

## 2007 ASSEMBLY BILL 572

November 6, 2007 – Introduced by Representatives GRIGSBY, BERCEAU, FIELDS, SEIDEL, SINICKI, TOLES, A. WILLIAMS, YOUNG, ALBERS and A. OTT, cosponsored by Senators TAYLOR, DARLING and A. LASEE. Referred to Committee on Children and Family Law.

1     **AN ACT** *to amend* 48.64 (title), 48.64 (1), 48.64 (1m), 48.64 (1r), 48.64 (2), 48.64  
2           (4) (a), 48.64 (4) (c), 48.981 (3) (d) 1. and 48.981 (7) (a) 4. of the statutes; **relating**  
3           **to:** notice of intent to remove a child from the home of a relative, review of  
4           decisions or orders involving the placement and care of a child placed in the  
5           home of a relative, and independent child abuse or neglect investigations when  
6           the subject of the investigation is a relative in whose home a child is placed.

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### ***Analysis by the Legislative Reference Bureau***

Under current law, if a child has been placed in a foster home, treatment foster home, or group home for six months or longer, the Department of Health and Family Services (DHFS), the Department of Corrections, the county department of human services or social services (county department), or licensed child welfare agency (collectively, “agency”) that placed the child must give the head of the home written notice of intent to remove the child from the home, stating the reasons for the removal. In those cases, the child may not be removed from the home before completion of a hearing before DHFS or the circuit court to review the removal decision, if a hearing has been requested, or 30 days after receipt of the notice of intent to remove, whichever is later, unless the safety of the child requires removal.

Also, under current law, any decision or order issued by an agency that affects the head of a foster home, treatment foster home, or group home or the children involved may be appealed to DHFS under fair hearing procedures. Under those

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procedures, the head of the home is entitled to be represented by counsel, to examine documents and records, to bring witnesses, to confront and cross-examine adverse witnesses, and to have judicial review of DHFS's decision.

In addition, under current law, an interested party may file a petition with the circuit court for the county where a child is placed alleging that a decision or order of the agency supervising the child's placement is not in the best interests of the child. On receipt of a petition, the circuit court may call a hearing for the purpose of reviewing the decision or order. If the child is placed in a foster home, the foster parent may present relevant evidence at the hearing.

Further, under current law, if a county department, DHFS, in Milwaukee County, or a licensed child welfare agency under contract with a county department or DHFS to perform child abuse and neglect investigations (collectively, "child protection agency") determines that, because of the relationship between the child protection agency and a foster parent, treatment foster parent, or other physical custodian who is alleged to have abused or neglected the child, there is a substantial probability that the child protection agency would not conduct an unbiased investigation, the child protection agency must notify DHFS, and DHFS must designate another child protection agency to conduct the investigation.

This bill grants to a relative, other than a parent, in whose home a child is placed the same procedural rights relating to notice of intent to remove a child from the home, review of decisions or orders involving the placement and care of the child, and independent child abuse or neglect investigations that are granted a foster parent under current law. Specifically, under the bill:

1. The agency that placed the child in the home of the relative must give the relative written notice of intent to remove the child from the home, stating the reasons for the removal, and the child may not be removed from the home before completion of a hearing before DHFS or the circuit court to review the removal decision, if a hearing has been requested, or 30 days after receipt of the notice of intent to remove, whichever is later, unless the safety of the child requires removal.

2. Any decision or order issued by an agency that affects the relative or the child may be appealed to DHFS under fair hearing procedures that include the rights to be represented by counsel, to examine documents and records, to bring witnesses, to confront and cross-examine adverse witnesses, and to have judicial review of DHFS's decision.

3. The relative may file a petition with the circuit court for the county where the child is placed alleging that a decision or order of the agency supervising the child's placement is not in the best interests of the child, the circuit court may call a hearing for the purpose of reviewing the decision or order, and the relative may present relevant evidence at the hearing.

4. In cases in which the relative is alleged to have abuse or neglected the child, the child protection agency must notify DHFS, and DHFS must designate another child protection agency to conduct the investigation, if the child protection agency determines that, because of the relationship between the child protection agency and the relative, there is a substantial probability that the child protection agency would not conduct an unbiased investigation.

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

1           **SECTION 1.** 48.64 (title) of the statutes is amended to read:

2           **48.64 (title) Placement of children in foster homes, treatment foster**  
3 **homes and group homes out-of-home care.**

4           **SECTION 2.** 48.64 (1) of the statutes is amended to read:

5           **48.64 (1) DEFINITION.** In this section, “agency” means the department of health  
6 and family services, the department of corrections, a county department, or a  
7 licensed child welfare agency authorized to place children in foster homes, treatment  
8 foster homes, or group homes or in the homes of relatives other than a parent.

9           **SECTION 3.** 48.64 (1m) of the statutes is amended to read:

10           **48.64 (1m) FOSTER HOME, TREATMENT FOSTER HOME AND GROUP HOME**  
11 **OUT-OF-HOME CARE AGREEMENTS.** If an agency places a child in a foster home,  
12 treatment foster home, or group home or in the home of a relative other than a parent  
13 under a court order or places a child in a foster home, treatment foster home, or group  
14 home under a voluntary agreement under s. 48.63, the agency shall enter into a  
15 written agreement with the head of the home. The agreement shall provide that the  
16 agency shall have access at all times to the child and the home, and that the child  
17 will be released to the agency whenever, in the opinion of the agency placing the child  
18 or the department, the best interests of the child require it. If a child has been in a  
19 foster home, treatment foster home, or group home or in the home of a relative other  
20 than a parent for 6 months or more, the agency shall give the head of the home  
21 written notice of intent to remove the child, stating the reasons for the removal. The

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1 child may not be removed before completion of the hearing under sub. (4) (a) or (c),  
2 if requested, or 30 days after the receipt of the notice, whichever is later, unless the  
3 safety of the child requires it or, in a case in which the reason for removal is to place  
4 the child for adoption under s. 48.833, unless all of the persons who have the right  
5 to request a hearing under sub. (4) (a) or (c) sign written waivers of objection to the  
6 proposed removal. If the safety of the child requires earlier removal, s. 48.19 shall  
7 apply. If an agency removes a child from an adoptive placement, the head of the home  
8 shall have no claim against the placing agency for the expense of care, clothing, or  
9 medical treatment.

10 **SECTION 4.** 48.64 (1r) of the statutes is amended to read:

11 48.64 (1r) NOTIFICATION OF SCHOOL DISTRICT. When an agency places a  
12 school-age child in a foster home, ~~a treatment foster home or a~~, or group home or  
13 in the home of a relative other than a parent, the agency shall notify the clerk of the  
14 school district in which the foster home, ~~treatment foster home or~~, group home, or  
15 home of the relative is located that a school-age child has been placed in a foster  
16 home, ~~treatment foster home or~~, group home, or home of a relative in the school  
17 district.

18 **SECTION 5.** 48.64 (2) of the statutes is amended to read:

19 48.64 (2) SUPERVISION OF ~~FOSTER HOME, TREATMENT FOSTER HOME AND GROUP HOME~~  
20 OUT-OF-HOME CARE PLACEMENTS. Every child who is placed in a foster home, treatment  
21 foster home, ~~or group home~~ shall be under the supervision of an agency. Every child  
22 who is placed in the home of a relative other than a parent under a court order shall  
23 be under the supervision of an agency.

24 **SECTION 6.** 48.64 (4) (a) of the statutes is amended to read:

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1           48.64 (4) (a) Any decision or order issued by an agency that affects the head of  
2 a foster home, treatment foster home, or group home, the head of the home of a  
3 relative other than a parent in which a child is placed, or the ~~children~~ child involved  
4 may be appealed to the department under fair hearing procedures established under  
5 ~~department rules.~~ ~~The department shall, upon~~ rules promulgated by the  
6 department. Upon receipt of an appeal, the department shall give the head of the  
7 home reasonable notice and an opportunity for a fair hearing. The department may  
8 make such additional investigation as the department considers necessary. The  
9 department shall give notice of the hearing to the head of the home and to the  
10 departmental subunit, county department, or child welfare agency that issued the  
11 decision or order. Each person receiving notice is entitled to be represented at the  
12 hearing. At all hearings conducted under this ~~subsection~~ paragraph, the head of the  
13 home, or a representative of the head of the home, shall have an adequate  
14 opportunity, notwithstanding s. 48.78 (2) (a), to examine all documents and records  
15 to be used at the hearing at a reasonable time before the date of the hearing as well  
16 as during the hearing, to bring witnesses, to establish all pertinent facts and  
17 circumstances, and to question or refute any testimony or evidence, including an  
18 opportunity to confront and cross-examine adverse witnesses. The department  
19 shall grant a continuance for a reasonable period of time when an issue is raised for  
20 the first time during a hearing. This requirement may be waived with the consent  
21 of the parties. The decision of the department shall be based exclusively on evidence  
22 introduced at the hearing. A transcript of testimony and exhibits, or an official report  
23 containing the substance of what transpired at the hearing, together with all papers  
24 and requests filed in the proceeding, and the findings of the hearing examiner shall  
25 constitute the exclusive record for decision by the department. The department shall

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1 make the record available at any reasonable time and at an accessible place to the  
2 head of the home or his or her representative. Decisions by the department shall  
3 specify the reasons for the decision and identify the supporting evidence. No person  
4 participating in an agency action being appealed may participate in the final  
5 administrative decision on that action. The department shall render its decision as  
6 soon as possible after the hearing and shall send a certified copy of its decision to the  
7 head of the home and to the departmental subunit, county department, or child  
8 welfare agency that issued the decision or order. The decision shall be binding on all  
9 parties concerned.

10 **SECTION 7.** 48.64 (4) (c) of the statutes is amended to read:

11 48.64 **(4)** (c) The circuit court for the county where the dispositional order  
12 placing a child in a foster home, treatment foster home, or group home or in the home  
13 of a relative other than a parent was entered or the voluntary agreement under s.  
14 48.63 so placing a child in a foster home, treatment foster home, or group home was  
15 made has jurisdiction upon petition of any interested party over ~~a~~ the child who is  
16 placed in ~~a~~ the foster home, treatment foster home, ~~or~~ group home, or home of the  
17 relative. The circuit court may call a hearing, at which the head of the home and the  
18 supervising agency under sub. (2) shall be present, for the purpose of reviewing any  
19 decision or order of that agency involving the placement and care of the child. If the  
20 child has been placed in a foster home or in the home of a relative other than a parent,  
21 the foster parent or relative may present relevant evidence at the hearing. The  
22 petitioner has the burden of proving by clear and convincing evidence that the  
23 decision or order issued by the agency is not in the best interests of the child.

24 **SECTION 8.** 48.981 (3) (d) 1. of the statutes is amended to read:

