

2007 ASSEMBLY BILL 971

March 13, 2008 – Introduced by Representatives WASSERMAN, TOWNSEND, SHERIDAN, POPE-ROBERTS and BERCEAU. Referred to Committee on Children and Family Law.

1 **AN ACT** *to amend* 48.09 (5), 48.14 (2) (b), 48.185 (2), 48.235 (1) (c), 48.299 (4) (a),
2 48.299 (4) (b), 48.831 (1) and 757.69 (1m) (e); and *to create* 48.979 and 808.075
3 (4) (a) 13. of the statutes; **relating to:** the appointment of a guardian for a child
4 who is born to a mother who is under 16 years of age and requiring the mother
5 of such a child to complete a parenting class.

Analysis by the Legislative Reference Bureau

Under current law, the court assigned to exercise jurisdiction under the Children's Code (juvenile court) may appoint a guardian for a child who, on appointment, has the duty and authority to make important decisions in matters having a permanent effect on the life and development of the child and the duty to be concerned about the general welfare of the child.

This bill requires the county department of human services or social services (county department) of the county of residence of a child who is born to a mother under 16 years of age, who resides with his or her mother, and who does not have a guardian or, if that county is Milwaukee County, the Department of Health and Family Services (DHFS) to file a petition for the appointment of a relative of the child or other fit and willing adult to serve as guardian of the child and to offer parenting classes to the mother of the child. If the juvenile court finds that the child was born to a mother under 16 years of age, resides with his or her mother, and does not have a guardian, the juvenile court must find that the child is in need of a guardian. If, after considering the suitability, willingness, and ability of the person nominated to

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serve as guardian of the child, the juvenile court finds that appointment as guardian of the person nominated is in the best interests of the child, the juvenile court must order the person to be appointed as the guardian of the child. If, after considering those factors, the juvenile court finds that appointment as guardian of the person nominated is not in the best interests of the child, the juvenile court must dismiss the petition and order the petitioner to file a petition nominating another person as guardian of the child. The guardianship continues until the mother of the child attains the age of 18 years, unless the juvenile court earlier terminates the guardianship, including termination due to removal of the guardian for cause, resignation of the guardian, termination of parental rights to the child, or placement of the child in the home of a guardian, with a fit and willing relative, or in some other alternative permanent placement.

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.** 48.09 (5) of the statutes is amended to read:

2 48.09 (5) By the district attorney or, if designated by the county board of
3 supervisors, by the corporation counsel, in any matter arising under s. 48.13, 48.133
4 ~~or~~ 48.977, or 48.979. If the county board transfers this authority to or from the
5 district attorney on or after May 11, 1990, the board may do so only if the action is
6 effective on September 1 of an odd-numbered year and the board notifies the
7 department of administration of that change by January 1 of that odd-numbered
8 year.

9 **SECTION 2.** 48.14 (2) (b) of the statutes is amended to read:

10 48.14 (2) (b) The appointment and removal of a guardian of the person for a
11 child under ss. 48.427, 48.428, 48.43, 48.831, 48.832, 48.839 (4) (a), 48.977, ~~and~~
12 48.978, and 48.979 and ch. 54 and for a child found to be in need of protection or
13 services under s. 48.13 because the child is without parent or guardian.

14 **SECTION 3.** 48.185 (2) of the statutes is amended to read:

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1 48.185 (2) In an action under s. 48.41, 48.978, or 48.979, venue shall be in the
2 county where the birth parent or child resides at the time that the petition is filed.
3 Venue for any proceeding under s. 48.363, 48.365, or 48.977, or any proceeding under
4 subch. VIII when the child has been placed outside the home pursuant to a
5 dispositional order under s. 48.345 or 48.347, shall be in the county where the
6 dispositional order was issued, unless the child's county of residence has changed,
7 or the parent of the child or the expectant mother of the unborn child has resided in
8 a different county of this state for 6 months. In either case, the court may, upon a
9 motion and for good cause shown, transfer the case, along with all appropriate
10 records, to the county of residence of the child, parent, or expectant mother.

11 **SECTION 4.** 48.235 (1) (c) of the statutes is amended to read:

12 48.235 (1) (c) The court shall appoint a guardian ad litem for any child who is
13 the subject of a proceeding to terminate parental rights, whether voluntary or
14 involuntary, for a child who is the subject of a contested adoption proceeding and for
15 a child who is the subject of a proceeding under s. 48.977 ~~or~~, 48.978, or 48.979.

16 **SECTION 5.** 48.299 (4) (a) of the statutes is amended to read:

17 48.299 (4) (a) Chapters 901 to 911 shall govern the presentation of evidence at
18 the fact-finding hearings under ss. 48.31, 48.42, 48.977 (4) (d) and, 48.978 (2) (e) and
19 (3) (f) 2., and 48.979 (2) (e).

20 **SECTION 6.** 48.299 (4) (b) of the statutes is amended to read:

21 48.299 (4) (b) Except as provided in s. 901.05, neither common law nor
22 statutory rules of evidence are binding at a hearing for a child held in custody under
23 s. 48.21, a hearing for an adult expectant mother held in custody under s. 48.213, a
24 runaway home hearing under s. 48.227 (4), a dispositional hearing, ~~or~~ a hearing
25 ~~about changes~~ on a change in placement, ~~a revision of a dispositional orders,~~ order.

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1 or an extension of a dispositional orders or order, a hearing on the revision or
2 termination of a guardianship orders order entered under s. 48.977 (4) (h) 2. or (6)
3 or 48.978 (2) (j) 2. or (3) (g), or a hearing on the termination of a guardianship order
4 entered under s. 48.979 (2) (g) 2. At those hearings, the court shall admit all
5 testimony having reasonable probative value, but shall exclude immaterial,
6 irrelevant, or unduly repetitious testimony or evidence that is inadmissible under s.
7 901.05. Hearsay evidence may be admitted if it has demonstrable circumstantial
8 guarantees of trustworthiness. The court shall give effect to the rules of privilege
9 recognized by law. The court shall apply the basic principles of relevancy,
10 materiality, and probative value to proof of all questions of fact. Objections to
11 evidentiary offers and offers of proof of evidence not admitted may be made and shall
12 be noted in the record.

13 **SECTION 7.** 48.831 (1) of the statutes is amended to read:

14 **48.831 (1) TYPE OF GUARDIANSHIP.** This section may be used for the appointment
15 of a guardian of a child who does not have a living parent if a finding as to the
16 adoptability of a child is sought. Except as provided in ss. 48.977 and, 48.978, and
17 48.979, ch. 54 applies to the appointment of a guardian for a child who does not have
18 a living parent for all other purposes. An appointment of a guardian of the estate of
19 a child who does not have a living parent shall be conducted in accordance with the
20 procedures specified in ch. 54.

21 **SECTION 8.** 48.979 of the statutes is created to read:

22 **48.979 Appointment of guardian for child of child parent. (1)**
23 **GUARDIANSHIP AND PARENTING CLASSES REQUIRED.** (a) *Notice to county department or*
24 *department.* Whenever a child is born to a mother under 16 years of age at or on route
25 to a hospital or maternity home, the hospital or maternity home shall, within 7 days

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1 after the birth of the child, provide notice of that birth to the county department of
2 the county of residence of the child or, if that county is a county having a population
3 of 500,000 or more, the department. Whenever a child is born to a mother under 16
4 years of age elsewhere than at or on route to a hospital or maternity home, the
5 physician, nurse–midwife, or birth attendant who attended the birth of the child,
6 shall, within 7 days after that birth, provide notice of that birth to the county
7 department of the county of residence of the child or, if that county is a county having
8 a population of 500,000 or more, the department.

9 (b) *Guardianship and parenting classes required.* Within 30 days after
10 receiving a notice under par. (a), the county department or department receiving that
11 notice shall determine whether the child resides with his or her mother and has a
12 guardian. If the child resides with his or her mother and does not have a guardian,
13 the county department or department shall file a petition under sub. (2) (a) for the
14 appointment of a relative of the child or other fit and willing adult to serve as
15 guardian of the child and offer parenting classes to the mother of the child.

16 (2) APPOINTMENT OF GUARDIAN. (a) *Filing of petition.* If a county department
17 or the department determines under sub. (1) (b) that a child resides with his or her
18 mother and does not have a guardian, the county department or department shall
19 file a petition for the appointment of a relative of the child or other fit and willing
20 adult to serve as guardian of the child.

21 (b) *Contents of petition.* A proceeding for the appointment of a guardian for a
22 child under this subsection shall be initiated by a petition that shall be entitled “In
23 the interest of (child’s name), a person under the age of 18” and shall set forth with
24 specificity all of the following:

- 25 1. The name, birth date, and address of the child.

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1 2. The name, birth date, and address of the mother of the child.

2 3. The name and address of the person nominated as guardian of the child.

3 4. A statement that the child has no guardian.

4 5. A statement of whether the proceedings are subject to the Uniform Child
5 Custody Jurisdiction and Enforcement Act under ch. 822.

6 6. A statement of whether the child may be subject to the federal Indian Child
7 Welfare Act, 25 USC 1911 to 1963.

8 (c) *Service of petition and notice.* 1. The petitioner shall cause the petition and
9 notice of the time and place of the hearing under par. (d) to be served on all of the
10 following persons:

11 a. The child's guardian ad litem.

12 b. The child's mother and, if the child's paternity has been established, the
13 child's father.

14 c. If the child's paternity has not been established, the persons to whom notice
15 is required to be given under s. 48.27 (3) (b) 1., if those persons can with reasonable
16 diligence be located.

17 d. The person who is nominated as the guardian of the child in the petition.

18 2. Service shall be made by certified mail at least 7 days before the hearing or
19 by personal service in the same manner as a summons is served under s. 801.11 (1)
20 at least 7 days before the hearing or, if with reasonable diligence a party specified in
21 subd. 1. cannot be served by mail or by personal or substituted service, service shall
22 be made by publication of a notice published as a class 1 notice under ch. 985. In
23 determining which newspaper is likely to give notice as required under s. 985.02 (1),
24 the petitioner shall consider the residence of the party, if known, or the residence of
25 the relatives of the party, if known, or the last-known location of the party.

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1 (d) *Plea hearing.* 1. A hearing to determine whether any party wishes to
2 contest a petition filed under par. (a) shall take place on a date that allows reasonable
3 time for the parties to prepare but is no more than 30 days after the filing of the
4 petition. At the hearing, the nonpetitioning parties shall state whether they wish
5 to contest the petition.

6 2. If the petition is not contested, the court may immediately proceed to a
7 dispositional hearing under par. (f), unless an adjournment is requested. If a party
8 requests an adjournment, the court shall set a date for the dispositional hearing
9 which allows reasonable time for the parties to prepare but is no more than 30 days
10 after the plea hearing.

11 3. If the petition is contested, the court shall set a date for a fact-finding
12 hearing under par. (e) that allows reasonable time for the parties to prepare but is
13 no more than 30 days after the plea hearing.

14 (e) *Fact-finding hearing.* The court shall hold a fact-finding hearing on the
15 petition on the date set by the court under par. (d) 3., at which any party may present
16 evidence relevant to the issues of whether the child was born to a mother under 16
17 years of age, whether the child resides with his or her mother, and whether the child
18 has a guardian. If the court, at the conclusion of the fact-finding hearing, finds by
19 clear and convincing evidence that the child was born to a mother under 16 years of
20 age, resides with his or her mother, and has no guardian, the court shall find that the
21 child is in need of a guardian and immediately proceed to a dispositional hearing
22 unless an adjournment is requested. If a party requests an adjournment, the court
23 shall set a date for the dispositional hearing which allows reasonable time for the
24 parties to prepare but is no more than 30 days after the fact-finding hearing.

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1 (f) *Dispositional hearing.* The court shall hold a dispositional hearing on the
2 petition at the time specified under par. (d) 2. or (e), at which any party may present
3 evidence relevant to the disposition.

4 (g) *Dispositional factors.* In determining the appropriate disposition under par.
5 (h), the best interests of the child shall be the prevailing factor to be considered by
6 the court. In making a decision about the appropriate disposition, the court shall
7 consider all of the following:

8 1. Whether the person nominated as guardian would be a suitable guardian of
9 the child.

10 2. The willingness and ability of the person nominated as guardian to serve as
11 the guardian of the child.

12 (h) *Disposition.* After receiving any evidence relating to the disposition, the
13 court shall enter one of the following dispositions within 10 days after the
14 dispositional hearing:

15 1. A disposition dismissing the petition and ordering the petitioner to file a
16 petition nominating another person as the guardian of the child, if the court
17 determines that appointment as guardian of the child of the person nominated as
18 guardian of the child is not in the best interests of the child.

19 2. A disposition ordering that the person nominated as guardian be appointed
20 as the guardian of the child, if the court determines that such an appointment is in
21 the best interests of the child.

22 **(3) PARENTAL RIGHTS; DUTY AND AUTHORITY OF GUARDIAN.** (a) *Parental rights.* The
23 appointment of a guardian under sub. (2) does not, in itself, divest a parent of any
24 parental rights.

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1 (b) *Duties and authority of guardian.* A guardian appointed under sub. (2) shall
2 have all of the duties and authority specified in s. 48.023.

3 **(4) TERMINATION OF GUARDIANSHIP.** (a) *Term of guardianship.* A guardianship
4 under this section shall continue until the child's mother attains the age of 18 years
5 or until terminated by the court, whichever occurs earlier. The court shall terminate
6 a guardianship under this section if any of the following occur:

7 1. The parental rights to the child of all living parents of the child are
8 terminated under s. 48.427 (3).

9 2. The child is placed in the home of a guardian under s. 48.977 (2) or ch. 54,
10 with a fit and willing relative, or in some other alternative permanent placement.

11 (b) *Removal for cause.* 1. The petitioner under sub. (2) (a) may request that
12 a guardian appointed under sub. (2) (h) 2. be removed for cause or the court may, on
13 its own motion, propose such a removal. The request or court proposal shall allege
14 facts sufficient to show that the guardian is or has been neglecting, is or has been
15 refusing, or is or has been unable to discharge the guardian's trust and may allege
16 facts relating to any other information that affects the advisability of the court's
17 disposition.

18 2. The court shall hold a hearing on the matter unless written waivers of
19 objections to the removal are signed by all parties entitled to receive notice under
20 sub. (2) (c) 1. and the court approves the waivers.

21 3. If a hearing is to be held, the court shall notify the persons entitled to receive
22 notice under sub. (2) (c) 1. at least 7 days before the hearing of the date, place, and
23 purpose of the hearing. A copy of the request or court proposal shall be attached to
24 the notice. The court shall remove the guardian for cause if, at the hearing, the court
25 finds that it has been proved by clear and convincing evidence that the guardian is

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1 or has been neglecting, is or has been refusing, or is or has been unable to discharge
2 the guardian's trust and if the court determines that removal of the guardian would
3 be in the best interests of the child.

4 (c) *Resignation of guardian.* A person who is appointed as a guardian under
5 sub. (2) (h) 2. may, at any time after his or her duty and authority as guardian begin,
6 resign that appointment by executing a written resignation, filing the resignation
7 with the court that issued the guardianship order, and notifying the petitioner in
8 writing of that resignation. On compliance with this paragraph, the court may
9 accept the resignation and rescind the guardianship order if the court determines
10 that the resignation and rescission are in the best interests of the child.

11 **(5) RELATIONSHIP TO CH. 54.** (a) Except when a different right, remedy, or
12 procedure is provided under this section, the rights, remedies, and procedures
13 provided in ch. 54 shall govern a guardianship created under this section.

14 (b) This section does not abridge the duties or authority of a guardian appointed
15 under ch. 54.

16 (c) Nothing in this section prohibits an individual from petitioning a court for
17 the appointment of a guardian under ch. 54.

18 **SECTION 9.** 757.69 (1m) (e) of the statutes is amended to read:

19 757.69 **(1m)** (e) Conduct hearings, make findings, or issue orders in
20 proceedings under s. 48.977 ~~or~~, 48.978, or 48.979.

21 **SECTION 10.** 808.075 (4) (a) 13. of the statutes is created to read:

22 808.075 **(4)** (a) 13. Termination of a guardianship order under s. 48.979 (4),
23 including removal of a guardian under s. 48.979 (4) (b) or rescission of a guardianship
24 order under s. 48.979 (4) (c).

25 **(END)**