

2007 DRAFTING REQUEST

Bill

Received: **04/19/2007**

Received By: **gmalaise**

Wanted: **Soon**

Identical to LRB:

For: **Tamara Grigsby (608) 266-0645**

By/Representing: **Cindy McGinnis**

This file may be shown to any legislator: **NO**

Drafter: **gmalaise**

May Contact:

Addl. Drafters:

Subject: **Children - abuse and neglect
Children - out-of-home placement**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Grigsby@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Child placed in home of relative; notice of removal, review of decisions involving placement of child; independent investigations child abuse and neglect reports

Instructions:

See Attached--Provide that a relative who is not licensed as a foster parent is entitled to notice of removal of a child from the relative's home and may petition DHFS or the circuit court for review of a decision involving placement of the child under s. 48.64. Also, provide for an independent investigation under s. 48.981 (3) (d) when a relative with custody of a child is the subject of a child abuse or neglect report.

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 04/19/2007	wjackson 04/26/2007		_____			S&L
/1			pgreensl 04/27/2007	_____	cduerst 04/27/2007	lparisi 06/19/2007	

FE Sent For:

*at
intro*

<END>

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FE Sent For:

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Bill Request Form

Legislative Reference Bureau
100 N. Hamilton Street
Legal Section 266-3561

You may use this form or talk directly with the LRB attorney who will draft the bill.

Date 7-17-06

Legislator, agency, or other person requesting this draft Rep. Tamara Grigsby

Person submitting request (name and phone number) Cindy McBinnis 6-0645

Persons to contact for questions about this draft (names and phone numbers) Cindy

Describe the problem, including any helpful examples. How do you want to solve the problem?
*Currently - relatives & core givers do not have the same standing in court as foster parents do. Rep. Grigsby would like to change the law so ~~they~~ relatives are afforded the same rights as foster parents.
See statement attached*

Please attach a copy of any correspondence or other material that may help us. If you know of any statute sections that might be affected, list them or provide a marked-up copy.

You may attach a marked-up copy of any LRB draft or provide its number (e.g., 2001 LRB-2345/1 or 1999AB-67).

Requests are confidential unless stated otherwise. May we tell others that we are working on this for you? YES NO

If yes: Anyone who asks? YES NO
 Any legislator? YES NO

Only the following persons _____

Do you consider this request urgent? YES NO If yes, please indicate why _____

Should we give this request priority over any pending request of this legislator, agency, or person?
YES NO

Brief Statement Regarding the Difference in Rights Afforded Relative Caregivers

Mr. & Mrs. Green have cared for foster children for over 25 years, first as foster parents then as adoptive parents. They received recognition awards for services to children as foster parents. The Greens relinquished their foster care license after adopting the last child in their home. Later, the Greens accepted placement of their granddaughter as a court ordered kinship placement. They were told that it would not be necessary to renew their foster care license. The decision not to renew their foster care license had extraordinary consequences for this family. After raising their granddaughter for six years, she was removed from their home on a non-emergency basis. At that point, the Greens discovered that they had no legal rights to contest the change in placement, and they have not been allowed contact with the granddaughter they raised from birth to six years old. The granddaughter has remained in foster care for an additional year, and it is still not clear that any permanent placement is available for her. She has not been returned home and cannot be returned home. She has not been adopted, and no TPR has been filed. All of the siblings of this child aged out of foster care.

The Greens are very concerned that their now seven year old grandchild will also age out of foster care and experience multiple transitions in placement. When the Greens attempted to contest the change in placement, accusations were made against the Greens by the mother. After the child was moved, the allegations were investigated and found to be untrue. However, that left the Greens with no ability to examine the allegations made in court, or to contest the decision, and no ability to bring the action back into court once the allegations were shown to be false. As a background note, while the child welfare agency removed the granddaughter based on the allegations, they left another adopted child in their home.

Wis. Stat. sec. 48.357 is the change of placement statute. This statute allowed the Greens to file an objection when they received notice that the agency responsible for carrying out their granddaughter's dispositional order planned to move her to an undetermined location. The statute allowed the agency to move the child 10 days after receiving the objection of the caregivers. (The statute, as written, is not clear as to whether the move can be made after the agency serves the notice (10 days) or 10 days after the caregiver files an objection (up to 20 days)). At any rate, the child can be removed, on a non-emergency basis, long before the court hears the objection.

Once the objection is before the court, the statute allowed the caregivers to make a written or oral statement to the court. Although the statute calls this statement an "objection," it is really more of an opportunity to be heard or to make a written statement. An objection under 48.357 does not make a grandparent or other relative caregiver a party to the action. What this meant in the Green's case is that they had to argue to the court that they should be allowed to make an oral statement on the record rather than merely submitting a written summary of remarks prepared as a courtesy to the parties because the issues raised in the objection were numerous and somewhat complex. The Greens found that they were at the mercy of the court – in their case, a guardian ad litem who had not met the child, and a Judge who was brand new to the bench and to the case.

The Green's, by their attorney, were finally allowed to make an oral statement on the record. They were, however, summarily ejected from the courtroom after making the statement. They were not allowed to hear the evidence the court used to make the decision to move their granddaughter from their home, despite the fact that they had raised her for her entire life.

Had the Greens been foster parents, Wis. Stat. sec. 48.64 would have granted a number of rights to them. They would first have had the benefit of an administrative process. The child welfare agency would have to have given 30 days notice of intent to remove the child on a non-emergency basis. The Greens could have done an administrative appeal and the child could not have been removed from the home until the issue was decided in an administrative hearing. They would have had the right to examine all documents and records to be used at the hearing at a reasonable time before the date of the hearing as well as during the hearing, to bring witnesses, to establish all pertinent facts and circumstances, and to question or refute any testimony or evidence, including opportunity to confront and cross-examine adverse witnesses. Sec. 48.357 afforded the Greens none of these rights. Had the administrative process proved unsuccessful, sec. 48.64 gives the Greens the right to seek judicial review in the circuit court as provided in ch. 227. These are significant differences in the rights of relatives caring for children on court orders and foster parents.

Further, foster parents have rights and administrative processes that protect them from false allegations. When a foster parent is accused of abuse or neglect, the case is referred to an agency that is independent of the agency charged with carrying out the dispositional order for the child. The independent agency does an investigation, questioning the foster family, the child and any other relevant individuals. As well, the investigator has access to all records related to the foster family and the allegation. The independent investigator determines if the allegation is substantiated or unsubstantiated. The foster parent can then appeal any decision that is made as a result of the investigation (see sec 48.64). Kinship caregivers do not have any such processes or protections.

Wisconsin statutes define "relative" as a parent, stepparent, brother, sister, stepbrother, stepsister, half brother, half sister, brother-in-law, sister-in-law, first cousin, 2nd cousin, nephew, niece, uncle, aunt, step-uncle, step-aunt, or any person of a preceding generation as denoted by the prefix of grand, great, or great-great, whether by blood, marriage, or legal adoption, or the spouse of these people, even if the marriage is terminated by death or divorce.

The number of children affected by this difference in treatment of relative caregivers and foster parents in the statutes has ranged from 739 to 1000 children in Milwaukee County over the past year. There are additional children on child protection orders placed with relatives who are not licensed foster parents in the remaining 71 counties. The Division of Children and Families should be able to provide information regarding how many relative caregivers in Wisconsin are affected by the differences in rights accorded to relative caregivers and foster parents. However, it should be noted that increasing numbers of children on child protection orders are cared for by relatives, often at much

lower cost or no cost as compared to foster care. By point of comparison, there are approximately 690 foster licensed homes serving Milwaukee County children, and a similar number of treatment foster homes.

We are asking that relative caregivers who have cared for children for six months or longer be given the same right to advocate for the child as a foster parent would have, specifically:

- Adequate notice of intent to change placement by agency responsible for carrying out the child's dispositional order (30 days if a non-emergency).
- Ability to object to change of placement and receive an administrative hearing on the issue.
- Child cannot be removed on a non-emergency basis before hearing is complete.
- Caregiver has right to examine all documents and records to be used at the hearing.
- Caregiver has right to bring witnesses, establish all pertinent facts and circumstances, and to question or refute any testimony or evidence, including opportunity to confront and cross-examine adverse witnesses.
- Kinship caregivers are afforded a process to appeal false allegations.



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-2479/7

GMM.....

WLj

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LPS: Please
print w/ line #s.

Gen Cat.

AN ACT ...; **relating to:** notice of intent to remove a child from the home of a relative, review of decisions or orders involving the placement and care of a child placed in the home of a relative, and independent child abuse or neglect investigations when the subject of the investigation is a relative in whose home a child is placed.

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 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' decision. 5

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 abused 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.

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:

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

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

History: 1971 c. 40; 1973 c. 328; 1977 c. 271, 354, 418, 447, 449; 1985 a. 176; 1985 a. 292 s. 3; 1985 a. 332; 1989 a. 31, 107; 1993 a. 395, 446, 491; 1995 a. 27 ss. 2595, 9126 (19); 1997 a. 104; 2001 a. 69; 2005 a. 293.

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

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

History: 1971 c. 40; 1973 c. 328; 1977 c. 271, 354, 418, 447, 449; 1985 a. 176; 1985 a. 292 s. 3; 1985 a. 332; 1989 a. 31, 107; 1993 a. 395, 446, 491; 1995 a. 27 ss. 2595, 9126 (19); 1997 a. 104; 2001 a. 69; 2005 a. 293.

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

48.64 (1m) ~~FOSTER HOME, TREATMENT FOSTER HOME AND GROUP HOME~~ OUT-OF-HOME CARE AGREEMENTS. If an agency places a child in a foster home, treatment foster home, or group home or in the home of a relative other than a parent under a court order or places a child in a foster home, treatment foster home, or group home under a voluntary agreement under s. 48.63, the agency shall enter into a written agreement with the head of the home. The agreement shall provide that the agency shall have access at all times to the child and the home, and that the child will be released to the agency whenever, in the opinion of the agency placing the child or the department, the best interests of the child require it. If a child has been in a foster home, treatment foster home, or group home or in the home of a relative other than a parent for 6 months or more, the agency shall give the head of the home

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

History: 1971 c. 40; 1973 c. 328; 1977 c. 271, 354, 418, 447, 449; 1985 a. 176; 1985 a. 292 s. 3; 1985 a. 332; 1989 a. 31, 107; 1993 a. 395, 446, 491; 1995 a. 27 ss. 2595, 9126 (19); 1997 a. 104; 2001 a. 69; 2005 a. 293.

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

48.64 (1r) NOTIFICATION OF SCHOOL DISTRICT. When an agency places a school-age child in a foster home, ~~a treatment foster home or a, or~~ ^{strike, extra space} group home or in the home of a relative other than a parent, the agency shall notify the clerk of the school district in which the foster home, treatment foster home ~~or, group home, or~~ home of the relative is located that a school-age child has been placed in a foster home, treatment foster home ~~or, group home, or~~ home of a relative in the school district.

History: 1971 c. 40; 1973 c. 328; 1977 c. 271, 354, 418, 447, 449; 1985 a. 176; 1985 a. 292 s. 3; 1985 a. 332; 1989 a. 31, 107; 1993 a. 395, 446, 491; 1995 a. 27 ss. 2595, 9126 (19); 1997 a. 104; 2001 a. 69; 2005 a. 293.

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

48.64 (2) SUPERVISION OF FOSTER HOME, TREATMENT FOSTER HOME AND GROUP HOME OUT-OF-HOME CARE PLACEMENTS. Every child who is placed in a foster home, treatment foster home, or group home shall be under the supervision of an agency. Every child

who is placed in the home of a relative other than a parent under a court order shall be under the supervision of an agency. ✓

History: 1971 c. 40; 1973 c. 328; 1977 c. 271, 354, 418, 447, 449; 1985 a. 176; 1985 a. 292 s. 3; 1985 a. 332; 1989 a. 31, 107; 1993 a. 395, 446, 491; 1995 a. 27 ss. 2595, 9126 (19); 1997 a. 104; 2001 a. 69; 2005 a. 293.

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

48.64 (4) (a) Any decision or order issued by an agency that affects the head of a foster home, treatment foster home, or group home, the head of the home of a relative other than a parent in which a child is placed, or the ~~children~~ child involved may be appealed to the department under fair hearing procedures established under ~~department rules.~~ The department shall, upon rules promulgated by the department. Upon receipt of an appeal, the department shall give the head of the home reasonable notice and an opportunity for a fair hearing. The department may make such additional investigation as the department considers necessary. The department shall give notice of the hearing to the head of the home and to the departmental subunit, county department, or child welfare agency that issued the decision or order. Each person receiving notice is entitled to be represented at the hearing. At all hearings conducted under this subsection paragraph, the head of the home, or a representative of the head of the home, shall have an adequate opportunity, notwithstanding s. 48.78 (2) (a), to examine all documents and records to be used at the hearing at a reasonable time before the date of the hearing as well as during the hearing, to bring witnesses, to establish all pertinent facts and circumstances, and to question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses. The department shall grant a continuance for a reasonable period of time when an issue is raised for the first time during a hearing. This requirement may be waived with the consent of the parties. The decision of the department shall be based exclusively on evidence

introduced at the hearing. A transcript of testimony and exhibits, or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding, and the findings of the hearing examiner shall constitute the exclusive record for decision by the department. The department shall make the record available at any reasonable time and at an accessible place to the head of the home or his or her representative. Decisions by the department shall specify the reasons for the decision and identify the supporting evidence. No person participating in an agency action being appealed may participate in the final administrative decision on that action. The department shall render its decision as soon as possible after the hearing and shall send a certified copy of its decision to the head of the home and to the departmental subunit, county department, or child welfare agency that issued the decision or order. The decision shall be binding on all parties concerned.

History: 1971 c. 40; 1973 c. 328; 1977 c. 271, 354, 418, 447, 449; 1985 a. 176; 1985 a. 292 s. 3; 1985 a. 332; 1989 a. 31, 107; 1993 a. 395, 446, 491; 1995 a. 27 ss. 2595, 9126 (19); 1997 a. 104; 2001 a. 69; 2005 a. 293.

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

48.64 (4) (c) The circuit court for the county where the dispositional order placing a child in a foster home, treatment foster home, or group home or in the home of a relative other than a parent was entered or the voluntary agreement under s. 48.63 ~~so~~ placing a child in a foster home, treatment foster home, or group home was made has jurisdiction upon petition of any interested party over ^{strike extra space} a the child who is placed in a ^{strike extra space} the foster home, treatment foster home, ~~or~~ group home, or home of the relative. The circuit court may call a hearing, at which the head of the home and the supervising agency under sub. (2) shall be present, for the purpose of reviewing any decision or order of that agency involving the placement and care of the child. If the child has been placed in a foster home or in the home of a relative other than a parent,

the foster parent or relative may present relevant evidence at the hearing. The petitioner has the burden of proving by clear and convincing evidence that the decision or order issued by the agency is not in the best interests of the child.

History: 1971 c. 40; 1973 c. 328; 1977 c. 271, 354, 418, 447, 449; 1985 a. 176; 1985 a. 292 s. 3; 1985 a. 332; 1989 a. 31, 107; 1993 a. 395, 446, 491; 1995 a. 27 ss. 2595, 9126 (19); 1997 a. 104; 2001 a. 69; 2005 a. 293.

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

48.981 (3) (d) 1. In this paragraph, "agent" includes, ~~but is not limited to,~~ a foster parent, treatment foster parent, relative other than a parent, or other person given custody of a child or a human services professional employed by a county department under s. 51.42 or 51.437 or by a child welfare agency who is working with a child or an expectant mother of an unborn child under contract with or under the supervision of the department in a county having a population of 500,000 or more or a county department under s. 46.22.

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; 2001 a. 16, 38, 59, 69, 70, 103, 105; 2003 a. 33, 279, 321; 2005 a. 113, 232, 344, 406, 434; 2005 a. 443 s. 265; s. 13.93 (2) (c).

SECTION 9. 48.981 (7) (a) 4. of the statutes is amended to read:

48.981 (7) (a) 4. A child's foster parent, treatment foster parent, relative other than a parent, or other person having physical custody of the child or a person having physical custody of the expectant mother of an unborn child, except that the person or agency maintaining the record or report may not disclose any information that would identify the reporter.

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; 2001 a. 16, 38, 59, 69, 70, 103, 105; 2003 a. 33, 279, 321; 2005 a. 113, 232, 344, 406, 434; 2005 a. 443 s. 265; s. 13.93 (2) (c).

SECTION 10. Initial applicability.

(1) AGENCY DECISIONS INVOLVING PLACEMENT OF CHILD. The treatment of section 48.62 (1), (1m), (1r), (2), and (4) (a) and (c) of the statutes first applies to decisions or orders involving the placement and care of a child ^{that are} made on the effective date of this subsection.

(2) INDEPENDENT CHILD ABUSE OR NEGLECT INVESTIGATIONS. The treatment of section 48.981 (3) (d) 1.√ and (7) (a) 4.√ of the statutes first applies to a report of suspected or threatened child abuse or neglect received by an agency, as defined in section 48.981 (1) (ag)√ of the statutes, on the effective date of this subsection.

(END)

Parisi, Lori

From: Mcginnis, Cindy

Sent: Tuesday, June 19, 2007 11:25 AM

To: LRB.Legal

Subject: Draft Review: LRB 07-2479/1 Topic: Child placed in home of relative; notice of removal, review of decisions involving placement of child; independent investigations child abuse and neglect reports

Please Jacket LRB 07-2479/1 for the ASSEMBLY.