 7. A tribal court, or other adjudicative body authorized by an American Indian
19 tribe or band to perform child welfare functions, that is exercising jurisdiction over
20 proceedings relating to the child, an attorney representing the interests of the
21 American Indian tribe or band in those proceedings¹ or an attorney representing the
22 interests of the child in those proceedings.

23 ~~(8) PARENTAL OPTIONS. (a) Subject to par. (b), a law enforcement officer,~~
24 ~~emergency medical technician or hospital emergency room staff member who takes~~

ASSEMBLY BILL 926

1 a child into custody under sub. (1) shall make available to the parent who
2 relinquishes custody of the child all of the following:

3 1. Information relating to the means specified in sub. (4) (a) by which the parent
4 may, until the granting of an order terminating parental rights, choose to be
5 identified as the child's parent.

6 2. The set of written materials specified in sub. (4) (b) that describe the services
7 that are available to assist parents and newborn children.

8 3. The affidavit specified in sub. (4) (c) by which the parent may voluntarily
9 disclaim any parental rights that he or she may have to the child, including the right
10 to notice of proceedings under subch. VIII.

11 4. The form specified in sub. (4) (d) on which the parent may disclose the
12 medical and genetic information specified in s. 48.425 (1) (am).

13 (b) The decision whether to accept any information made available under par.
14 (a) 1. or written materials made available under par. (a) 2., to complete the affidavit
15 made available under par. (a) 3. or to complete, in whole or in part, the form made
16 available under par. (a) 4. is entirely voluntary on the part of the parent. No person
17 may induce or coerce or attempt to induce or coerce any parent into accepting that
18 information or those materials or into completing that affidavit or form.

19 (4) RULES. The department shall promulgate rules to implement this section.

20 In promulgating those rules, the department shall consider the different
21 circumstances under which a parent might relinquish custody of a child under sub.

22 (1). The rules shall include rules prescribing ~~all of the following:~~

23 ~~(a) the~~ means by which a parent who relinquishes custody of his or her child
24 under sub. (1) may, until the granting of an order terminating parental rights, choose
25 to be identified as the child's parent.

Handwritten notes on the left margin: "Move to", "P. 8", "217.", and a circled "9" next to line 23.

ASSEMBLY BILL 926

1 (b) A set of written materials that describe the services that are available to
2 assist parents and newborn children. The materials shall include materials that are
3 directly relevant to circumstances that might cause a parent to relinquish custody
4 of a child under sub. (1) and materials that provide information as to how a parent
5 may regain custody of a child relinquished under sub. (1) if the parent later decides
6 to do so.

7 (c) An affidavit by which a parent who relinquishes custody of a child under sub.
8 (1) may voluntarily disclaim any rights that the parent may have to the child. The
9 affidavit shall advise the parent as to the effect of an order terminating parental
10 rights and shall recite that the parent has been informed of and understands the
11 effect of such an order and that the parent voluntarily disclaims any rights that the
12 parent may have to the child, including the right to notice of proceedings under
13 subch. VIII.

14 (d) A form on which a parent who relinquishes custody of a child under sub. (1)
15 may voluntarily disclose the medical and genetic information specified in s. 48.425
16 (1) (am). The form prescribed under this paragraph shall be identical to the form
17 provided by the department under s. 48.425 (1) (am), except that the form prescribed
18 under this paragraph shall clearly and unambiguously state on each page of the form
19 all of the following:

- 20 1. That the information requested is intended to facilitate the provision of
21 medical care for the child.
- 22 2. That the form may be completed in whole or in part or left completely blank.
- 23 3. That the decision whether to complete the form in whole or in part or to leave
24 the form completely blank is entirely voluntary on the part of the parent.

ASSEMBLY BILL 926

4. That the parent may not be held civilly or criminally liable for failing to complete the form or any part of the form.

(3)

IMMUNITY FROM LIABILITY. (a) Any parent who relinquishes custody of his or her child under sub. (1) and any person who assists the parent in that relinquishment are immune from any civil or criminal liability for any good faith act or omission in connection with that relinquishment. The immunity granted under this paragraph includes immunity for exercising the right to remain anonymous under sub. (2) (a) and the right to leave at any time under sub. (2) (b) and the right not to accept any information or written materials and not to complete any affidavit or form under sub. (3) (1).

(b) Any law enforcement officer, emergency medical technician, or hospital emergency room staff member who takes a child into custody under sub. (1) is immune from any civil or criminal liability for any good faith act or omission occurring within the scope of his or her duties under this section.

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

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

48.355 (2d) (b) 5. That the parent has been found under s. 48.13 (2m) or under a law of any other state or a federal law that is comparable to s. 48.13 (2m) to have relinquished custody of the child under s. 48.195 (1) or under a law of any other state or a federal law that is comparable to s. 48.195 (1) when the child was 30 days old or younger.

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

and immunity from prosecution under s. 449.20 for abandonment or neglecting a child

72 hours

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ASSEMBLY BILL 926

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

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

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

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

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

~~SECTION 7. 48.41 (2) (e) of the statutes is created to read:~~

~~48.41 (2) (e) The person filing the petition under s. 48.42 files with the court an affidavit signed by a parent who has relinquished custody of his or her child under s. 48.195 (1) and witnessed by 2 persons stating that the parent has been informed and understands the effect of an order to terminate parental rights and that the~~

ASSEMBLY BILL 926

SECTION 7

1 ~~parent voluntarily disclaims all rights to the child, including the right to notice of~~
2 ~~proceedings under this subchapter.~~

3 SECTION 8. 48.415 (1m) of the statutes is created to read:

4 48.415 (1m) RELINQUISHMENT. Relinquishment, which shall be established by
5 proving that a court of competent jurisdiction has found under s. 48.13 (2m) ~~or under~~
6 a law of any other state or a federal law that is comparable to s. 48.13 (2m) that the
7 parent has relinquished custody of the child under s. 48.195 (1) ~~or under a law of any~~
8 ~~other state or a federal law that is comparable to s. 48.195 (1)~~ when the child was 30
9 days old or younger.

72 hours

10 SECTION 9. 48.42 (2) (a) of the statutes is amended to read:

11 48.42 (2) (a) The parent or parents of the child, unless the child's parent has
12 waived the right to notice under s. 48.41 (2) (d) or (e).

10-11

13 SECTION 10. 48.422 (9) (a) of the statutes is amended to read:

14 48.422 (9) (a) If a petition for termination of the rights of a birth parent, as
15 defined under s. 48.432 (1) (am), is filed by a person other than an agency
16 enumerated under s. 48.069 (1) or (2) or if the court waives the report required under
17 s. 48.425, the court shall order any parent whose rights may be terminated to file
18 with the court the information specified under s. 48.425 (1) (am), unless the parent
19 has chosen under s. 48.195 (3) (b) not to disclose the information.

20 SECTION 11. 48.425 (2) of the statutes is amended to read:

21 48.425 (2) The court may waive the report required under this section if
22 consent is given under s. 48.41, but shall order the birth parent or parents to provide
23 the department with the information specified under sub. (1) (am), unless the parent
24 has chosen under s. 48.195 (3) (b) not to disclose the information

20-24

25 SECTION 12. 48.977 (2) (f) of the statutes is amended to read:

ASSEMBLY BILL 926

1 48.977 (2) (f) That the agency primarily responsible for providing services to
 2 the child under a court order has made reasonable efforts to make it possible for the
 3 child to return to his or her home, while assuring that the child's health and safety
 4 are the paramount concerns, but that reunification of the child with the child's
 5 parent or parents is unlikely or contrary to the best interests of the child and that
 6 further reunification efforts are unlikely to be made or are contrary to the best
 7 interests of the child, except that the court need not find that the agency has made
 8 those reasonable efforts with respect to a parent of the child if any of the
 9 circumstances specified in s. 48.355 (2d) (b) 1., 2., 3. or 4. or 5. apply to that parent.

10 ~~SECTION 13. 938.355 (2d) (b) 5. of the statutes is created to read:~~

11 ~~938.355 (2d) (b) 5. That the parent has been found under s. 48.13 (2m) or under~~
 12 ~~a law of any other state or a federal law that is comparable to s. 48.13 (2m) to have~~
 13 ~~relinquished custody of the juvenile under s. 48.195 (1) or under a law of any other~~
 14 ~~state or a federal law that is comparable to s. 48.195 (1) when the juvenile was 30~~
 15 ~~days old or younger.~~

16 ~~SECTION 14. 938.355 (2d) (c) of the statutes is amended to read:~~

17 ~~938.355 (2d) (c) If the court makes a finding specified in par. (b) 1., 2., 3., or 4.~~
 18 ~~or 5., the court shall hold a hearing within 30 days after the date of that finding to~~
 19 ~~determine the permanency plan for the juvenile. If a hearing is held under this~~
 20 ~~paragraph, the agency responsible for preparing the permanency plan shall file the~~
 21 ~~permanency plan with the court not less than 5 days before the date of the hearing.~~

22 ~~SECTION 15. 938.38 (4) (a) of the statutes is amended to read:~~

23 ~~938.38 (4) (a) The services offered and any service provided in an effort to~~
 24 ~~prevent holding or placing the juvenile outside of his or her home, while assuring~~
 25 ~~that the health and safety of the juvenile are the paramount concerns, and to make~~

ASSEMBLY BILL 926

1 it possible for the juvenile to return safely home, except that the permanency plan
 2 need not include a description of those services offered or provided with respect to
 3 a parent of the juvenile if any of the circumstances specified in s. 938.355 (2d) (b) 1.,
 4 2., 3. or 4. or 5. apply to that parent.

5 SECTION 16. 938.38 (5) (c) 7. of the statutes is amended to read:

6 938.38 (5) (c) 7. Whether reasonable efforts were made by the agency to make
 7 it possible for the juvenile to return safely to his or her home, except that the court
 8 or panel need not determine whether those reasonable efforts were made with
 9 respect to a parent of the juvenile if any of the circumstances specified in s. 938.355
 10 (2d) (b) 1., 2., 3. or 4. or 5. apply to that parent.

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11 SECTION 17. Initial applicability.

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

15 (END)

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SECTION 1. 48.42 (2m) of the statutes is renumbered 48.42 (2m) (a) and amended to read:

48.42 (2m) (a) *Parent as a result of sexual assault.* Except as provided in this ~~subsection paragraph~~, notice is not required to be given to a person who may be the father of a child conceived as a result of a sexual assault in violation of s. 940.225 (1), (2) or (3), 948.02 (1) or (2),[✓] or 948.025 if a physician attests to his or her belief that a sexual assault as specified in this ~~subsection paragraph~~ has occurred or if the person who may be the father of the child has been convicted of sexual assault as specified in this ~~subsection paragraph~~ for conduct which may have led to the child's conception. A person who under this ~~subsection paragraph~~ is not given notice does not have standing to appear and contest a petition for the termination of his parental rights. This ~~subsection paragraph~~ does not apply to a person who may be the father of a child conceived as a result of a sexual assault in violation of s. 948.02 (1) or (2) if that person was under 18 years of age at the time of the sexual assault.

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

48.42 (2m) (b) *Parent who relinquished child.* Except as provided in this paragraph, notice is not required to be given to a parent who has relinquished custody of his or her child under s. 48.195 (1) and who has exercised his or her right to remain anonymous under s. 48.195 (2) (a). A person who under this paragraph is not given notice does not have standing to appear and contest a petition for the termination of his or her parental rights. This paragraph does not apply to a parent

who, prior to the granting of an order terminating parental rights, chooses to be identified as the child's parent.

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SECTION 3. 48.981 (2) of the statutes is amended to read:

48.981 (2) PERSONS REQUIRED TO REPORT. A physician, coroner, medical examiner, nurse, dentist, chiropractor, optometrist, acupuncturist, other medical or mental health professional, social worker, marriage and family therapist, professional counselor, public assistance worker, including a financial and employment planner, as defined in s. 49.141 (1) (d), school teacher, administrator or counselor, mediator under s. 767.11, child care worker in a day care center or child caring institution, day care provider, alcohol or other drug abuse counselor, member of the treatment staff employed by or working under contract with a county department under s. 46.23, 51.42^v or 51.437, physical therapist, occupational therapist, dietitian, speech-language pathologist, audiologist, emergency medical technician, first responder^v or police or law enforcement officer having reasonable cause to suspect that a child seen in the course of professional duties has been abused or neglected or having reason to believe that a child seen in the course of professional duties has been threatened with abuse or neglect and that abuse or neglect of the child will occur shall, except as provided under sub. subs. (2m) and (2r), report as provided in sub. (3). A court-appointed special advocate having reasonable cause to suspect that a child seen in the course of the court-appointed special advocate's activities under s. 48.236 (3) has been abused or neglected or having reason to believe that a child seen in the course of those activities has been threatened with abuse and

neglect and that abuse or neglect of the child will occur shall, except as provided in sub. (2m), report as provided in sub. (3). Any other person, including an attorney, having reason to suspect that a child has been abused or neglected or reason to believe that a child has been threatened with abuse or neglect and that abuse or neglect of the child will occur may make such a report. Any person, including an attorney having reason to suspect that an unborn child has been abused or reason to believe that an unborn child is at substantial risk of abuse may report as provided in sub. (3). No person making a report under this subsection may be discharged from employment for so doing.

NOTE: NOTE: Sub. (2) is shown as affected by two acts of the 1999 legislature and as merged by the revisor under s. 13.93 (2) (c).
NOTE:
History: Sup. Ct. Order, 59 Wis. 2d R1, R3 (1973); 1977 c. 355; 1977 c. 447 s. 210; 1979 c. 300; 1983 a. 172, 190, 299, 538; 1985 a. 29 ss. 917 to 930m, 3200 (56); 1985 a. 176, 234; 1987 a. 27, 186, 209; 1987 a. 332 s. 64; 1987 a. 334, 355, 399, 403; 1989 a. 31, 41, 102, 316, 359; 1991 a. 160, 263; 1993 a. 16, 105, 218, 227, 230, 246, 272, 318, 395, 443, 446, 491; 1995 a. 275, 289, 369, 456; 1997 a. 27, 114, 292, 293; 1999 a. 9, 20, 32, 56, 84, 149, 192; s. 13.93 (2) (c).

SECTION 4. 48.981 (2m) (title) of the statutes is amended to read:

48.981 (2m) (title) EXCEPTION TO REPORTING REQUIREMENT; CONFIDENTIAL HEALTH

CARE SERVICES.

History: Sup. Ct. Order, 59 Wis. 2d R1, R3 (1973); 1977 c. 355; 1977 c. 447 s. 210; 1979 c. 300; 1983 a. 172, 190, 299, 538; 1985 a. 29 ss. 917 to 930m, 3200 (56); 1985 a. 176, 234; 1987 a. 27, 186, 209; 1987 a. 332 s. 64; 1987 a. 334, 355, 399, 403; 1989 a. 31, 41, 102, 316, 359; 1991 a. 160, 263; 1993 a. 16, 105, 218, 227, 230, 246, 272, 318, 395, 443, 446, 491; 1995 a. 275, 289, 369, 456; 1997 a. 27, 114, 292, 293; 1999 a. 9, 20, 32, 56, 84, 149, 192; s. 13.93 (2) (c).

SECTION 5. 48.981 (2r) of the statutes is created to read:

48.981 (2r) EXCEPTION TO REPORTING REQUIREMENT; RELINQUISHMENT OF NEWBORN CHILD. A law enforcement officer, emergency medical technician, or hospital emergency room staff member is not required to report any suspected abuse or neglect of a child taken into custody under s. 48.195 (1).

(END OF INSERT)

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This bill permits a child whom a law enforcement officer, emergency medical technician, or hospital emergency room 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 emergency room staff member and does not express an intent to return for the newborn child.

A law enforcement officer, emergency medical technician, or hospital emergency room staff member that 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.

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0609/1dn

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deadline

Representatives Jeskewitz and Plale:

This redraft makes all of the following changes to the original draft:

1. Shortens from 30 days to 72 hours the maximum age of a newborn child who can be taken into custody under the draft. Note that the draft also provides a little wiggle room for the person taking the child into custody by describing the child as "a child whom the law enforcement officer *reasonably believes* to be 72 hours old or younger."

2. Specifies unequivocally that a parent who relinquishes his or her newborn child is immune from prosecution for child abandonment or neglecting a child for any act or omission in connection with that relinquishment.

3. Deletes all of the language from the previous draft about providing information and materials to the parent, thereby leaving it up to the individual hospitals and local safe-haven programs to develop their own information and materials.

4. Adds language to clarify that notice of the TPR proceeding is not required to be given to a parent who has exercised the right to remain anonymous under the draft.

5. Adds language to clarify that a person taking into custody a newborn child who may have been abused or neglected is not required to report under the child abuse reporting law. Because the draft does not contain the requirement that the child be unharmed, a person taking the child into custody is caught in a dilemma between the duty to respect the parent's right to remain anonymous and the duty to report under the child abuse reporting law unless the person is exempted from reporting under that law.

If you have any questions about any of these changes or about the draft in general, please do not hesitate to contact me at the phone number or e-mail address listed below.

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0609/1dn
GMM:kmg:pg

October 13, 2000

Representatives Jeskewitz and Plale:

This redraft makes all of the following changes to the original draft:

1. Shortens from 30 days to 72 hours the maximum age of a newborn child who can be taken into custody under the draft. Note that the draft also provides a little wiggle room for the person taking the child into custody by describing the child as "a child whom the law enforcement officer . . . *reasonably believes* to be 72 hours old or younger."
2. Specifies unequivocally that a parent who relinquishes his or her newborn child is immune from prosecution for child abandonment or neglecting a child for any act or omission in connection with that relinquishment.
3. Deletes all of the language from the previous draft about providing information and materials to the parent, thereby leaving it up to the individual hospitals and local safe-haven programs to develop their own information and materials.
4. Adds language to clarify that notice of the TPR proceeding is not required to be given to a parent who has exercised the right to remain anonymous under the draft.
5. Adds language to clarify that a person taking into custody a newborn child who may have been abused or neglected is not required to report under the child abuse reporting law. Because the draft does not contain the requirement that the child be unharmed, a person taking the child into custody is caught in a dilemma between the duty to respect the parent's right to remain anonymous and the duty to report under the child abuse reporting law unless the person is exempted from reporting under that law.

If you have any questions about any of these changes or about the draft in general, please do not hesitate to contact me at the phone number or e-mail address listed below.

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State of Wisconsin
Department of Health and Family Services

Tommy G. Thompson, Governor
Joe Leean, Secretary

To: Representative Suzanne Jeskewitz
From: Russ Pederson, ^{Ru}Legislative Liaison
Re: Speaker's Task Force on Abandoned Babies
Date: November 28, 2000

The Department appreciates the opportunity to provide a response to the Task Force inquiry pertaining to the Maternal and Child Health (MCH) resource and referral telephone hotline. In addition to comments on the hotline, we would like to re-state important issues previously raised in correspondence to the Task Force Co-Chairs. The Department would welcome the opportunity to meet with the Task Force or Co-Chairs to discuss the concerns noted below.

The MCH Hotline provides information on the following programs: Family Planning, HealthCheck, Prenatal Care, Prenatal Care Coordination, Well Child Care, Children with Special Health Care Needs and the Women, Infants and Children Supplemental Nutrition Program (WIC). Operationally, several distinct State program toll-free numbers, including the Birth to Three, Women's Health Program and Well Woman, are forwarded to a single incoming telephone line and answered by a primary contractor. Currently, Lutheran Hospital in La Crosse is the contractor. The Hotline is staffed 24-hours a days, seven days a week. The current contractor also provides First Call for Help resource for approximately 17 counties in Wisconsin with separate funding. Currently, the Hotline is neither staffed nor funded, however, to provide callers with ad hoc legal guidance relating to termination of parental rights, or to operate as a statewide health crisis line.

While this legislation primarily addresses issues relating to legal custody and termination of parental rights, the MCH Hotline does provide information and resources that may be helpful to women seeking information about adoption, nutrition, and other infant and prenatal services. It should be noted, individuals who may choose to abandon a young child are likely suffering psychological duress and are perhaps least likely to avail themselves to existing resources.

The MCH Hotline has also been designated as the "Service Hotline of Women, Children and Families" under Act 309, and, as such, is required by to provide women and families with information and alternatives to abortion.

In the questions to the Task Force re-stated below, the Department has described some scenarios that are possible – and likely in certain circumstances – if this legislation becomes law.

1. How is the person to whom the baby is given to know if the person relinquishing the child is the child's parent?

For example, what if the baby has been kidnapped or taken out of spite and is then relinquished under this legislation? What if the mother of a teen who just gave birth took the baby to the hospital against her daughter's wishes and walked away without identification?

*If suspect,
not required to
take baby
"may"*

2. If the parent does not complete the medical and other necessary forms, it may not be known whether the child is Native American, a fact that creates a variety of problems under the Indian Child Welfare Act. Under the Indian Child Welfare Act, the State must notify a Tribe within 24 hours if they have taken custody of one of their children. If the Tribe does not assume custody of the child, the State is required to place the child according to Tribal affiliation first and then among other Tribes. Thus, there are many potential areas where Wisconsin could be in violation of the Act if we are unaware of the child's race or ethnicity.

ICWA applies only if knows or should know baby is Native American

3. There will also be no medical history on the child, placing the child at risk for health complications when treating the child for illnesses and when placing the child in foster care or for adoption.

4. If a child is relinquished and placed in foster care, what are the timelines under which the parent who relinquished custody or the child's birth father (who may know nothing of the relinquishment - or even the birth) can attempt to "reclaim" the child. A parent could relinquish the child without the biological father being aware. There must be an attempt to locate the father in order to Terminate Parental Rights (TPR) under Chapter 48.

Current law re TPR applies

5. What if a termination of parental rights is completed based on the voluntary relinquishment and then the child's birth father, upon learning of the matter, seeks to enforce his own parental rights.

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For example, if a father does not learn of the relinquishment until the child has already been placed in a foster or adoptive home, what rights, if any will the father have to "claim" his child and what sort of disruption will this cause for the child and the adoptive family?

6. What if the child is relinquished and is not in good health due to neglect and subsequently dies.

Change bill -- may search for parent if abuse or neglect

For example, if a parent attempts to injure the child with the intent to fatally harm and then decides to relinquish, who will be held responsible for the death of the child if the parent remains anonymous? Many symptoms of abuse and neglect may not be readily apparent, including babies exposed to alcohol or crack cocaine or those who are physically injured.

7. What if the parent who relinquishes the child, at the time of relinquishment, is intoxicated, under the influence of other drugs or is otherwise incapacitated to the point that the decision is not voluntarily and knowingly made?

Parent may identify self at any time before TPR

For example, a parent in such a situation as to voluntarily relinquish a baby may also be subject to the duress of a boyfriend, a parent or other person or may be suffering from post-partum depression. Research has shown that post-partum depression occurs within 2-4 days of delivery, the exact time allotted for a parent to give up their child under this draft.

8. How will the determination be made that the baby is 72 hours old or younger? Is there training for those who are allowed to accept a baby, to assist them in determining the age of the baby at the time of relinquishment.

Reasonably believes "15 72 hours or younger"

9. Current research of other states' abandonment programs (e.g. South Carolina's program has not been utilized in the first months of the program) indicates that women are not utilizing

such programs. Low numbers of abandonment, and the difficulty – and cost – of conducting outreach to women are important considerations.

Again, thank you for considering these issues. Please let me know if the Department can provide any additional information to you or the Task Force.

Cc: Representative Jeff Plale
Anne Sappenfield, Legislative Council



**WISCONSIN LEGISLATIVE COUNCIL
STAFF MEMORANDUM**

TO: REPRESENTATIVES SUZANNE JESKEWITZ AND JEFFREY PLALE

FROM: Anne Sappenfield, Senior Staff Attorney

RE: Issues Raised Relating to Abandoned Babies Legislation

DATE: November 28, 2000

This memorandum discusses issues relating to LRB-0609/1 (the "bill draft"), relating to relinquishing custody of a newborn child that have been raised at the meetings of the Speaker's Task Force on Abandoned Babies. The memorandum also sets forth options to address the issues raised, if applicable.

A. ISSUES RAISED AT PUBLIC HEARINGS

1. Issue: Provide levels of immunity from prosecution for a parent who relinquishes custody of a newborn based upon the severity of an offense with which the parent is charged.

This issue is based upon provisions of a bill in North Carolina relating to relinquishing custody of newborns. Under the North Carolina bill, a parent may not be prosecuted for misdemeanor child abuse of a newborn if the parent relinquished custody of the newborn as provided under of the bill. Further, for felony child abuse, the fact that a parent relinquished custody of his or her newborn would have been a mitigating factor in sentencing the parent.

• ***The Bill Draft***

The bill draft provides that a parent who relinquishes custody of his or her newborn is immune from any civil or criminal liability for any good faith act or omission ***in connection with the relinquishment.*** The bill draft specifies that this includes immunity from criminal prosecution for child abandonment or child neglect.

• ***Discussion***

Because the immunity provision in the bill draft is applicable only to acts or omissions in connection with the relinquishment of the newborn, it appears that it would rarely, if ever, provide immunity from prosecution for child abuse. Further, if it appeared a parent who relinquished custody of his or her newborn had abused the newborn, the district attorney would

have the discretion to consider the fact that the parent took the child to a safe place in determining whether to charge the parent. In addition, a court could consider that fact in sentencing the parent without a modification to current law. Finally, Wisconsin does not have a crime of misdemeanor child abuse, so there is no clear way to accomplish what the North Carolina bill proposes.

One issue, however, is that it will be very difficult to prosecute an individual for abusing a relinquished newborn if the parent does not disclose his or her identity when relinquishing the baby.

□ Draft

- *Options*

Under the bill draft, no officer, employer or agent of the state or of a political subdivision of the state may attempt to locate or ascertain the identity of a parent who relinquishes custody of a newborn or a person who assists in the relinquishment. You may wish to include an exception to this provision if the baby is determined to have been abused.

2. Issue: A parent should be offered some minimal information when relinquishing custody of a newborn.

Several individuals have stated that they believe the bill draft should require a person who accepts custody of a newborn to offer the parent relinquishing custody with specified information. It has been suggested that such information could include a list of medical concerns following child birth and telephone numbers for various community organizations that could provide services such as medical care, family planning and mental health care.

- *The Bill Draft*

The bill draft does not address offering information to a parent upon relinquishing custody of a newborn. Whether information is offered or not is determined by the individual accepting the newborn.

□ Draft

- *Discussion and Options*

Although you have determined that the state should not create materials to be offered to every parent who relinquishes custody of a newborn, it may be appropriate to specify to a certain degree what information is offered to ensure that it is accurate and appropriate. One option is to require a person accepting custody of a newborn to offer the telephone number of the county health department. Also, the bill draft could require the person to offer the 24-hour toll-free number maintained by the Department of Health and Family Services (DHFS) to provide information on maternal and child health issues.

B. ISSUES RAISED BY THE DHFS

Susan Dreyfus, Administrator, Division of Children and Family Services, DHFS, raised several issues in a letter to Representative Jeskewitz, dated September 25, 2000. This section of the memorandum discusses those issues.

1. Issue: How is the person to whom the baby is given to know if the person relinquishing the child is the child's parent?

- **Bill Draft**

The bill draft permits a law enforcement officer, emergency medical technician (EMT) or hospital room emergency staff person to take a newborn into custody if the *parent of the newborn* relinquishes custody to one of these people and does not express an intent to return for the newborn. Because this provision is permissive and because it permits taking custody only from the parent, a law enforcement officer, EMT or emergency room staff person who doubts that the person with the newborn is the newborn's parent is not required to accept custody of the newborn.

- **Options**

One option to address this concern would be to specify in the legislation that a person accepting custody of a newborn who is suspicious that the person relinquishing custody is not the newborn's parent may inquire as to the identity of the person and may follow the person. Under the bill draft, a parent who relinquishes custody has the right to remain anonymous and may not be followed or pursued.

2. Issue: If the parent does not complete the medical and other necessary forms, it may not be known whether the child is Native American, a fact that creates a variety of problems under the Federal Indian Child Welfare Act. There will also be no medical history on the child.

The Federal Indian Child Welfare Act (ICWA) provides that the tribal court for the tribe or band of which a child may be a member has jurisdiction in child welfare cases involving an Indian child. In addition, the standard of proof is higher in involuntary termination of parental rights (TPR) proceedings involving Indian children.

- **Bill Draft**

The bill draft permits a parent relinquishing custody of a newborn to remain anonymous and does not require the parent to provide information to the person accepting custody of the newborn. Therefore, if a parent exercises the right to remain anonymous, it will be impossible to know whether a newborn is an Indian child if the parent does not disclose this fact and the child's medical history will not be known.

- **Discussion**

ICWA provides that in any state court proceeding for foster care placement of or TPR to an Indian child, the court must generally transfer such proceeding to the jurisdiction of the tribe. However, ICWA also provides an involuntary proceeding in a state court where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement TPR must notify the parent or Indian custodian and the tribe of pending proceedings and of their right to intervention.

No - would
jeopardize
anonymity

✱ Although it is unfortunate that a baby who is an Indian child may be relinquished without anyone knowing he or she is an Indian child, it appears that the court may proceed in placing and terminating the parental rights to the child without violating ICWA.

3. Issue: If a child is relinquished and placed in foster care, what are the timelines under which the parent who relinquished custody of the child or the child's birth father can attempt to "reclaim" the child.

• **Bill Draft**

The bill draft specifies that DHFS must promulgate rules that prescribe a means by which a parent who relinquishes custody of his or her newborn may, until the granting of a TPR order, choose to be identified as the child's parent. In addition, a parent who is not involved in the relinquishment must also have his or her parental rights terminated before the child may be adopted, so that parent would be able to exercise parental rights until they are terminated.

Under current law, a parent who did not contest a petition for involuntary TPR and whose rights were terminated may file a motion with the court for relief from the judgment. Such a motion must be based on one of the following grounds:

- a. Mistake, inadvertence, surprise or excusable neglect.
- b. Newly discovered evidence which entitles the parent to a new trial (i.e., material evidence that has come to the parent's notice after trial, despite diligence in seeking it, that would probably change the result of the trial).
- c. Fraud, misrepresentation or other misconduct of an adverse party.
- d. The judgment is void.
- e. A prior judgment on which the judgment is based has been reversed or otherwise vacated.

A motion for relief must be filed within 30 days after the entry of the TPR judgment *unless the* parent files a notice of his or her intent to file an appeal within 30 days after the entry of the TPR judgment, in which case the motion must be filed within 30 days of receiving the trial transcript.

In addition, a parent may appeal a TPR judgment by failing a notice of appeal within 30 days of the TPR judgment.

4. Issue: What if a TPR is completed based on the voluntary relinquishment and then the child's birth father, upon learning of the matter, seeks to enforce his own parental rights?

• **Bill Draft**

Under the bill draft, relinquishment of a newborn is a ground for *involuntary* TPR. Therefore, it will not be an expedited procedure. In addition, even if the mother were to identify

herself and voluntarily terminate her parental rights to the child, ^{an} unknown or alleged father's rights must still be terminated involuntarily. It is clear that if a father seeks to enforce his parental rights before they are terminated, he may do so.

- **Discussion**

As stated above, if a father seeks to enforce his parental rights more than 30 days after the final judgment terminating his rights was entered, he may not enforce his rights. It should be noted, however, that such a father may file a declaration of parental rights so that he is eligible to receive notice of an applicable TPR proceeding. In addition, he will receive constructive notice through a legal notice published in the local newspaper.

- **Option**

One option to address the concern of a father being unaware that his newborn has been relinquished is to require that a county department or sheriff issue a press release or publish notice whenever a newborn is relinquished so that it is more likely that a father would find out about a relinquishment. A similar provision is included in South Carolina's bill regarding abandoned babies.

5. Issue: What if the child is relinquished and is not in good health due to neglect and subsequently dies?

- **Bill Draft**

The bill draft provides that a parent who relinquishes custody of a newborn is immune from prosecution for any good faith act or omission in connection with the relinquishment. The bill draft specifies that this includes immunity from prosecution for neglect or abandonment. If a baby is relinquished and dies due to neglect, it is possible that a prosecutor would charge a parent with neglect, arguing that the neglect was not in connection with the relinquishment.

- **Options**

You may wish to exclude the reference to criminal child neglect in the immunity provision. With that modification, child abandonment would be the only criminal statute specifically referenced.

Another option is to permit an attempt to identify the newborn's parents if the newborn dies from apparent neglect.

6. Issue: What if the parent who relinquishes a child is intoxicated or otherwise incapacitated at the time of the relinquishment to the point that the decision is not voluntarily and knowingly made? A person in such a situation may also be subject to the duress inflicted by a boyfriend, parent or other person or may be suffering from post-partum depression.

- **Bill Draft**

No- 3 public notices sufficient

□ Draft

Correct
Under the bill draft, because a law enforcement officer, EMT or emergency room staff person is not required to accept custody of a newborn, he or she may choose not to if it appears that the voluntary nature of the relinquishment is questionable.

- *Options*

NO
You may wish to consider amending the bill draft to provide that a law enforcement officer, EMT or emergency room staff person who suspects that the relinquishment is not voluntary may inquire into the identity of the parent and may follow or pursue the parent. In addition, the bill draft could permit an officer or agent of the state to attempt to locate or identify such a parent.

If you have any questions or would like further information on this topic, please call me at the Legislative Council Staff offices.

criminal statute

(abuse or neglect)

Exception

If harmed - may search for parent
(~~abuse or neglect~~)

Amendment - later

no change now

not immune, but can't follow or find

~~AM 48.193 (1) (b) + (c)~~

unless baby has been abused or neglected ~~investigation~~
~~(~~investigation~~)~~

~~DILES hotline or local health dept #~~

~~call 911~~