

2005 DRAFTING REQUEST

Bill

Received: 05/12/2005

Received By: gmalaise

Wanted: As time permits

Identical to LRB:

For: Stephen Freese (608) 266-7502

By/Representing: Terri Griffiths

This file may be shown to any legislator: NO

Drafter: gmalaise

May Contact:

Addl. Drafters:

Subject: Children - TPR and adoption

Extra Copies:

Submit via email: YES

Requester's email: Rep.Freese@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Legal custody of relinquished children after termination of parental rights

Instructions:

See Attached--prohibit DHFS from transferring to a county legal custody of a TPR'd child who was initially taken into custody under the safe haven law (s. 48.915 (1)).

Drafting History:

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Typed</u> | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
|--------------|------------------------|------------------------|------------------------|----------------|------------------------|------------------------|-----------------|
| /? | gmalaise 05/12/2005 | csicilia 06/08/2005 | | _____ | | | S&L |
| /1 | | | jfrantze 06/09/2005 | _____ | mbarman 06/09/2005 | | S&L |
| /2 | gmalaise 06/27/2005 | csicilia 06/28/2005 | jfrantze 06/28/2005 | _____ | sbasford 06/28/2005 | sbasford 09/02/2005 | |

FE Sent For:

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| /? | gmalaise 05/12/2005 | csicilia 06/08/2005 | | _____ | | | S&L |
| /1 | | | jfrantze 06/09/2005 | _____ | mbarman 06/09/2005 | | |

FE Sent For:

1295 6/28/05 [Handwritten signatures and dates]

<END>

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|--------------|----------------|-----------------|---------------|-----------------|------------------|-----------------|-----------------|
| /? | gmalaise | | <i>Je 6/8</i> | <i>J/Ps 6/9</i> | | | |

FE Sent For:

<END>

Malaise, Gordon

From: Kennedy, Debora
Sent: Tuesday, May 10, 2005 5:02 PM
To: Malaise, Gordon
Subject: FW: Draft request-change to s 48.43 (7)

Gordon, I have notified Terri that I am sending this request on to you.

Thanks,
Debora

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

From: Griffiths, Terri
Sent: Tuesday, May 10, 2005 4:31 PM
To: Kennedy, Debora
Subject: Draft request-change to s 48.43 (7)

Debora,

I'm guessing that you would be the appropriate attorney to draft the following change. This comes to us from our social services directors requesting a change to the "safe haven" statute.

48.43(7) currently reads: If the agency specified under sub. (1)(a) is the department and a permanent adoptive placement is not in progress 2 years after entry of the order, the department may petition the court to transfer legal custody of the child to a county department. The court shall transfer the child's custody to the county department specified in the petition. The department shall remain the child's guardian.

The current law works fine when the baby is a healthy child. Unfortunately, not all children are healthy and it is possible this was not taken into consideration when the law was enacted. As a result counties are faced with a potentially significant financial burden. We are wanting to amend the law to address the situations of "special needs" babies and, for that matter, any and all "safe haven" babies. We want to amend the language so that the state maintains custody and guardianship indefinitely or until an adoption is completed in the case of any relinquished child., subject to 48.195.

We would propose the following change to read

(7) If the agency specified under sub. (1)(a) is the department and a permanent adoptive placement is not in progress 2 years after entry of the order, the department may petition the court to transfer legal custody of the child to a county department. The court shall transfer the child's custody to the county department specified in the petition. The department shall remain the child's guardian. **If the child was initially taken into custody pursuant to ss.48.195 the department shall maintain custody and not transfer custody to the county department.**

Please contact me with questions and I'll do my best to get appropriate answers for you. Thank you.

Terri

266-7502



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-30277

GMM

NOTE

6/10

Handwritten signature and initials

SAV

Gen. cat.

1 AN ACT ...; relating to: legal custody of a child who was initially taken into
2 custody under circumstances in which the child's parent relinquished custody
3 of the child following a termination of parental rights to the child.

Analysis by the Legislative Reference Bureau

Under current law, a law enforcement officer, emergency medical technician, or hospital staff member may take into custody a child who is 72 hours old or younger under circumstances in which the child's parent relinquished custody of the child to the officer, technician, or staff member and did not express an intent to return for the child. Current law also permits the court assigned to exercise jurisdiction under the Children's Code (juvenile court) to grant an involuntary termination of parental rights (TPR) to a child who was taken into custody under those circumstances. Currently, if the parental rights of all living parents of a child are terminated or if a child has no living parents, the juvenile court may transfer guardianship of the child to the Department of Health and Family Services (DHFS), which is then responsible for securing the adoption of the child. If a permanent adoptive placement is not in progress two years after entry of the TPR order, DHFS may petition the juvenile court to transfer legal custody of such a child to a county department of human services or social services (county department), and the juvenile court must transfer the child's legal custody to the county department specified in the petition.

This bill prohibits DHFS from petitioning the juvenile court to transfer to a county department legal custody of a child who was initially taken into custody under circumstances in which the child's parent relinquished custody of the child when the child was 72 hours old or younger and did not express an intent to return for the child.

Similarly, under current law, an American Indian tribal court in this state may appoint DHFS as the guardian or legal custodian of a child who has no parents, or whose parents' parental rights to the child have been terminated by the tribal court, for the purpose of making an adoptive placement for the child. If a permanent adoptive placement is not in progress two years after entry of the TPR order, DHFS may petition the tribal court to transfer legal custody or guardianship back to the tribe.

This bill prohibits DHFS from petitioning a tribal court to transfer back to a tribe legal custody or guardianship of a child who was initially taken into custody under circumstances in which the child's parent relinquished custody of the child when the child was 72 hours old or younger and did not express an intent to return for the child.

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.** 48.43 (7) of the statutes is amended to read:

2 48.43 (7) If the agency specified under sub. (1) (a) is the department and a
3 permanent adoptive placement is not in progress 2 years after entry of the order, the
4 department may petition the court to transfer legal custody of the child to a county
5 department, except that the department may not petition the court to transfer to a
6 county department legal custody of a child who was initially taken into custody
7 under s. 48.915¹⁹⁵(1). The court shall transfer the child's legal custody to the county
8 department specified in the petition. The department shall remain the child's
9 guardian.

10 **History:** 1979 c. 330; 1983 a. 27, 219, 286; 1985 a. 70, 176, 332; Sup. Ct. Order, 136 Wis. 2d xxv (1987); 1987 a. 383; 1993 a. 395, 446; 1995 a. 275; 1997 a. 237.

11 **SECTION 2.** 48.485 of the statutes is amended to read:

12 **48.485 Transfer of tribal children to department for adoption.** If the
13 department accepts guardianship or legal custody or both from an American Indian
14 tribal court under s. 48.48 (3m), the department shall seek a permanent adoptive
placement for the child. If a permanent adoptive placement is not in progress within

1 2 years after entry of the termination of parental rights order by the tribal court, the
2 department may petition the tribal court to transfer legal custody or guardianship
3 of the child back to the tribe, except that the department may not petition the tribal
4 court to transfer back to a tribe legal custody or guardianship of a child who was
5 initially taken into custody under s. 48.915(1).

195

History: 1989 a. 31.

6 **SECTION 3. Nonstatutory provisions.**


7 (1) LEGAL CUSTODY OF RELINQUISHED CHILD AFTER TERMINATION OF PARENTAL
8 RIGHTS. This act first applies to petitions filed under section 48.43 (7) or 48.485 of the
9 statutes, as affected by this act, on the effective date of this subsection.

10 (END)

NOTE

Representative Freeze:

*Section 48.485 ~~contains~~ permits DIFS to transfer
legal custody or guardianship of a child back to a tribe
under the same circumstances that s. 48.43 (7) permits DIFS
to transfer legal custody of a child to a county. Accordingly,
this draft makes the same change to both ss. 48.43(7)
and 48.485.*



DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3027/1dn
GMM:cjs:jf

June 8, 2005

Representative Freese:

Section 48.485 permits DHFS to transfer legal custody or guardianship of a child back to a tribe under the same circumstances that s. 48.43 (7) permits DHFS to transfer legal custody of a child to a county. Accordingly, this draft makes the same change to both ss. 48.43 (7) and 48.485.

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



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-3027/1

GMM:cjs:jf

So on

(relating clause only)

2005 BILL

stays

and whose parents' parental rights to the child
have been terminated

Repeal

1 AN ACT to amend 48.43 (7) and 48.485 of the statutes; relating to: legal custody
2 following a termination of parental rights to the child of a child who was
3 initially taken into custody under circumstances in which the child's parent
4 relinquished custody of the child.

Analysis by the Legislative Reference Bureau

Under current law, a law enforcement officer, emergency medical technician, or hospital staff member may take into custody a child who is 72 hours old or younger under circumstances in which the child's parent relinquished custody of the child to the officer, technician, or staff member and did not express an intent to return for the child. Current law also permits the court assigned to exercise jurisdiction under the Children's Code (juvenile court) to grant an involuntary termination of parental rights (TPR) to a child who was taken into custody under those circumstances. Currently, if the parental rights of all living parents of a child are terminated or if a child has no living parents, the juvenile court may transfer guardianship of the child to the Department of Health and Family Services (DHFS), which is then responsible for securing the adoption of the child. If a permanent adoptive placement is not in progress two years after entry of the TPR order, DHFS may petition the juvenile court to transfer legal custody of such a child to a county department of human services or social services (county department), and the juvenile court must transfer the child's legal custody to the county department specified in the petition.

This bill prohibits DHFS from petitioning the juvenile court to transfer to a county department legal custody of a child who was initially taken into custody

BILL

under circumstances in which the child's parent relinquished custody of the child when the child was 72 hours old or younger and did not express an intent to return for the child.

Similarly, under current law, an American Indian tribal court in this state may appoint DHFS as the guardian or legal custodian of a child who has no parents, or whose parents' parental rights to the child have been terminated by the tribal court, for the purpose of making an adoptive placement for the child. If a permanent adoptive placement is not in progress two years after entry of the TPR order, DHFS may petition the tribal court to transfer legal custody or guardianship back to the tribe.

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For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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4 of the child back to the tribe, except that the department may not petition the tribal
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6 initially taken into custody under s. 48.195 (1).

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9 RIGHTS. This act first applies to petitions filed under section 48.43 (7) or 48.485 of the
10 statutes, as affected by this act, on the effective date of this subsection.

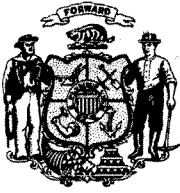
11 (END)

Basford, Sarah

From: Griffiths, Terri
Sent: Friday, September 02, 2005 1:27 PM
To: LRB.Legal
Subject: Draft review: LRB 05-3027/2 Topic: Legal custody of relinquished children after termination of parental rights

It has been requested by <Griffiths, Terri> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 05-3027/2 Topic: Legal custody of relinquished children after termination of parental rights



Corrected Copy

Added
09-15-05

2005 ASSEMBLY BILL 660

September 15, 2005 - Introduced by Representatives FREESE, ALBERS, HAHN, HINES, KESTELL, LOTHIAN and VAN AKKEREN, cosponsored by Senator ROESSLER. Referred to Committee on Family Law.

1 **AN ACT to amend** 48.43 (7) and 48.485 of the statutes; **relating to:** legal custody
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4 rights to the child have been terminated.

fixed

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